REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 31745/2014

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

…………………….. …………………………
DATE SIGNATURE

In the matter between:

PC BECKET t/a LIBERTAS BOERDERY Applicant

And

OLD FASHIONED FISH AND CHIPS
DISTRIBUTION CENTRE (PTY) LTD Respondent

J U D G M E N T

WEINER, J:

1. This application came before this Court as an application for the winding-up of the respondent. It was initially brought on a long form

notice of motion but an amended notice of motion was filed on 6 November 2014 setting the matter down for 13 November 2014 on the basis that the application for the winding-up had become urgent. The original application was launched on 18 August 2014 and was based upon section 344(f) and/or 344(h) of the Companies Act read with Schedule 9 of the Companies Act 71 of 2008 ("*the Act*"). The applicant based its claim on the fact that the respondent was unable to pay its debts and that it was just and equitable that the respondent be wound-up. The applicant also submitted that, in terms of section 81(1)(c) of the Act, even if the respondent is solvent, it would be just and equitable for it to be wound-up.

2. The applicant is in the business of selling fresh potatoes to various companies one of which was the respondent. The respondent is the distribution centre of a company styled Old Fashioned Fish and Chips (Pty) Ltd, which is the franchisor of the Old Fashioned Fish and Chips franchise which operates approximately 300 franchisees countrywide. The respondent's business is the supply of fish and potatoes to the franchisees of Old Fashioned Fish and Chips (Pty) Ltd including certain franchise operations owned directly by the franchisor.

3. The parties concluded an oral agreement in terms of which the applicant would supply potatoes to the respondent; the applicant would deliver to the respondent's principal place of business in Germiston; upon delivery the applicant would submit a delivery note to the respondent who would then send the applicant a supply invoice

which evidenced the delivering and acceptance of the potatoes; the applicant would then send the respondent its tax invoices for payment; payment for the applicant would be made within 14 days from date of invoice; ownership of the goods remained vested in the applicant until the purchase price had been paid in full.

4. From February 2014 until July 2014 the respondent telephonically ordered potatoes on various occasions from the applicant which were delivered. The orders were placed telephonically by one Amelia de Souza (Amelia) of the respondent with the applicant's wife Linda Becker (Linda) who took the orders telephonically on a daily basis. The applicant attaches the relevant documents which relate to the applicant's claims which are still outstanding.

5. Prior to February 2014 one Paul Mendonca (Paul) was the Managing Director of the respondent and the applicant had corresponded with him in regard to the ordering and delivery of the potatoes. The applicant had traded then under the name and style of Paul Farrel Boerdery CC trading as Libertas Boerdery. The applicant conducted business with the respondent from February 2014 onwards. The applicant was the only member of Paul Farrel Boerdery CC and the respondent was under the management of Mendonca. The applicant's invoices were always paid timeously until February 2014 when Mendonca left the employ of the respondent.

6. When Paul left, the applicant set up a meeting with the new management and was introduced to Amelia who held herself out as a

CEO of the respondent. The Director of the respondent one Nicole de Souza (Nicole) is the daughter of Amelia and the ex-wife of Paul and the two businesses being the respondent and Old Fashioned Fish and Chips (Pty) Ltd are interlinked.

7. On 26 February 2014, Amelia met with representatives of the applicant and they decided to continue the relationship on the same basis as before. The first delivery of potatoes was made on the same day.

8. The applicant states that it was specifically agreed that payment terms would be 14 days from date of the applicant's invoices and it was further agreed that when the potatoes were delivered the price would be agreed depending upon the price fluctuations.

9. The applicant contends that the respondent breached the terms of the agreement in failing to make payments as agreed. A second meeting was held on 21 May 2014 between Amelia and the applicant. Amelia promised that the outstanding amounts owed to the applicant would be paid in full.

10. No payment was forthcoming and a letter of demand was sent to the respondent by the applicant's legal representatives in August 2014. The applicant attached the relevant delivery notes and invoices upon which its claim is based. The applicant claimed that the respondent was commercially insolvent in that it had failed to pay the amount owing which the applicant alleged was the sum of R1 415 257,06. The

applicant set out how this was calculated in terms of the documents which it attached.

11. The applicant refers to several other creditors of the respondent:

11.1 A liquidation application was launched by Dynamic Labour Solutions (Pty) Ltd who supplied labour broking services to the respondent and an amount of R400 364,09 was outstanding which led to the application for liquidation.

