IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2024-008266

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: **NO**

(2) OF INTEREST TO OTHER JUDGES: ***NO***

(3) REVISED.

(4) Date: 06 February 2026

Signature: [redacted]

In the matter between:

AWESOME DISTRIBUTORS CC Applicant

And

UMNOTHOWETHU TRADING ENTERPRISE CC Respondent

JUDGMENT

NYATHI J

Introduction

[1] This is an application for the provisional liquidation of the respondent on the presumption that the respondent is unable to pay its debts in terms of Section 345(2) of the Companies Act, Act No 61 of 1973 (hereinafter referred to as "the 1973 Companies Act"). The applicant maintains that it is entitled to the relief claimed in terms of Section 344(f) read with Section 345(1)(a) of the 1973 Companies Act.

Background

[2] The application is premised on the provisions of section 344(f), read with section 345(1)(a) of the Companies Act 61 of 1973, on the basis that the respondent is commercially insolvent and unable to pay its debts as and when they fall due.

[3] The applicant's claim arises from a debt that remains unpaid despite due demand. A statutory demand in terms of section 345(1)(a) was properly served on the respondent, which failed to make payment or raise a *bona fide* dispute within the prescribed 21-day period. Consequently, the applicant contends that the respondent is deemed unable to pay its debts and that it is just and equitable for the respondent to be wound up.

[4] The respondent is opposing the application and has filed their answering affidavit, alleging that the indebtedness is *bona fide* disputed on reasonable grounds.

[5] The respondent argues a number of legal points and issues that it hopes will be dispositive of the claim.

[6] The respondent also argues that the application is an abuse of the winding-up process and that the company is both factually and commercially solvent.

[7] Whilst the respondent had initially alleged that the claim which the applicant had instituted has prescribed, they are no longer persisting with this point.

[8] The respondent is praying that the applicant's claim be dismissed with costs.

[9] The respondent, however, have failed to pay the full amount owing to the applicant.

[10] The respondent made partial payments to the applicant with regard to its indebtedness on various different dates.

[11] The applicant alleges that the last payment made by the respondent to the applicant was on 2 January 2022.

[12] The respondent also contends that the papers when issued amount to a nullity and are contrary to the provisions of the Justice of the Peace and Commissioner of Oaths Act 16 of 1963 as read with the regulations promulgated thereunder.

Common-cause facts and disputed issues

[13] It is common cause that:

(i) the parties concluded a written supply agreement dated 8 February 2024;

(ii) the Plaintiff delivered goods under 17 invoices between 12 February 2024 and 15 May 2024;

(iii) the Defendant made part payments totaling R1 120 000; and

(iv) the balance remains unpaid. The dispute centers on four invoices where the Defendant raised quality complaints and a general defence based on a clause that (on the Defendant's case) limits or excludes liability where "any defects are reported within 7 days".

[14] The main issue to be decided is whether the applicant is entitled to the relief sought in this application, more particularly:

i. Whether a prima facie right in favour of the applicant exists;

ii. Whether the applicant is entitled to rely on its statutory demand.

iii. Whether the respondent committed an act of insolvency;

iv. Whether the respondent should be provisionally liquidated; and

v. Whether there are any other alternatives for the relief sought.

Discussion

[15] Ms Vorster, the Applicant's erstwhile attorney, directed a notice of demand in accordance with Section 345(1) of the 1973 Companies Act to the respondent, demanding payment in the amount of R2 207 866.02 within 21 days from the date of service.

[16] The applicant obtained a copy of the respondent's financial statements which indicates that the respondent cannot settle its debts when they become due and the debt due to the applicant is not indicated on the statements.

[17] The respondent avoided the applicant after the delivery of the notice of demand and failed to make payment of the debt as per demand within 21 days thereof.

[18] As the respondent failed to respond to the demand, the applicant's erstwhile attorney instituted liquidation proceedings.

[19] The respondents have complied with the provisions of the 1973 Companies Act and has provided the Master with Security.

[20] The application has been served on the Master, SARS and the employees and Trade Unions.

[21] In response, the respondent raises defences based on technicalities and unsupported by any cogent evidence whatsoever.

[22] Section 345 of the Companies Act of 1973 is a deeming provision: because the respondent does not pay its debt after being served with a statutory demand, the respondent is deemed to be unable to pay its debt. – See *Ter Beek v United Resources CC and Another* 1997 (3) SA 315 (C) at 331 and *Body Corporate of Fish Eagle v Group Twelve Investments* 2003 (4) SA 414 (W) at 428 B-C.

[23] The requirements for a liquidation under Section 345(1)(a) read with 344(f) of the 1973 Companies Act are as follows:

i. An amount of more than R100 must be due by the Respondent to the Applicant;
ii. The Applicant must serve a statutory demand on the Respondent, adding to the usual terms that unless payment is made within 21 days, an application for liquidation will be brought.
iii. The Respondent must have failed to make payment in terms of the statutory demand.
iv. The Applicant must convince the court on application to exercise its discretion in favour of liquidation. (This is borne by the word "may" in section 344(f)).

