

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2024-075404

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
8/12/2025.	
DATE	SIGNATURE

In the matter between:

SIIC AFRICA (PTY) LIMITED

Applicant

and

MASETLAOKA BUSINESS HOLDINGS (PTY) LIMITED

Respondent

JUDGMENT

BOTHMA, AJ

1. The applicant applies for the winding-up of the respondent on the basis of the respondent's inability to pay its debts. The case made out in the applicant's founding affidavit is the following:
 - 1.1 The parties entered into a written lease agreement;
 - 1.2 the respondent took occupation of the leased premises and remains in occupation thereof;
 - 1.3 the respondent made sporadic, short payments in respect of the leased property to the applicant but the respondent remains indebted to the applicant in the amount of R3 377 083,96;
 - 1.4 the applicant has demanded payment from the respondent but despite demand and despite the delivery of a section 345 letter of demand, the respondent has failed to make payment; and
 - 1.5 there have been numerous undertakings by the respondent and its attorneys promising to make payment of the outstanding amount.

2. The matter came before me on Monday, 8 September 2025. At that stage the respondent had not filed an answering affidavit. The respondent requested that the matter stand down and I allowed the respondent to file an answering affidavit and the applicant to file a reply. The matter was then heard before me on the three sets of affidavits on Friday, 12 September 2025.
3. The matter was enrolled on the unopposed roll on a previous occasion, the respondent having failed to file an answering affidavit. On that occasion, the matter was postponed and the respondent filed an unsigned answering affidavit. In the unsigned answering affidavit the existence of the written lease agreement is admitted by the respondent.
4. The respondent opposes the liquidation on a number of grounds. The respondent's main contention appears to be the existence of a counterclaim or counterclaims based upon renovations and improvements that were made by the respondent to the leased property. The respondent alleges that the total of the improvements is R3 343 951,01.

5. The applicant relies on the existence of a written lease agreement, it being the applicant's case that the agreement was signed by the deponent of the founding affidavit, Mr Ning Li and Mr Raymond Ramikosi Madi.
6. The respondent does not deny that Mr Madi initialled every page of the lease agreement but states that he did not append his full signature in the space provided in the lease agreement.
7. The lease agreement consists of 34 pages, which includes an annexure "A". Annexure "A" forms part of the lease agreement and also forms part of the 34 pages.
8. It is indeed correct that Mr Madi did not sign at page 19 of the lease agreement where there is a specific space provided for the signature for and on behalf of the respondent. He did, however, initial page 19.
9. Mr. Madi's full signature appears at the end of the lease agreement above the word "*lessee*". Mr Li's signature appears on the same page above the word "*lessor*".

10. The lease agreement was signed by representatives of the applicant and the respondent and is binding between the parties. There is, in my view, nothing in the point raised by the respondent that the full signature does not appear at page 19 of the lease agreement.
11. It is also telling that in the unsigned answering affidavit, which was presented to court by the respondent on a previous occasion, it was never placed in dispute that there was a valid and binding lease agreement between the parties.
12. In **Afgri Operations Ltd v Hambs Fleet (Pty) Ltd 2022 (1) SA 91** (SCA), the SCA held that the court's discretion to refuse a winding-up order is very narrow and is only to be exercised in special or unusual circumstances. The existence of a counterclaim by the company to be placed in liquidation may be a factor, it is not in itself a reason for the court to refuse the granting of an order. In such a case the question of *onus* is critical and once the respondent company's indebtedness to the applicant has been *prima facie* established, the *onus* is on the respondent company to show that the indebtedness is disputed on *bona fide* and reasonable grounds. If it is accepted that a counterclaim is a

factor to be taken into account, then the company would have to show that the counterclaim is genuine.

13. The respondent contends that the Badenhorst rule should apply in this matter and that the debt is *bona fide* disputed. In my view there is no *bona fide* dispute raised by the respondent. There is no place for the argument raised by the respondent as the respondent's claim for reimbursement is contractually excluded in terms of clause 13 of the lease agreement.
14. Clause 13 (1) of the lease agreement holds that the lessee shall not be entitled to effect any improvements on or to the premises without the prior written consent of the lessor and that any such improvements made by the lessee on or to the premises during the period of the lease shall become the property of the lessor upon termination of the agreement and the lessee shall have no lien over the premises.
15. The respondent's alleged counterclaim is contractually excluded by the lease agreement and the respondent is precluded from attempting to rely on it.

16. The respondent also contends that the liquidation application is an abuse of the process of court. I fail to see how pursuing a debt in excess of R3 million based upon a lease agreement can be an abuse of the process of court.
17. The respondent also submits that it is against public policy that the improvements made are contractually excluded and is against the spirit and purport of the Constitution of the Republic of South Africa Act 108 of 1996.
18. The respondent places further reliance on the judgment of **Barkhuizen v Napier** 2007 (5) SA 323 (CC) at paragraphs 52 and 54. In essence, the respondent argues that it is unfair for the applicant to contend that the improvements are contractually excluded. This argument by the respondent does not reflect the current state of our law.
19. Fairness and equity are not self-standing bases for ignoring clear contractual terms. In **Potgieter v Potgieter NO** 2012 (1) SA 637 (SCA), Brand JA held as follows at paragraph 32: "*Reasonableness and fairness are not freestanding requirements for the exercise of a contractual right.*"

That much was pertinently held in Bredenkamp and Others v Standard Bank of South Africa Ltd 2010 (4) SA 468 (SCA) para 53. As to the role of these abstract values in our law of contract this court expressed itself as follows in South African Forestry Co Ltd v York Timbers Ltd 2005 (3) SA 323 (SCA) ([2004] 4 All SA 168) para 27: '(A)lthough abstract values such as good faith, reasonableness and fairness are fundamental to our law of contract, they do not constitute independent substantive rules that courts can employ to intervene in contractual relationships. These abstract values perform creative, informative and controlling functions through established rules of the law of contract. They cannot be acted upon by the courts directly. Acceptance of the notion that judges can refuse to enforce a contractual provision merely because it offends their personal sense of fairness and equity will give rise to legal and commercial uncertainty.'"

20. The respondent also raises the point that there are disputes of fact which cannot properly be decided on affidavit. In my view there are no material disputes of fact on the papers. The facts in this matter, as well as the terms of the lease agreement are clear.

21. Lastly, the respondent contends that the applicant launched the liquidation application to exert pressure on the respondent for payment of the amount claimed. This contention is most probably correct and I see nothing wrong with it. Litigants are entitled to utilise the mechanisms of the Insolvency Act and the Companies Act to obtain the payment of outstanding debts.
22. The respondent is commercially insolvent and is unable to pay its debts as described in section 345 of the Companies Act 61 of 1973.
23. In the result, I am satisfied that the applicant has made out a clear case for the final winding-up of the respondent, that the respondent does not have a defence to the applicant's claim and that the claim is not *bona fide* disputed. There is also no reason why I should exercise a discretion in favour of the respondent.
24. I accordingly make the following order:
 - 24.1 The respondent is placed under final winding-up order in the hands of the Master.

A handwritten signature in black ink, appearing to be 'H. C. Bothma', is written over a solid black rectangular redaction box.

H. C. BOTHMA
ACTING JUDGE OF THE HIGH COURT

HEARD ON: 12 SEPTEMBER 2025

DELIVERED ON: 8 DECEMBER 2025

APPEARANCES:

For the applicant: TARYN LIPSHITZ

For the respondent: MASHUDU TSHIVHASE