11.2 Another liquidation application was launched by suppliers of fish fillets who alleged that they were owed the sum of R1 197 571,73.

12. The respondent filed its opposing affidavit on 5 September 2014. It was deposed to by Nicole. The respondent alleged that the applicant's attorneys were the ones who launched the three separate applications for the liquidation of the respondent being the applications referred to in 11 above. They stated that all were being opposed. It is pertinent that the application launched by Beadica 219 CC was argued and a judgment was prepared. However before judgment was handed down, the matter was settled and the applicant, in that case, was paid by the respondent. The respondent intimates that there is something untoward in the applications as the attorneys for the applicants also represent the respondent's ex-husband representing De Souza's ex-husband Paul, who Nicole alleges is being investigated by SAPS. The

respondent states that there are *bona fide* and genuine disputes of fact in the applicant's application. It is denied that the respondent is insolvent.

13. In regard to the sale and delivery of the potatoes the following is the respondent's defence:

13.1. In many instances the quantity ordered was not delivered. Linda was aware of the fact that there were short deliveries as Amelia had informed her;

13.2. At least one whole consignment consisted of rotten potatoes which Linda asked the respondent to dump and promised to pass a credit.

14. The respondent sets out a schedule and alleges that the deliveries between 14 May 2014 to 5 June 2014, a period of some 23 days consisted of approximately 44 110 bags of various grades and sizes of potatoes. Usually the bags of potatoes that are delivered are not opened by the respondent but are sent directly to the franchisees.

15. The respondent contends that from about 14 May 2014, the franchisees to whom the applicant's potatoes were delivered refused to pay for the potatoes because they were rotten or unsuitable. According to Nicole, Amelia raised this problem with Linda who

immediately sent replacement loads. Some of the replacement bags sent were opened after delivery and those were also found to be unsuitable for chips. Amelia offered to return the potatoes but was told by Linda to dump them. This was done and the potatoes were collected by the respondent's waste disposal company. The respondent states that they had to buy potatoes from another supplier because of this problem and that during the period 14 May 2014 to 5 June 2014 there was obviously something wrong with the applicant's goods.

16. The respondent annexes to its affidavit the latest financial and bank statements of the respondent to support the allegation that it is solvent. It is noteworthy that these bank statements and financial statements relate to the period ending 28 February 2013 and are only draft statements.

17. Although the respondent stated that many franchisees complained about the potatoes that were unusable, no confirmatory affidavits from any of the franchisees were attached.

18. On 10 October 2014 the applicant served its replying affidavit.

19. The applicant denies that Paul is being investigated by the police. ______ states that there is no connection between this application and the problems between Paul and Nicole. The applicant also points out that the bank statements which the respondent produces show an income but do not show any of the liabilities which the respondent is incurring. The applicant points out that the respondent appears to raise

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the same points in opposition to the other applications referred to in 11 above that is non-delivery or defective goods.

20. In dealing with the short deliveries the applicant points out that there was short delivery on three occasions in respect of delivery notes 6444, 6693 and 6716. Three bags of potatoes were missing from the delivery note 6444. After an investigation of the applicant, it appeared that the applicant's driver had misappropriated these three bags. On delivery notes 6693 and 6716 there was a short delivery of one bag and three bags respectively. The applicant credited the respondent's account in respect of those short deliveries. They amounted to R263,30. The applicant denies that the entire consignment of potatoes for a certain period were rotten and unusable. There are no emails, confirmatory affidavits or written complaints from the respondents or its franchisees.

21. The applicant states that the respondent was not satisfied with two consignments being 32 bags and 531 bags respectively. Although there was some dispute as to whether the goods were unusable, a credit note was provided for those bags. Other than that, the applicant says the remaining amounts are outstanding.

22. The applicant states that despite the respondent now stating that the goods were unfit for the purpose for which they were purchased, the respondent continuing ordering vast quantities of potatoes on a daily basis and made partial payments in respect thereof. The applicant denies that, at any time, there was any correspondence or telephone

calls from the respondent dealing with the fact that these potatoes were rotten.

23. The applicant points out that it has provided all the necessary documentation to show sale and delivery and failure to pay and that the respondent has not annexed any documents or confirmatory affidavits of persons in its employ (other than Amelia) to confirm that the potatoes were rotten, were dumped or that there were short deliveries. The applicant states further that, in terms of their invoicing and delivery procedure, a supply invoice would not have been generated by the respondent and provided to the applicant if the goods were not delivered or unsatisfactory.

