IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 111230/2025

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

[redacted]

18 FEBRUARY 2026

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SIGNATURE **DATE**

IGNATIUS LEON DE VILLIERS Applicant

and

AQUATIC BREEDER SA (PTY) LTD

(Registration Number: 2022/860996/07) Respondent

JUDGMENT

LABUSCHAGNE J:

[1] The applicant applies for the liquidation of the respondent based on a money debt.

THE DEBT

[2] The applicant advanced an amount of R631 000.00 to the business of the respondent for the import of aquatic stock. The applicant contends that the payment of the aforesaid amount was made in two tranches, on the understanding that the amount would be repaid 45 days after the stock arrived in South Africa.

[3] The applicant contends that despite the passing of the aforesaid period the amount remains unpaid. He brings an application in terms of section 344(f) of the Companies Act, 61 of 1973, read together with section 345(1) and section 346(1)(b) for the winding-up of the respondent.

[4] The respondent has repaid a small amount, but an amount of R613 800.00 still remains due and payable, according to the plaintiff.

[5] The aforesaid transaction took place in May 2024. The stock was purchased from Weifang Yipin Pet Products Co. Ltd, being the Chinese supplier of the stock.

[6] The applicant contends that Mr Swanepoel, of the respondent assured the applicant that at least 50% of the purchased stock had already been sold on pre-orders to prospective clients. He paid the amounts due to the respondent in a few tranches during August and September 2024. The stock arrived on 15 September 2024 in Durban Harbour but was placed under detention in terms of a detention notice issued by the National Regulator for Compulsory Specifications. On 03 October 2024 the stock was released under embargo

in terms of an embargo notice. Despite the lapsing of the 45 day period since the arrival of the stock in Durban, the amount remains unpaid.

[7] On 24 January 2025 a letter of demand was sent to the respondent, informing the respondent that it had repudiated the agreement between the parties, that the applicant had accepted its repudiation and that the agreement had been cancelled. As a result, the respondent was placed on terms to make payment of R631 800.00 within 7 (seven) days.

[8] As there was no response, the applicant sent a section 345 notice on 19 February 2025, which was served by the sheriff on the respondent at its registered address. In terms of the statutory demand the respondent was advised that it is indebted to the applicant in the amount of R631 800.00, which was due and owing. Despite the demand, no payment was forthcoming within the period of 21 days provided for in the notice.

[9] The applicant contends that the respondent is commercially insolvent as it is not able to pay its debts in the ordinary course of business as and when they are due and owing.

[10] The applicant also points out that Mr Swanepoel has registered a new company with the name of Pet Oh Natix (Registration Number: 2025/081936/07) which has as its registered address the same address at which the imported stock is being stored. The applicant contends that the respondent has closed its doors and has ceased trading and that the respondent is now making dispositions without value to Pet Oh Natix.

THE DEFENCE

[11] In the answering affidavit, Swanepoel expresses concern that the applicant is presenting a false version of events to the Court. He contends that the agreement between the applicant and the respondent was that the applicant would invest in the respondent and that the proceeds of his investment would be recouped from the sale of the imported stock. A small portion was sold, and the applicant was reimbursed for R18 000.00 pertaining to that sale. As the remaining stock could not be sold, the amount claimed is not due and payable. The respondent blames the applicant for the stock not being sold.

[12] The respondent contends that the applicant was enraged when the applicant refused to release stock to the applicant without proof of payment. This resulted in threats of violence and the obtaining of protection orders in the Magistrates' Court against the applicant. The matter was however resolved, and the protection orders were withdrawn. The applicant however created a WhatsApp group with all of the respondent's clients, and he has been making defamatory and insulting statements about Mr Swanepoel and the respondent, resulting therein that clients of the respondent no longer want to buy stock from the respondent. This has caused the respondent harm, and the respondent has a damages claim against the applicant. The respondent's inability to sell the stock has therefore been brought about by the applicant, according to Mr Swanepoel.

[13] The respondent does not deny that the amount of R613 800.00 was lent to the respondent. However, without being able to sell the stock, the amount claimed is not due and payable.

[14] The respondent has not been able to make sales due to the applicant's conduct. It has however not ceased to trading. The stock in question remains the property of the respondent and is in the respondent's possession. The respondent contends that the incorporation of Pet Oh Natix is not related to the respondent.

[15] It is against this backdrop that the Court needs to assess whether the applicant has made out a case for the winding-up of the respondent.