The Respondent's opposition:

[24] Prescription: The respondent did not persist with this point of opposition at the hearing of the application.

[25] *Res judicata:* The respondent relies on dismissal of similar proceedings in the Krugersdorp Magistrates' Court. The dismissal was for lack of jurisdiction; the merits were not adjudicated. There is no final judgment on the merits between the same parties concerning the same cause of action. The plea of res judicata accordingly fails. See *African Wanderers Football Club v Wanderers Football Club* 1977 (2) SA 38 (A).

[26] Solvency and ability to pay: The respondent asserts that it is solvent, financially sound, and has adequate cash flow, based on its financial statements. However, the applicant obtained statements indicating the company cannot settle its debts when due, and the respondent's indebtedness to the applicant is not reflected therein. Non-payment following a statutory demand, coupled with the cessation of payments since December 2022, evidences commercial insolvency. The court is concerned with the company's ability to meet current liabilities; balance sheet solvency does not displace the commercial insolvency test. The respondent's indication that it will advance further submissions at the hearing is of no assistance where no factual foundation is laid in the answering affidavit. Liquidation proceedings are motion proceedings; the affidavits constitute both pleadings and evidence.

[27] Compliance: The application was served on the Master, SARS, and the employees/trade unions, and security was furnished to the Master. These factors weigh in favour of granting relief. The applicant has shown proper compliance with procedural requirements and has made out a *prima facie* case for liquidation.

[28] The court's discretion must be exercised judicially, considering whether liquidation is just and equitable in the circumstances and whether any alternative, such as a *bona fide* and reasonable dispute of indebtedness, exists. No such genuine dispute is established. The respondent's conduct—acknowledgement of debt, part payments, cessation of payments, and failure to satisfy the statutory demand—points to inability to pay.

[29] The applicant has established the jurisdictional facts under sections 344(f) and 345(1)(a). The respondent has not rebutted the statutory presumption of inability to pay under section 345(2). The defences of prescription, res judicata, and asserted solvency are without merit on the papers. It is therefore appropriate to grant a provisional order of liquidation.

Order:

[30] The following order is made:

The respondent is provisionally liquidated and placed in the hands of the Master of the High Court, Pretoria. The Draft Order filed under CaseLines 015-14 to 015-17 providing for a *rule nisi* is made an order of Court.

[redacted]

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 12/05/2025
Date of Judgment: 06 February 2026

On behalf of the Applicant: Mr. CJ Liebenberg
Instructed by: Cavanagh & Richards Attorneys, Pretoria

On behalf of the Respondents: Mr. SB Friedland
Instructed by: Beder-Friedland Incorporated., Pretoria.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 06/02/2026.

[redacted] 'X'

06/02/2026

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2024-008266

BEFORE THE HONOURABLE JUSTICE NYATHI J

On this 06 February 2025.

Court______.

Matter number 41 on the roll

This Order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by email. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge's Secretary. The date of this Order is deemed to be 06February 2026.

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
2026 -02- 06
GD-PRET-017
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

In the matter between:

AWESOME DISTRIBUTORS CC **Applicant**

(Registration Number: 2006/218972/23)

and

UMNOTHOWETHU TRADING ENTERPRISE CC **Respondent**

(Registration Number: 2009/077866/23)

KM

DRAFT COURT ORDER

Having read the Application and all other documents filed:

THE COURT GRANTS THE FOLLOWING ORDER:

1. That the Respondent be provisionally liquidated and placed in the hands of the Master of the High Court

2. That a rule nisi be granted for 4 MAY 2026 at 10h00 or as soon thereafter as the matter may be heard on which day the Respondent, or any party - who wishes to avoid such an Order being made final - to advance reasons, if any, why this Court should not grant a final Order of Liquidation;

3. A copy of this provisional liquidation Order be served on –

   3.1. The Respondent personally;

   3.2. The employees of the Respondent, if any;

   3.3. All trade unions of which the employees of the Respondent are members, if any;

3.4. The Master of the High Court, Pretoria; and

3.5. The South African Revenue Service.

4. That the cost of this application, as between attorney and client, be costs in the liquidation of the Respondent;

5. Further and/or alternative relief as this Honourable Court may deem appropriate.

DATED at Pretoria **on this** 06 **day of** February **2026.**

[redacted]

BY ORDER

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
Private Bag X67, Pretoria 0001
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REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

FOR THE APPLICANT:
Cavanagh & Richards Attorneys
Chris Liebenberg
Cell: 084 561 0853
E-mail: chris@crlawchambers.co.za

KM

FOR THE RESPONDENT:

Beder-Friedland Inc

Cell: 0826039640

Email: sb@bfinc.co.za

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA
Private Bag X67, Pretoria 0001
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PRETORIA

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