24. The applicant contends that on a balance of probabilities the proper delivery of the potatoes did occur. Although the respondent places the amount of the potatoes delivered in dispute, there is no proof provided by the respondent. Although it contends that the potatoes were dumped on the instructions of Linda, there is no confirmation, or any documentation provided from the entity which was utilised to dump the unsuitable goods. The applicant relies on Section 345(1)(c) and accordingly the debt owed need not be due and payable, nor need the precise quantum thereof be determined.

25. It was not, in essence, disputed by the respondent, that the goods were delivered (save for certain short deliveries for which credits were passed). The issue of the potatoes being rotten appeared unsubstantiated and was garnered from hearsay. The applicant

accordingly contends that there is no *bona fide* and reasonable dispute on the papers and that a *prima facie* case has been shown by the respondent which the applicant has not *bona fide* disputed.

26. The respondent states that as a result of the potatoes being rotten, the respondent had to purchase same from another supplier however, again, the respondent fails to annex any documentation in this regard.

27. It cannot be disputed on the applicant's papers that it is a creditor in an amount in excess of the amount which is required in terms of the legislation. The respondent has certainly not shown that all of the goods which were delivered were not suitable for use and cannot disturb the factor of the applicant's *locus standi* as a creditor. In any event the respondent concedes that the applicant is a contingent creditor as set out in ***Simmonds NO v Cape (Pty) Ltd*** 1977 (3) SA 451 (W).

28. The respondent alleges that there is a substantial dispute of fact on the papers dealing with the delivery of the goods. Reference is made by the applicant to the well-known case of ***Kalil v Decotex (Pty) Ltd*** 1988 (1) SA 943 (AD) at 976A-I where Corbett JA stated the following:

> *Where the application for a provisional order of winding up is not opposed or where, though it is opposed, no factual disputes are raised in the opposing affidavits, the concept of the applicant, upon whom the onus lies, having to establish a* <u>*prima facie*</u> *case for the liquida-tion of the company seems wholly appropriate; but not so where the application is opposed and real and funda-mental factual issues arise on the affidavits, for it can hardly be suggested that in such a case the*

court should decide whether or not to grant an order without reference to respondent's rebutting evidence."

29. Taking the above into consideration it is important to point out the following:-

29.1. The amount owed to the Applicant is R1 415 257,06

29.2. The respondent annexes draft Annual Financial Statements for the years ended 2012 and ended February 2013 which shows assets and liabilities up to February 2013. The application was launched in August 2014. The respondent annexes bank statements which shows a turnover of monies in the respondent's bank account. This is irrelevant.

29.3. There is no evidence to suggest that the respondent has assets or cash at its disposal to settle its debts even if its assets do exceed its liabilities. These assets may be unrealizable to pay its debts as and when they become due.

29.4. It is also important to point out that the 2013 "Draft Annual Financial Statements" annexed to the Respondent's Affidavit are not complete and in fact start from page 6. This is telling under the circumstances.

29.5. It is also interesting to note that the deponent to the respondent's answering affidavit doesn't state that the respondent is liquid enough to pay the applicant should the court find that the consignment of potatoes was in fact delivered. All the respondent states is that the bank statement and "old" annual financial statements are annexed to show the extent of the respondent's operation. This is irrelevant.

29.6. The respondent has simply not passed the hurdle in respect of evidencing that it can pay the indebtedness owed to the applicant or that the indebtedness is even *bona fide* disputed.

Urgent application

30. The applicant amended its notice of motion on 6 November 2014 to apply for the matter to be heard as a matter of urgency. In this regard a supplementary affidavit was filed. The applicant contends that on 5 November 2014 it came to the attention of the applicant that the respondent had various creditors which were owed in the region of R15 550 000,00. This was confirmed to the applicant by one Chantel Leech ("Leech") a former employee in the respondent's Accounts Department.

31. It also came to the attention of the applicant on 4 November 2014 that the respondent was selling and dissipating assets by selling 11 of its trucks. The applicant points out that the respondent is a distribution centre which needs the trucks to transport its goods to the various franchises. The trucks are according to the applicant owned by the respondent or are subject to a hire purchase agreement but the amount owing is minimal. This was confirmed by Leech to the applicant. As a distribution centre, the main assets of the company are the trucks. Without same, the respondent could not trade as a distribution centre.