THE RELEVANCE OF THE QUESTION WHETHER THE DEBT IS PAYABLE

[16] It is trite that a creditor with an admitted but unpaid debt is *ex debito iustitiae* entitled to a winding up order.

[17] The issues relating to the exercise of a judicial discretion in circumstances where an unpaid creditor approaches a court for a winding-up order, has been considered in *Afgri Operations Ltd v Hamba Fleet (Pty) Ltd* 2022 (1) SA 91 (SCA) at paragraph 12. There it was reiterated that an unpaid creditor had a right *ex debito iustitiae* to a winding-up order and that a court has a very narrow discretion "that is rarely exercised and then in special and unusual circumstances". Examples of consideration of such circumstances can be found in *Service Trade Supplies (Pty) Ltd v Dasco & Sons* 1962 (3) SA 424

(T) at 428B, *Firstrand Bank Ltd v Evans* 2011 (4) SA 597 (KZD) paragraph 27, *Oretisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another* 2015 (4) SA 449 (WCC) paragraph 18 and *Victory Parade Trading 74 Proprietary t/a Agri-Best SA v Tropical Paradise 93 (Pty) Ltd t/a Vari Foods* [2007] ZAWCHC 31 paragraph 28.

[18] The defence in this matter relates to an admitted debt which is due but is alleged not to be payable.

[19] In *EVZ Industriële Dienste 2 CC v Early Moon Trading 361 CC* 2020 JDR 0565 (GP), such a defence was upheld. The applicant brought an application against the respondent based on the respondent's inability to pay its debts. In the answering affidavit the respondent contended that it is commercially solvent and undertook to repay an admitted amount into its attorneys' trust account. It however disputed that the amounts are due and payable. It contended that this stance was conveyed to its attorneys in response to a section 345 letter, conveying the message that the money will be paid to the applicant only after an arbitration process between the Tshwane Municipality and its sister company called Misty Blue Trading CC was finalised. The sole member of the respondent was also the sole member of Misty Blue Trading CC.

[20] Whether a company is able or not to pay its debts, liquidation proceedings are not meant for the enforcement of a debt that the debtor company disputes on *bona fide* and reasonable grounds (*Badenhorst v Northern Construction Enterprises (Pty) Ltd* [1956] 2 SA 346 (T) at 347 H to 348 C).

[21] The fact that a party is factually unable to pay its debts or is commercially insolvent is not a bar to raising a defence if it is *bona fide* and based on reasonable grounds. The respondent will have to show on a balance of probabilities that its indebtedness to the applicant is disputed on *bona fide* and reasonable grounds. The Court will thereupon refuse the winding-up order. The respondent does not have to establish, even on probabilities, that the respondent will as a matter of fact succeed in an action which may be brought against it by the applicant to enforce the disputed claim. It must just show that the alleged facts, if proved at trial, would constitute a good defence to the claims against it (see paragraph [21] – see also *Hulse-Reutter and Another v Heg Consulting Enterprises (Pty) Ltd (Lane and Fey NNO Intervening)* 1998 (2) SA 208 (C) at 218 D to 219 C.

[22] At paragraph [19] Khumalo J states:

"The liquidation proceedings are therefore not for determining if the amount owing or due is payable. The proceedings are not for settling disputes between the parties. However, the dispute must be genuine and raised on reasonable grounds. ETM will have to show on a balance of probabilities that the defence raised is genuine and reasonable."

[23] The aforesaid issue lies at the heart of the dispute between the parties. The respondent denies that the amount is payable as the source of repayment would be the sale of stock. As the applicant has prevented such sales, the respondent has a damages claim. Further, it is not liable to repay unless sales are made.

[24] In motion proceedings the respondent's version is to be preferred unless it falls to be rejected as far-fetched. My assessment of this defence is that it is *bona fide* and based on reasonable grounds. In light of the aforesaid, the applicant has not established a case for the winding-up of the respondent. It is apparent that the parties need to resolve their disputes in other proceedings. Liquidation is not a remedy available to the applicant in light of these disputes pertaining to the repayment of the amount advanced.

[25] In the premises I make the following order:

1. The application is dismissed with costs, such costs to be on Scale B.

[redacted]

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

APPEARANCES:

COUNSEL FOR APPLICANT: ADV LOIBNER
INSTRUCTED BY : DU PLESSIS AND KRUYSHAAR INC

COUNSEL FOR RESPONDENT: ADV MARQUES
INSTRUCTED BY : KG TSERKEZIS INC