



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 034549/2023

- [1] REPORTABLE: NO
- [2] OF INTEREST TO OTHER JUDGES: NO
- [3] REVISED: YES

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SIGNATURE

DATE: 19 November 2025

In the matter between:

MOVING TACTICS DIGITAL MEDIA (PTY) LTD

Applicant

and

AFROBONATICS (PTY) LTD

Defendant

JUDGMENT

PULLINGER AJ

- [1] The applicant applies for an order placing the respondent in final liquidation on the basis that it is unable to pay its debts as contemplated in section 344(f) read with 345(1)(c) of the Companies Act, 1973.
- [2] The debt which the applicant asserts arises from a written agreement in terms of which the applicant would provide certain advertising services to the respondent for the period July to November 2022. There is no dispute that the agreement was concluded.
- [3] The agreed, discounted, fee for those services was R500,000. The importance of this discount will become apparent shortly.
- [4] It is common cause that the respondent has not paid the applicant for the services it rendered.
- [5] In its answering affidavit, the respondent takes two points.
 - [5.1] The respondent's first point concerns this court's jurisdiction. It contends that this court does not enjoy jurisdiction over the respondent or over this dispute. It contends that its principal place of business is in Sunderland Ridge, Centurion, Tshwane and that its registered address is in Strydom Park in Tshwane. It refers to a document in support of the latter statement of fact that is not attached to the answering affidavit.

- [5.1.1] I disagree with the respondent's contention.
- [5.1.2] Section 21(1) of the Superior Courts Act, 2013 provides that "[a] Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance...". The word "Division" is defined as "any Division of the High Court" and "High Court" means the "High Court of South Africa referred to in section 6(1)". Section 6(1) states that the High Court of South Africa consists of the Divisions listed in sub-paragraphs (a) to (j) thereof and section 6(3)(c) empowers the minister to establish one or more local seats of a Division and determine its area of geographical jurisdiction.
- [5.1.3] The High Court, Johannesburg is a local seat of the Gauteng Division. It is not a separate court from the main seat of the Division in Pretoria (*Murray N.O v African Global Holdings (Pty) Ltd* 2020 (2) SA 93 (SCA) at [18]).
- [5.1.4] The Gauteng Division's area of geographical jurisdiction was determined in the Minister's Determination of 15 January 2016 made pursuant to sections (6)(3)(a) and (5)

of the Superior Courts Act, 2013 and is set out in item 2 of the schedule to the Determination.

[5.1.5] In terms of the Determination, this seat of the Gauteng Division enjoys concurrent jurisdiction with the main seat in Pretoria over, *inter alia*, the magisterial districts of Johannesburg and Randburg. Johannesburg, *ex facie* the LexisNexis report annexed to the founding affidavit, being the respondent's registered address and Midrand, being the place where the written agreement between the parties was concluded, falls within the Randburg sub-district.

[5.1.6] Notwithstanding the foregoing, and even if the respondent's registered address is now as alleged, this court still enjoys jurisdiction by virtue of the Minister's Determination aforesaid.

[5.2] The second point concerns the applicant's alleged non-performance in terms of the written agreement. The version that appears, for the first time, in the answering affidavit, suggests that, for certain periods, advertisements were not flighted. This is clearly refuted in the replying affidavit.

[5.2.1] On 2 March 2023, demand was made on the respondent to pay an amount of R 575 000.00. The respondent did not,

at that time, dispute the indebtedness either in terms of the amount demanded or assert that the services were not rendered. It has long been said that, "... a party's failure to reply to a letter asserting the existence of an obligation owed by such party to the writer does not always justify an inference that the assertion was accepted as the truth. But in general, when according to ordinary commercial practice and human expectation firm repudiation of such an assertion would be the norm if it was not accepted as correct, such party's silence and inaction, unless satisfactorily explained, may be taken to constitute an admission by him of the truth of the assertion, or at least will be an important factor telling against him in the assessment of the probabilities and in the final determination of the dispute. And an adverse inference will the more readily be drawn when the unchallenged assertion had been preceded by correspondence or negotiations between the parties relative to the subject-matter of the assertion." (*McWilliams v First Consolidated Holdings (Pty) Ltd* 1982 (2) SA 1 (A) at 10 E to H and the authorities therein cited).