32. The respondent concedes that it has sold all of its trucks.

33. The applicant refers to a confirmatory affidavit from one Altin Lay, who is the sole director and shareholder of the Truck Wizard (Pty) Ltd. Law confirms that his company is owed approximate R400 000 and he supports the application for liquidation. Lay states that he used to maintain the trucks of the respondent which included repairs, tire maintenance, refuelling and licensing. He further states that it was at the premises of the respondent on the 16th of October 2014 and confirms that there was no stock in the warehouse. The applicant contends further that on the 4th of November 2014, it came to his attention that an agreement was concluded with a company called Jawell No Fine (Pty) Ltd, represented by an attorney, Fitz Henry. The agreement purports to be a share sale and buyback agreement, however it is clear from the document that the respondent and/or Old Fashioned Fish and Chips (Pty) Ltd were, in effect, providing their shareholding or at least, Old Fashioned Fish and Chips (Pty) Ltd was providing its shareholding in the respondent as collateral for the loan amount of some R4,8 million. The buyback price appears to be more than a "selling price" which buyback price increases over a period of time from 30 days to 90 days (the interest component).

34. A further agreement was concluded with Waleed Investment Holdings, represented by Zunaid Moti. What appears from this agreement, is the following:-

34.1. On the 14th of May 2014, the respondent represented by Nicole and Waleed Investment (Pty) Ltd, entered into an agreement whereby the respondent would lend from Waleed an amount of R4,3million. This was subject to 40 percent of the shareholding of the respondent, being held as security for the duration fo the indebtedness. The loan had to be repaid within 6 months from the 15th of May 2014. Accordingly, the repayment date is the 15th of November 2014.

34.2. In addition, in terms of the agreement, the respondent has bound itself to pay royalties to Waleed for period of 10 years at 1 percent of turnover payable 30 days in arrears, plus VAT. Alternatively, Waleed is entitled to 10percent of the gross proceeds of the respondent plus the capital loaned.

35. It appears from the agreement that the respondent was obliged to pay Waleed an a amount of R4,8 million (The R4 300 000,00 loaned and the interest royalty component of R5 000) in terms of letters between Waleed and Nicole.

36. In addition, the respondent has closed down its Cape Town, Durban, Bloemfontein and Port Elizabeth branches of its distribution centre. Each branch was its own distribution centre with its own trucks, carsm stocks and other items. The only distribution centres that remain open are the Johannesburg and Polokwane branches. The Polokwane branch is apparently being closed down during November 2014. All of

the above was relayed to the applicant by Lay, who was told the same by the respondents and by Leech.

37. Leech approached the applicant's attorney on the 5th of November 2014 and informed them of the following:-

37.1. Over the 3 months that she was employed by the respondent as an accounts assistance, she made payments from the respondent's bank account to the bank account of Old Fashioned Fish & Chips (Pty) Ltd which is a separate entity and for which there were no invoices or documentary proof of the reason for such payments.

37.2. She made payments in the amount of approximately R1million from the respondent to Old Fashioned Fish & Chips (Pty) Ltd. These were made in order for Old Fashioned Fish & Chips (Pty) Ltd to pay salaries and other expenses.

37.3. She was ordered by Nicole, Nelson De Souza and Emilia to pay amounts from the respondent's bank account to the personal bank accounts of Nelson, Nicholas and Nicole. On one occasion she paid R50 000,00 to Nicholas' bank account while he was in Italy. On another occasion, monies were paid from the bank account of the respondent into the bond account of Nicole for two houses which she owns in Ballito.The bonds amount payable, R14 000, 00 each.

37.4. She further confirmed that all cash payments from the franchisees are kept by Emelia and not entered into the respondent's accounting system. Cash payments are made daily.

37.5. In addition, Emelia told her to load a payment of part of invoice, but to provide proof of payment to the client of the full amount, when there were insufficient funds in the bank account.

37.6. Leech resigned on the 17th of October 2014, because Emelia demanded that she sign an affidavit that Lawy had stolen purchase orders and other documents from the respondent. She refused to do so.

38. The applicant submits that the loans and/or share sale and/or buyback agreements and the interest components thereof appear to be wither questionable dispositions, alternatively, one creditor is being preferred against another and is a further indication that the respondent is unable to pay its creditors.

