



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED.

SIGNATURE

DATE: 20 June 2023

Case No. 84446/2022

In the matter between:

MRV INVESTMENTS (PTY) LTD

Applicant

and

N.E.W.S. CARRIERS (PTY) LTD

Respondent

JUDGMENT

WILSON J:

- 1 The applicant, MRV, seeks the liquidation, on either a provisional or final basis, of the respondent, NEWS. The application rests on what MRV says is an unpaid demand, made under section 345 of the Companies Act 61 of 1973, in the sum of R232 150.81. That amount is alleged to be payable in respect of a series of road freight loads MRV transported on NEWS' behalf under a written contract between the parties.

The nature of liquidation proceedings

- 2 The purpose of a liquidation application is generally to protect the interests of the creditors of a company that cannot pay its debts. It is not to enforce a payment obligation in itself – although insolvency proceedings can often boil down to little more than what Didcott J once referred to as an “elaborate means of execution” (see *Gardee v Dhanmanta Holdings* 1978 (1) SA 1066 (N) at 1068H). The fundamental purpose of debt-driven liquidation proceedings is reflected in the *Badenhorst* rule: that a liquidation order will not be granted where it is sought to enforce a genuinely disputed obligation (see *Badenhorst v Northern Construction Company (Pty) Ltd* 1956 (2) SA 346 (T)).
- 3 In this case, despite some creative and amiable argument from Mr. de Leeuw, who appeared for MRV, I have no option but to conclude that the demand for payment is genuinely disputed, and that the application must fail. These are my reasons for saying so.

The debt

- 4 NEWS is a transport and logistics company. MRV is a road haulier to which NEWS subcontracts work. It appears from the papers that NEWS pays MRV by the load, which means that MRV must transport the loads entrusted to it, and then present NEWS with documentary confirmation that each load has been transported to its particular destination. The documentary requirements MRV must meet appear from clause 3 of the contract between the parties. Clause 3.4 states that NEWS “shall not be obliged to settle any invoice unless” MRV meets the documentary requirements specified in the contract.

- 5 The purpose of this provision is set out in NEWS' answering affidavit, where Glen Rayson, a director of NEWS, explains that "even if [a] load has been delivered, the customers of [NEWS] do not make payment to [NEWS] if [NEWS] does not submit the necessary proofs of delivery". NEWS accordingly needs the documentation specified in its contract with MRV before it is in a position to trace and claim payment for the loads it has subcontracted to MRV.
- 6 The principal issue between the parties in this case is whether MRV has given those documents to NEWS. MRV says that it provided a bundle of documentation to NEWS on 22 September 2021. NEWS disputes this. It says that the bundle is missing key, contractually required, information, and that, in any event, the bundle provided was so poorly organised as to make it impossible for NEWS to perform a proper audit of the dozens of loads to which the documentation is said to apply.
- 7 The bundle of documentation was not placed before me, and I heard little, if any, argument about its adequacy. What matters, though, is that the documentary requirements upon which NEWS relies are an integral part of the contract, and NEWS alleges in its answering affidavit that the documents have not been supplied. What I would have expected in reply from MRV is a clear and straightforward accounting of each load in respect of which MRV claims payment, showing that MRV's contractual obligations had been discharged.
- 8 But that is nowhere in sight. The onus is of course on NEWS to show that it disputes the debt on *bona fide* and reasonable grounds (see *Kalil v Decotex (Pty) Ltd* 1988 (1) SA 943 (A) at 980C-D), but I do not see what more NEWS was required to do than point out that the documentary requirements it says

have not been complied with are fused into the payment obligation MRV seeks to enforce, and to set out the basis on which it genuinely believes that those requirements have not been met. To require it to do more would be to confuse the obligation to show that the debt is genuinely disputed with the more onerous duty to prove that the debt is not owing at all. As *Kalil* makes clear, a respondent in liquidation proceedings is required to do only the first of these things.

- 9 The papers in this matter fail to disclose a single case in which MRV has complied with the documentary requirements placed on it in clause 3 of its contract with NEWS, but in which MRV is yet to be paid. Indeed, MRV's founding papers make no attempt to address the terms of the contract at all. The written agreement appears for the first time annexed to NEWS' answering affidavit. NEWS paid MRV for what appears to have been a great deal of work before the relationship between the parties broke down. There is no explanation on the papers for that breakdown other than MRV's failure to comply with its obligations under clause 3.
- 10 In those circumstances, NEWS has plainly discharged the onus on it to show that the debt upon which MRV relies is disputed on *bona fide* and reasonable grounds.
- 11 The application is dismissed with costs.



S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 20 June 2023.

HEARD ON: 31 May 2023

DECIDED ON: 20 June 2023

For the Applicant: R de Leeuw
Instructed by Schabort Potgieter Attorneys

For the Respondent: C Gibson
Instructed by the Reg Joubert Attorneys