IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable

Case no: 2818/2025

In the matter between:

STANDARD BANK OF SOUTH AFRICA LIMITED — **FIRST APPLICANT**

[Registration No: 1962/000738/06]

SB GUARANTEE COMPANY (RF) (PTY) LTD — **SECOND APPLICANT**

and

THEWO DEVELOPMENT AND CONSULTING ENGINEERS CC — **RESPONDENT**

[Registration No: 2007/03814/23]

Neutral citation: *Standard Bank of South Africa Limited and Another v Thewo Development and Consulting Engineers CC* (2818/2025) [2026] ZAFSHC 12 (16 January 2026)

Coram: DANISO J

Heard: 28 August 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 09h00 on 16 January 2026

Summary: Companies Act – provisional liquidation – allegation of respondent not being able to pay debts – points *in limine* that letter of demand served after proceedings instituted and that liquidation improperly used to enforce debt – letter of demand properly served – respondent's request for payment arrangements undermined contention that debts *bona fide* disputed – provisional liquidation order granted.

ORDER

1 The respondent's citation is amended by the deletion of the words: "Thewo Development and Consulting Engineers CC [Registration number: 2007/03814/23] and replacing them with: "Thewo Development and Consulting Engineers (Pty) Ltd [Registration number: 2022/477611/07" wherever they appear.

2 A provisional liquidation order returnable at 09h30 on 19 February 2026 is granted as prayed for in the notice of motion dated 3 June 2025 (Prayer 1-6).

JUDGMENT

Daniso J

[1] This is an opposed application for the provisional liquidation of the respondent in terms of s 344 to 345 of the Companies Act 61 of 1973 (The Old Act) and s 9 of schedule 5 of the Companies Act 71 of 2008 (The New Act) on account of the respondent's failure to pay its debts when they fall due. The debts comprise of an amount of R2 427 014.00 in respect of the first applicant's accounts namely, three vehicle and asset finance accounts and an overdraft facility. A further amount of R1 842 589.45 relating to the second applicant's home loan account.

[2] At the hearing of the matter, the applicants sought an order for the amendment to cure a misdescription which involves the citation of the respondent by deleting the words: 'Thewo Development and Consulting Engineers CC [Registration number: 2007/03814/23]' and replacing them with 'Thewo Development and Consulting Engineers (Pty) Ltd [Registration number: 2022/477611/07'. The amendment follows the conversion of the respondent's business from a close corporation to a company.

[3] The amendment was opposed however, I detect no malice on the part of the applicants and there is also no prejudice indicated by the respondent should the amendment be granted. The amendment is accordingly granted.

[4] The debts are not disputed. A letter of demand as contemplated in s 69 (1)*(a)* of the Close Corporations Act 69 of 1984 was delivered to the respondent by the sheriff on

3 March 2025. In response, the respondent transmitted an email to the applicants dated 10 March 2025. It reads as follows:

'Good day,

We writing with regards to the documentation that were delivered to our premises with reference number LDC/SO3448. We would like to make payment arrangement with your organization, will appreciate if we can set up a virtual meeting at your convenient time to go through the details of how we can go about the arrangement setup.

Hope to hear from you.'

[5] It is the applicants' case that, despite proper service of the letter of demand and the respondent's undertaking to settle the debts, the debts remain unpaid.

[6] The applicant contends that the respondent is unable to pay its debts when they become due and payable, it will not be to the benefit of the applicants and other creditors if the respondent is allowed to continue to operate on an insolvent basis as the likelihood that the creditors will recover what is due to them, will simply diminish over time. It will accordingly be just and equitable that the respondent is provisionally liquidated.

[7] In its answering affidavit, the respondent raises two points *in limine* that: the application is irregular for want of compliance with s 345(1)*(a)* of the Old Act and the impropriety of utilising liquidation procedures to enforce a debt.

[8] It is the respondent's submission that the applicants were required to serve the respondent with a letter of demand prior to instituting the liquidation proceedings as the letter of demand is a legal mechanism that can deem a company unable to pay its debts thereby triggering liquidation proceedings. In this matter, the purported letter of demand was served on the respondent after the liquidation proceedings had been instituted. Furthermore, it is clear that the applicants seek to use liquidation proceedings to enforce a debt as there is a pending action instituted by the applicants against the respondent on 2 May 2025, a month before these proceedings were instituted on 4 June 2025. Liquidation proceedings should not be utilised to enforce a debt that is *bona fide* disputed on reasonable grounds. The application falls to be dismissed on these grounds alone.