[5.2.2] The respondent does not address why, in respect of those advertisements which were flighted, it has not paid for the services it received.

[5.2.3] In respect of the discount, the respondent suggests, as I understand it, that it has been overcharged by the applicant. But *ex facie* the written agreement, this is not the case. Moreover, the involvement of the stores at which the advertisements were flighted has nothing to do with the applicant; it was a service provider to the respondent. There is no causal link to the stores, the agreement or the discounted price for the advertising services apparent from the answering affidavit.

[5.2.4] There is then no basis for this contention and it is difficult to understand how any dispute of a factual nature, much less how the respondent could cogently contend that the debt is illiquid or overstated can cogently be advanced.

[6] Now, bearing in mind that the applicant applies for the respondent's winding-up on the basis of it being unable to pay its debts, and the respondent has not suggested to the contrary, whether it has been satisfactory proved that the respondent is able to pay its debts.

- [6.1] The principal is that an unanswered demand is *prima facie* evidence of an inability to meet obligations, because a trading entity that is not facing financial difficulties ought to be able to meet its obligations from current revenue or readily available resources (*Rosenbach & Co (Pty) Ltd v Singh's Bazaars (Pty) Ltd* 1962 (4) SA 593 (D) at 597 D to G)
- [6.2] This is an instance where the respondent bears an evidentiary burden to set out those facts within its knowledge to rebut a *prima facie* case.
- [6.3] In *Wright v Wright and Another*, 2015(1) SA 262 (SCA) Majiedt JA, at paragraph 15, says that:
- "Litigants are required to seriously engage with the factual allegations they seek to challenge and to furnish not only an answer but also countervailing evidence, particularly where the facts are within their personal knowledge."
- [6.4] The learned Judge of Appeal referenced the earlier judgment of Heher JA in *Wightman trading as JW Construction v Headfour, (Pty) Ltd and Another* 2008(3) SA 371 (SCA) at paragraph [13] in furtherance of the principal stated.
- [6.5] Here, the respondent has not engaged with the facts it purports to dispute in any meaningful way. The respondent does not even contend to be solvent or able to meet its obligations. It must be plain that these are facts that fall within the respondent's knowledge, and they ought to have been addressed.

[6.6] The inference which arises from the respondent's failure to pay invoices that are, in terms of the written agreement, payable on 30 days, is that it cannot do so (*Rosenbach & Co supra*).

[6.7] This inference is strengthened by the respondent's failure to have addressed, in any manner, its failure to pay for at least a portion of the services which it accepts were rendered or to have answered the demand made on it (*McWilliams supra*).

[6.8] The respondent's failures, aforesaid, leads to the conclusion that it is a company which is unable to pay its debts.

[7] In *Legh v Nungu Trading, 353 (Pty) Limited and Another, 2008(2) SA 1 (SCA)*, Ponnann JA said, at paragraph [18], that:

"In my view, the appellant established that he is a creditor of the company. Furthermore, it is undisputed that the company was unable to pay its debts. Generally speaking, an unpaid creditor has a right *ex debito justitiae* to a winding-up order against a company unable to pay its debts."

[8] In this particular case, I cannot see any basis on which to exercise a discretion in favour of the respondent. The answering affidavit does not engage with the facts set out in the founding affidavit and does not provide any cogent reason for the non-payment of at least the undisputed portion and there is a complete absence of any evidence in the answering affidavit of the respondent's financial position much less that it can meet any of its obligations as they fall due.

[9] In the result, I make the following order:

1. The respondent is placed in final liquidation.
2. The costs of this application and, to the extent necessary, those applications preceding the hearing today, as well as any earlier hearings in this matter, are to be costs in the liquidation.



A W PULLINGER

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 15 October 2025.

DATE OF HEARING: 15 OCTOBER 2025

DATE OF JUDGMENT: 15 OCTOBER 2025

APPEARANCES:

**COUNSEL FOR THE APPLICANT: ADV B DELPORT instructed by
FRANCOIS PIENAAR ATTORNEYS INC
T/A FDP LAW**

COUNSEL FOR THE RESPONDENT: NO APPEARANCE