



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 12641/2025

In the matter between

AMANDLA GFC CONSTRUCTION CC

Applicant

and

SOVENTIX SOUTH AFRICA (PTY) LTD

Respondent

Neutral citation: *Amandla GFC Construction CC v Soventix South Africa (Pty) Ltd* (Case no 12641/2025) [2025] ZAWCHC (26/02/2026)

Coram: PATHER AJ

Heard: 29 NOVEMBER 2025

Delivered: 26 FEBRUARY 2026

ORDER

The application is dismissed with costs, on Scale B.

JUDGEMENT

PATHER, AJ

[1] This is an opposed application to place the Respondent into provisional liquidation. In summary, the background is that the parties entered into a sub-contacting agreement during July 2024 pursuant to which the Applicant agreed to perform certain construction related works. Disputes subsequently arose and the Respondent terminated the agreement, at which stage the Applicant had not completed the works.

[2] What followed were engagements between the parties relating to alleged outstanding amounts. The Respondent requested the Applicant to provide a proposal of its claims up to the stage that the Applicant left the site.¹ The Applicant did so, on a without prejudice basis, alleging that there were two compensation events and that the Respondent was indebted to it for R 4 230 178.56.²

[3] On 13 November 2024 the Respondent made an offer to settle all of the Applicant's claims in a far lower amount, the sum of R 1 374 095.40.³ Properly considered the Respondent's offer did not constitute a Payment Certificate and that document even concluded an item reflecting losses allegedly owed by the Applicant to the Respondent for R 804 000.00.⁴

[4] The Applicant took the opportunity to issue a tax invoice against the Respondent for the amount of R 1 374 095.40 (the amount in the Respondent's "without prejudice" offer).⁵

¹ AA2, 011-59

² A5, 002-36

³ A6, 002-37.

⁴ A2, 002-21.

⁵ A3, 002-22.

At the same time, the Applicant rejected acceptance of this amount in full and final settlement

and contended that it would pursue the balance of its alleged claim under the dispute resolution procedures in the contract.⁶

[5] It is the amount of the tax invoice on which the Applicant relies in seeking the Respondent's winding up. At the outset the point must be made that, in contending that its claim is to be referred to dispute resolution, the Applicant evidently accepted that its entire claim is in dispute. The fact that it may have unilaterally issued a tax invoice for an amount which the Respondent had offered, in full and final settlement, cannot arm it with a debt for a

liquidated amount when the Applicant has itself rejected that such amount constitutes the debt.

[6] Relying on the invoiced amount, the Applicant issued a written demand in terms of Section 345 of the Companies Act.⁷ The Respondent did not pay this amount to the Applicant

but rather made payment thereof into the trust account of its attorneys, and contends that it has "secured" the amount. Dissatisfied with this, the Applicant instituted the liquidation application on or about 31 January 2025.

[7] The parties subsequently filed papers, with both sides having not strictly complied with the applicable time limits. The Respondent also delivered a Counter Application seeking

declaratory relief to the effect that all of the disputes between the parties have been settled and, in the alternative, adjourning the liquidation application, in terms of Section 347(1) of the

Act, pending the outcome of an adjudication between the parties. As I understood it from Counsel during argument, the Counter Application is not persisted with.

[8] The point of departure in this case is the debt on which the Applicant relies. The deeming provision in Section 345(1) relates to when a company is indebted to a creditor "in a sum of not less than R100.00 then due". The creditor may then issue a Section 345 (1)

⁶ A7, 002-38.

⁷ A8, 002-39.

demand and the company's obligation are thereafter to pay the sum, or to secure or compound for it. Clearly, if the Applicant cannot establish a debt owed by the Respondent it had no right to invoke Section 345, as the section necessarily requires a valid debt for the deeming provisions to be able to apply.

[9] The debt asserted by the creditor must be a liquidated one.⁸ In this regard when the debt on which the creditor relies is disputed, it is not regarded as liquidated as it could depend, *inter alia*, on questions of fact in dispute and contradictory evidence.

[10] In my view this is the position with regard to the debt on which the Applicant relies. The amount of the alleged debt stems from the Respondent's written offer of 13 November 2024. The Applicant, upon receipt thereof, simply issued a tax invoice contending that the amount is due and payable and relies upon that amount as its present claim. This is not a debt on which a liquidation can be premised. The amount offered by the Respondent is made up of various amounts, including disputed claims, as well as amounts which the Applicant had not claimed under the Agreement.⁹ The Applicant itself contends that its claim is a far higher amount, R 4 230 178.56, which is illiquid in that it is subject to a dispute to be determined under the Agreement. There is no basis for the Applicant to simply isolate the amount which the Respondent offered and contend that this is a debt which is due and payable, entitling it to rely on Section 345. The inconsistency in the Applicant's argument is that the debt on which it relies actually forms part of a larger debt, which on the Applicant's own version is the subject of dispute.

[11] I agree with the Respondent's submission that the Applicant's reference to the correspondence as a "Payment Certificate" is unjustified. No Payment Certificate was issued and the Respondent submitted the amount as a settlement offer and as part of "without prejudice" discussions, which are by law privileged and inadmissible.

[12] The result is that the Applicant has not established a valid debt on the basis of which

⁸ *Premier Western Cape and Other vs Parker & Mohammed* [1999] 1 All SA 176 (C).

⁹ Answering Affidavit, paragraph 32.4, 011-22; 011-48.

it could lawfully have invoked Section 345 of the Act and the deeming provisions in that Section do not find application. In any event the Respondent's payment of the amount into the Trust account of its attorneys in my view would sufficiently secure for the Applicant's alleged claim. Although it may not expressly have stated so, the payment of the amount into the attorney's trust account must logically have been on the understanding that, if the amount

was lawfully due, the attorney is obliged to pay it over to the Applicant. The Respondent would be acting in bad faith, and unlawfully, if it seeks to withdraw those funds from its attorney's possession whilst the dispute between the parties is active.

[13] The debt on which the Applicant relies is therefore illiquid and *bona fide* disputed. I agree with the Respondent that it appears that the Application resorted to the liquidation application in order to force the Respondent to make payment of the amount, rather than truly

to have the Respondent placed into winding up.¹⁰ This is not the purpose of winding up proceedings.

[14] The parties also advanced argument on whether the Respondent is in fact a solvent

entity. In my view it is unnecessary to decide this issue, but on balance the evidence points to the Respondent indeed being solvent. The Applicant's focus appears to have been on the

negative cash on hand but fairly considered, the Respondent's financials show that it has liquid assets available to meet its liabilities as they fall due and it is able to trade, even with a negative cash balance.

[15] In the circumstances my view is that the Applicant has not made out a valid case for the Respondent's winding up and the Application falls to be dismissed with costs.

The following Order is made:

[16] The application is dismissed with costs, on Scale B.

PATHER AJ
ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Applicant: Adv. J P Steenkamp
Instructed by: Ryan Hall Attorneys

For the Respondent: Adv. M Desai
Instructed by: LNP Beyond Legal