[9] As regards to the merits, the respondent states that it has been servicing its debts on a monthly basis. The respondent explains that it has no knowledge of what it owes.

Despite a request for statements to review and ascertain the amount owed, the applicants have failed to provide same instead, they proceeded to launch these liquidation proceedings clearly intent to enforce the debts.

[10] It is denied that the respondent is commercially insolvent. In fact, the respondent's assets exceed its liabilities. In the heads of argument, paragraph 52.1., 52.2 and 54 the reference is made to Absa (clearly a bad cut and paste job) and it is argued that:

'. . .the fact that Absa does not come to Court with clean hands and that it did not disclose the amount in the statement to the Respondent. The fact that *Thewo* has employees who will lose their livelihood if *Thewo* is wound up.'

[11] For all these reasons averred, the respondent contends that the application falls to be dismissed with costs on scale B.

[12] The respondent's defences are devoid of any merit. The respondent deliberately ignores that the s 69(1)*(a)* letter of demand which mirrors the provisions of s 345(1)*(a)* of the Old Act was duly served on the respondent on 3 March 2025, approximately three months before these proceedings were instituted. The respondent even responded to the letter by making a request for a meeting in order to make payment arrangements.

[13] The fact that that there is a pending action being litigated elsewhere involving the same parties does not offer refuge to the respondent as the requisites of a defence of this nature (*lis pendens*) also include that both matters must also be based on the same cause of action and in respect of the same subject matter.[1]

[14] As it was explained in *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others*,[2] the underlying principle of the doctrine of *lis alibi pendens* is that where a dispute involving the same parties is litigated elsewhere it must be finalised in that forum and not replicated in another forum as that may result in different courts pronouncing on the same issue with the risk that they may reach differing conclusions.

[1] *Association of Mineworkers and Construction Union and Others v Ngululu Bulk Carriers (Pty) Limited (In Liquidation) and Others* [2020] ZACC 8; 2020 (7) BCLR 779 (CC); (2020) 41 ILJ 1837 (CC); [2020] 10 BLLR 959 (CC) para 26.

[2] *Caesarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others* [2013] ZASCA 129; 2013 (6) SA 499 (SCA); [2013] 4 All SA 509 (SCA) paras 18-30.

[15] Except for the fact that both matters involve the same parties, the litigation is not based on the same cause of action and the relief sought is not the same. In the action proceedings the applicants seek a money judgment whereas the relief sought in these proceedings is to bring about a convergence and liquidation of all the assets and liabilities of the respondent to ensure a fair distribution to the creditors.

[16] Based on these reasons above, the respondents' points *in limine* ought to fail and they are accordingly dismissed.

[17] In the answering affidavit, except to explain that there were attempts to cure the breach the fact that the debts are due and payable is indisputable. The respondent's response to the letter of demand by seeking to make payment arrangements also does not support the respondent's argument that the debts are disputed let alone, on *bona fide* reasonable grounds.

[18] It is for these reasons above that I am satisfied that the applicants have succeeded in making out the case for the order they seek in the notice of motion. Costs shall be costs in the liquidation.

Order

[19] I accordingly make the following order:

1 The respondent's citation is amended by the deletion of the words: "Thewo Development and Consulting Engineers CC [Registration number: 2007/03814/23] and replacing them with: "Thewo Development and Consulting Engineers (Pty) Ltd [Registration number: 2022/477611/07" wherever they appear.

2 A provisional liquidation order returnable at 09h30 on 19 February 2026 is granted as prayed for in the notice of motion dated 3 June 2025 (Prayer 1-6).

The Honourable Justice [redacted]

2026 -01- 16

N.S. Daniso

N S DANISO

JUDGE OF THE HIGH COURT

Appearances

For the applicants:	J Els
Instructed by:	EG Cooper Majiedt Inc, Bloemfontein
For the respondent:	S Ngombane
Instructed by:	Mvana & Associates Inc, Cape Town c/o Tshangana & Associates INC, Bloemfontein.