**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: **2024-070382**

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

2 March 2026 JRG

DATE SIGNATURE

In the matter between:

**HOME FABRICS (PTY) LTD** Applicant

and

**FIONA'S FASHIONS (PTY) LTD** Respondent

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**JUDGMENT**

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**Johann Gautschi AJ**

[1] This is an opposed application for the final winding up of the respondent in terms of section 344 (f) and section 345 (1) (a) of the Companies Act 61 of 1973 Redworth item 9 of schedule 5 of the Companies Act 71 of 2008.

[2] The founding affidavit alleges that the respondent is indebted to the applicant in the sum of R6,107,244.78 comprising R452,727.34, R1,226,495.08 and R4,428,022.36 all in respect of credit facilities granted to it by the applicant pursuant to a written application for credit facilities, the original of which it could not find, but instead, annexed a copy reflecting the same terms.

[3] The applicant caused a statutory letter of demand in terms of section 345 of the Companies Act to be served personally on a director of the respondent by the sheriff of the High Court on 31 May 2024 (annexure FA 4). The amount claimed was not paid and there was no response to the letter.

[4] The respondent's answering affidavit was filed late but although the respondent's request for combination was opposed by the applicant, nothing further was made of it in oral argument in the matter proceeded on the basis that the answering affidavit and the replying affidavit of the applicant were before me.

[5] The respondent submitted that the credit application was governed by the provisions of the National Credit Act. There was no substance in that submission as the agreement is exempt in terms of section 4 (1) of the National Credit Act because the consumer is a juristic person whose asset value or annual turnover of the time of the agreement equalled or exceeded the threshold of R1 million and it is a large agreement for a principal debt exceeding R250,000 where the consumer is a juristic person whose asset value or annual turnover at the time of the agreement was below the R1 million threshold.

[6] Ultimately, as submitted by the applicant, the respondent cannot escape the reality that on its own version in the answering affidavit it owes the applicant a liquidated debt of R270,883.84, being the balance which the respondent admits owing in respect of goods sold and delivered by the applicant to the respondent. That admission appears from paragraph 97.5 of the respondent's answering affidavit.

[7] In paragraph 98 of its answering affidavit the respondent raised a dispute in regard to a large number of further 2022 invoices issued to it by the applicant totalling in excess of R3.7 million. The respondent alleges that those invoices refer to items which it received in bulk shipping containers from the applicant's parent company in Belgium with a request that it should store the contents of the containers at the respondent's storage facility. The respondent further alleges that the items delivered consisted of *"discontinued ranges, end of rows and short ends"* which made the stock unsellable to the retail market and that despite a request for it to be collected, this was not done. Instead, the respondent alleges

that the applicant in bad faith belatedly in November 2023 gave the respondent permission to sell the items in storage "*to a market which had been saturated with the same products in 2022, which were (by then) end of range of discontinued or of limited supply*". The respondent alleges that it has a counterclaim for "*costs associated with the continued storage of the Applicant's goods*" in excess of the amount owed which it claims to set off against the remaining balance owed to the applicant.

[8] The applicant submits in its replying affidavit that the amount admittedly owed by the respondent is not contested on *bona fide* reasonable grounds and that there is no genuine dispute of fact. The applicant refers in its founding affidavit, *inter alia,* to an email, annexure FA 9 from the applicant addressed to the respondent dated 12 November 2023 which records an undertaking for repayment of an outstanding debt more than R26 million which includes that owing to "Bru Textiles" in excess of R18 million. The email followed a meeting held on 5 November 2023 between the chief operating officer of the applicant and the respondent's director Mr Darsot, the deponent to the respondent's answering affidavit. The email states *"I shared with you our feelings concerning the payment situation. You shared with me the cash flow issues that you are faced due to different scenarios and your current financial situation"*. On the subject of repayment it says:

- *"Repayment of outstanding debt*
    - o *Minimum R200k a month starting in February will be paid by you.*
    - o *Once your financial situation stabilises further, this will be exhilarated, and from 2025 we expect this acceleration.*
    - o *Until we see a steady payment of at least R200k per month you will pay cash before delivery on all orders.*
    - o *Once we are happy that you are paying smoothly the monthly amounts, we can discuss an easier way for the weekly cut length orders. To be clear we expect at the very least 2 million reduction in outstanding in 2024 and even more in the next years."*

[9] The respondent’s response was simply “*thank you brothers*”.

[10] The applicant in argument relied on the judgment in <u>Afgri Operations Limited v Hamba Fleet (Pty) Limited</u> 2022 (1) SA 91 (SCA) in support of its submission that the respondent should not by reason of the alleged counterclaim be able to resist a winding up order where it is common cause that the respondent has not paid an admitted debt. I agree, particularly as the respondent did not respond to the statutory demand letter.

[11] Mindful of the <u>Badenhorst</u> rule[1] that my discretion not to grant a winding up order in such circumstances is narrow, I am of the view that in the circumstances of the present case set out above, I should not exercise my discretion against the granting of a final winding up order.

**IT IS ORDERED THAT:**

1. The respondent is placed under final winding up in the hands of the Master

6. The cost of this application shall be cast in the winding up of the respondent.

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**Johann Gautschi AJ**

**ACTING JUDGE OF THE HIGH COURT**
**JOHANNESBURG**

[1] Badenhorst v Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T)

For the Applicants: Adv L Matsiela
Instructed by: Cliffe Dekker Hofmeyr Inc
(011 562 1173)

For the Respondents: Adv. Deon M Pool
Instructed by: SOHAIL MANGA ATTORNEYS
(0104433945; 0836616556)

Hearing date: 19 June 2025

Judgment date: 2 March 2026