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

**CASE NUMBER: 2024-090208**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: no
(3) NO REVISED: ~~NO~~ yes

2 March 2026
DATE

[redacted]
SIGNATURE

In the matter between:

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| **BELL-FORM (PTY) LTD** | **Applicant** |
| and | |
| **BUCHBURG ENGINEERING (PTY) LTD** | **Respondent** |

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**JUDGMENT**

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***FINE AJ*:**

assertion is unsustainable. Many of the material averments plainly concern matters falling within the knowledge of the applicant's directors rather than the legal representative. Notwithstanding this difficulty[2], the same approach was perpetuated in the replying affidavit. The attorney persisted in engaging directly with factual disputes raised in the answering affidavit and ventured to characterise the respondent's defences as lacking *bona fides*.

[5] Ultimately, only after heads of argument had been filed and raised the hearsay objection in clear terms, a confirmatory affidavit by the director of the applicant was filed during August 2025.

[6] The court granting the provisional order considered the challenge to authority to have been misdirected, correctly observing that challenges to authority must ordinarily be raised in terms of rule 7(1). However, the question of authority and admissibility of hearsay appear to have been conflated. Whilst the procedural route to challenge authority may be governed by rule 7, that does not cure the difficulty created where an attorney purports to depose to facts or matters beyond his personal knowledge.

[7] In response to the provisional order, the respondent filed an answering affidavit. No further affidavits were filed by the applicant. Neither the answering affidavit

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2 Authority of the attorney was challenged in the answering affidavit

## INTRODUCTION

[1] On 14 November 2025 this Court granted a provisional order placing the respondent under provisional winding up in terms of sections 344(f) read with section 345(1)(a) and (c) of the Companies Act[1] on the basis that the respondent was unable to pay its debts.

[2] The matter now serves before me on the return date.

[3] The cause of action advanced in the winding-up application arises from services rendered pursuant to a written agreement of letting and hiring concluded between during September 2020. The existence of that agreement and the rendering of services contemplated therein are not genuinely disputed. The court granting the provisional order was satisfied that the applicant had established a *prima facie* indebtedness and that no *bona fide* dispute had been raised sufficient to resist the granting of provisional relief.

[4] Some brief background is necessary as the application presents certain unsatisfactory and curious features. The founding affidavit dated 12 August 2024 was deposed to by the attorney or record for the applicant who asserted both that he was duly authorised to depose to the affidavit and the facts contained therein fell within his personal knowledge. Even on a cursory reading, the latter

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1 61 of 1973, as amended. In terms of item 9(1) of Schedule 5 of the Companies Act, 71 of 2008, Chapter 14 of the Companies Act continues to apply to the winding up of insolvent companies including sections 344 and 345.

nor the further supplementary affidavit raise any serious disputes in relation to the debt and the inability of the respondent to pay the debt.

[8] It appears to be common cause that pursuant to a contract of letting and hiring, equipment was supplied by the applicant to the respondent and that the amount of R332 000 claimed as due, owing and payable remains unpaid.

[9] The respondent does not, in substance, dispute that the goods and services were rendered. Only in the supplementary affidavit filed – in response to the rule nisi – is a portion of the indebtedness challenged, namely, an amount of approximately R100 000 said to relate to the "sale by lost portion". Even on the respondent's own version, however, the balance of approximately R200 000 remains effectively unanswered and undisputed. The attempt to isolate the limited component of the claim does not engage with, nor does it neutralise the bulk of the admitted indebtedness. Equally significant is the respondent's failure to engage meaningfully with the statutory demand served in terms of section 345(1)(a) of the Companies Act on 22 November 2023. That failure, viewed in its proper context, is consistent with an inability to meet its obligations as they fall due.

[10] In order to overcome this difficulty, during the course of argument it was stated that an amount of R200 000 had been paid in trust by Mr. Buchner, a director of the respondent, to his attorneys of record. Payment was made in order to demonstrate the respondent's *bona fides*. Whilst that conduct may reflect the

willingness to engage with the applicant, it does not establish solvency or an ability to meet debts as they fall due. Coupled with the fact that the respondent is not trading and intends to await the outcome of a dispute between Mr. Buchner and Mr. Burger before resuming operations, does not assist. The commercial reality is that the respondent is not trading and cannot pay its debts and lacks an active revenue stream to pay its debts.

[11] The principle defence advanced in relation to the indebtedness to the applicant concerns an internal dispute between the respondent's current directors, Mr. Burger, whom it is alleged engaged in unlawful conduct in relation to the applicant's indebtedness, an ongoing investigation by Mr. Buchner into the conduct of Mr. Burger. There is also litigation pending between Mr. Buchner and Mr. Burger. Mr. Buchner seeks to have Mr. Burger declared a delinquent director in terms of section 165(5)(c) of the Companies Act[3]. But that dispute is in my view irrelevant in relation to the present proceedings.

[12] The difficulty for the respondent is compounded by its reliance on unaudited financial statements tendered in an attempt to demonstrate solvency. Considered cumulatively, the document lacks reliability or the evidential weight required to demonstrate the respondent's ability to meet its debts. Rather than displacing the inference of commercial insolvency, the "financial statements"

3 71 of 2008

underscores the absence of any cogent answer to the statutory demand for payment reinforces the applicant's case for winding up.

[13] It is neither proper nor desirable for an attorney of record to depose to affidavits asserting personal knowledge where such knowledge relies elsewhere. Notwithstanding these procedural shortcomings in the present matter, they do not detract from the substance of the applicant's claim for the respondent's failure to establish a *bona fide* dispute and an ability to pay at least the admitted portion of the debt and that the respondent is insolvent and unable to pay its debts within the meaning of sections 344(f) read with section 345(1)(a) and (c).

[14] In these circumstances, and bearing in mind that the jurisdictional requirements of section 344(f) and 345(1) have been met, I am satisfied that the respondent is unable to pay its debts and a final order of liquidation should be issued.

[15] In the circumstances, I make the following order, namely: the respondent is placed under final winding up under the hands of the master and the costs of the application are to be costs in the liquidation .

[redacted]

DM FINE
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

**APPEARANCES**

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|---|---|
| DATE OF HEARING | : 30 January 2026 |
| DATE OF JUDGMENT | : 02 March 2026 |
| APPLICANT'S COUNSEL | : Mr. Van der Meer |
| APPLICANT'S ATTORNEYS | : Van der Meer and Partners |
| RESPONDENT'S COUNSEL | : Mr. Van Wyk |
| RESPONDENT'S ATTORNEYS | : C & A Friedlander Inc. |