39. The applicant submits that, in order to pay the amount of R4,8 million by the 15th of November, the respondent was obliged to dissipate it's assets, including all of its trucks. This, the applicant contends, would be of huge detriment and prejudice to the applicant, and the general body of creditors.

40. The financial distress of the respondent, and the way in which the bank account is being conducted, requires investigation, as it appears that there are more unsatisfied creditors, and the income coming into the respondent, is not being utilised to pay those creditors.

41. On the 4th of November 2014, the applicant's attorney sought an undertaking from the respondent that the assets would not be dissipated. The respondent's attorney responded by stating that no undertaking would be provided. The respondent however did not deny the fact that it was selling its trucks and also did not deny that it was to pay out the sum of R4,8 million by the 15th of November 2014.

42. The applicant contends that it appears that the De Souza family are using the income of the respondent to finance their luxurious lifestyles at the expense of the creditors.

43. In the affidavit deposed to by Nicole opposing the urgent application, she states that the applicant is advancing a hidden agenda to destroy the business of the respondent. She attacks the way in which the applicant came into possession of the documents, through Leech, who, according to the applicant, violated the terms of her confidentiality agreement and giving the information to Lay, who in turn passed it on to the applicant. She accordingly submits that same should not be relied upon by virtue of the way in which they came into the possession of the applicant. This situation was dealt with in the case of ______v______ where the court held that it was entitled to have regard to the information, despite the way in which the applicant came into possession thereof, if same was relevant to the issue at hand.

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44. In regard to the sale of its assets, the respondent states that it has been "restructuring its business since June 2014" by closing down the

underperforming depots in Cape Town, Durban, Port Elizabeth and Bloemfontein and by disposing of the redundant vehicles. It intends to also vacate the Gosforth Park Warehouse and states that "once the new supply chain that the respondent had established to the franchisees is fully up and running, and existing stock has been moved to the distributors' warehouse, the respondent will also vacate the Gosforth Park warehouse". She states that the restructuring is based on financially sound business principles, made with the legitimate aim of cutting unnecessary overheads, thereby improving the respondent's bottom-line profits. The sale of the vehicle, according to her, all occurred in the normal course of business.

45. However, as stated above, the major asset of the respondent in respect of its distribution services are the trucks which it had in its possession and, according to the respondent, it has disposed of all of the trucks which it had in its Johannesburg premises.

46. In regard to the previous application by Beadica, which was heard on the 15th of October 2014, the respondent states that although it disputed its indebtedness, after the argument had been concluded and whilst they were awaiting the judgment, the respondent was advised to effect payment of the amount claimed.

47. The respondent also refers to the fact that the applicant's attorneys act for the respondent's ex-husband and that he intends to open a business of his own in competition with the respondent, as his restraint of trade expired on the 11th of October 2014.

48. Whilst this might be a factor effecting the *bona fides* of the application in certain circumstances, it appears that the application is based on valid and substantiated grounds, and that the respondent has failed to provide the court with sufficient evidence to serve the *prima facie* case that it is unable to pay its debts.

49. In regard to the Waleed agreement, the respondent states that if the capital amount is not paid within 6 months, that is by the 15th of November 2014, the respondent will be liable to pay 1 percent of its monthly turnover as royalties to the lender, whilst the capital must then be repaid over a period of 48 months, commencing one year from the expiry of the initial 6 month period, that is 14th November 2014.

50. Nicole also states that the loan was an advance made to Old Fashioned Fish & Chips (Pty) Ltd in order to pay out the amount that was due to Paul in terms of the court order of 13th October 2013. The funds were initially made available by Joel No Fine (Pty) Ltd, which was repaid from the loan which had been made available by Waleed investments.

51. However, the fact remains that if the debt was not paid by the 15th of November 2014, that is 6 months from the day that it was loaned, the respondents finances will be adversely affected, in that it is liable to pay 1 percent of its monthly turnover as royalties to the lender, as well as the capital over a period of 48 months.

52. The respondent's explanation for it closing down various of its debtors and selling all of its trucks for "sound economic and commercial reasons" appear fanciful. The court has to wonder precisely what business the respondent will conduct if it closes its depots, and sells all of its trucks. It operates business as a warehouse and distribution company. Such business will obviously not be able to be conducted by the respondent without the warehouses and the trucks.

PARA TO PUT IN SOMEWHERE (you said on recording, you would find out where it goes. I'm guessing around para 10 where mention is made of the letter of demand?)-

53. The applicant's attorney sent a letter of demand to the respondent on the 1st of August 2014. Demand was made for the sum of R1 511 905, 90 for goods that had been sold and delivered. No response was received to that letter and another letter was addressed to the respondent on the 14th of August 2014. Similarly, no response was received there too.

54. Although the respondent attempts to cure the problem with the lack of evidence in the supplementary answering affidavit it only attaches certain emails from persons who are unknown to the applicant. There was no confirmatory affidavit from any of the franchisees that the potatoes were totally rotten.

55. The applicant concedes that two batches were unsuitable and credit notes were passed for them. It appears therefore that the applicant

has made out a *prima facie* case for a provisional winding-up order. In regard to the insolvency of the respondent reference is made to Section 345(1)(c) of the Act and the fact that the applicant is a creditor or at least a contingent creditor in an amount of more than R100,00. In ***Absa Bank v Reeboksskloof (Pty) Ltd*** 1993 (4) SA 436 (CPD), Berman J held at 440F-441C as follows:

> *"The concept of commercial insolvency as a ground for winding up a company is eminently practical and commercial sensible. The primary question which a Court is called upon to answer in deciding whether or not a company carrying on business should be would up as commercially insolvent is whether or not it has liquid assets or readily realisable assets available to meet its liabilities as they fall due to be met in the ordinary course of business and thereafter to be in a position to carry on normal trading-in other words, can the company meet current demands on it and remain buoyant? It matters not that the company's assets, fairly valued,' far exceed its liabilities: once the Court finds that it cannot do this, it follows that it is entitled to, and should, hold that the company is unable to pay its debts within the meaning of s345(1)(c) as read with s34(f) of the Companies Act 61 of 1973 and is accordingly liable to be would up. As Caney J said in Rosenbach & Co (Pty) Ltd v Singh's Bazaar (Pty) Ltd 1962(4) SA 593 (D) at 597E-F:*
>
> > *'If the company is in fact solvent, in the sense of its assets exceeding its liabilities, this may or may not depending upon the circumstances, lead to a refusal of a winding-up order, the circumstances particularly to be taken into consideration against the making of an order are such as show that there are liquid assets or readily realisable assets available out of which, or the proceeds of which, the company is in fact able to pay its debts. '*

Notwithstanding this the Court has a discretion to refuse a winding-up order in these circumstances but it is one which is limited where a creditor has a debt which the company cannot pay, in such a case the creditor is entitled, ex debito justitiae, to a winding-up order (see Henochsberg on the Companies Act 4th ed vol 2 at 586; Sammel and Others v President Brand Gold Mining Co Ltd 1969 (3) SA 629 (A) at 662F)"

Berman J held further at 442A as follows:-

"Winding up is nothing more nor less than a form of execution to which an unpaid creditor is entitled in law to resort, and even if Rhebokskloof possesses an asset worth R25 m and its liabilities amount to only some R5 m, if it is unable to meet the demand by one of it creditors for payment of one of its liabilities amounting to R31/2 m and its only asset is neither liquid nor readily realisable, it is commercially insolvent and liable to be wound up at the instance of that unpaid creditor on that ground".

56. The applicant accordingly alleges that:-

56.1. It is a creditor for an amount of R1 415 257,06.

56.2. The respondent annexes draft annual financial statements for the years ending 2012 and 2013 which show assets and liabilities only up until February 2013. The applicant was launched in August 2014. The respondent annexes bank statements to show that turnover of monies in its account but no liabilities or expenses are demonstrated.

57. Having regard to the above factors as well as the fact that the respondent has dissipated the majority of its assets at a time when there are several pending liquidation applications against the

respondent the applicant has made out a case for the provisional winding-up of the respondent.

Accordingly there will be an order in the following terms:

1. The respondent is placed under provisional winding-up in the hands of the Master of the High Court.
2. The respondent and all other interested parties must show cause on 2 February 2015 why a final order should not

WEINER J

Counsel for the Applicant: Adv. B. Stevens
Applicant's Attorneys: Jurgens Bekker Attorneys
Counsel for the Respondent:
Respondent's Attorneys: Geo Isserow & TL Friedman Inc.
Date of Hearing: 12 November 2014
Date of Judgment: 05 DECEMBER 2014