IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN

Case No: 2025-056023

In the matter between:

JONATHAN ASHLEY MIDDLETON First Applicant

(UK passport 5[...])

LIANDRI MIDDLETON Second Applicant

(SA identity number 8[...])

and

THE RAW BERRY PRESS (PTY) LTD Respondent

Reportable / Not reportable

Coram: Anderssen AJ

Heard: 26 February 2026

Delivered: Electronically on 9 March 2026

Summary: Winding-up application – *locus standi* disputed – burden of proof on a balance of probabilities not discharged

---

ORDER

---

1. The application for provisional winding-up is refused.

2. The applicants shall pay the costs of the application on a party and party scale with Scale C applying to counsel's fees.

JUDGMENT

Introduction

[1] In April 2025 the applicants ("*the Middletons*") launched an application seeking the provisional winding-up of the respondent company ("*Raw Berry*") on the grounds that Raw Berry is deemed to be unable to pay its debts as contemplated in section 344(f) read with section 345(1)(a) of the Companies Act. At the hearing I was informed that the parties had agreed that a supplementary answering affidavit from the respondent may be filed on the basis that the applicants would file a supplementary replying affidavit by Thursday, 5 March 2026. I therefore reserved judgment until these affidavits were provided to me.

[2] The Middletons claim that they had, during the period 25 February 2023 to 14 June 2024 and at the special instance and request of Raw Berry, lent and advanced to it the amount of R3 672 923.61, which amount they allege is due and payable but unpaid. They advanced the money to provide working capital needed by Raw Berry to operate and grow its business. In the founding affidavit they reference an existing relationship with Mr Pulles, the managing director of Raw Berry, and state that Mr

Pulles had advised them that the company has an ambitious intention to grow into a multi-national enterprise exporting products all over the world. They had furthermore been advised by Mr Pulles that they would eventually benefit by being issued shares in Raw Berry at a future point. This is why they advanced the capital as an interest-free loan and without a fixed date for repayment. As there was no fixed term for repayment, in law, the loan is repayable on demand. The Middletons caused a written demand in terms of the provisions of the Companies Act to be served on Raw Berry at its registered address by the Sheriff ("*the Demand*"). Despite the Demand, Raw Berry failed to repay the loan.

[3] Mr Pulles, on behalf of Raw Berry, in the answering affidavit dispute these contentions. He complains that, for various reasons, the Middletons are abusing the Court's process. Firstly, because they did not disclose the existence of an agreement concluded between The Pulles Family Trust ("*TPFT*") and the Solar Share 1 Trust ("*SS1T*") concluded on 21 February 2023 at Paarl ("*the MOA*"). Secondly, because, in terms of the MOA, it was agreed that SS1T would be advancing the working capital, which would only be repayable once Raw Berry's business had commenced trading profitably – the Middletons are not the creditors of Raw Berry as the funds were paid by SS1T. Thirdly, because the business of the company is growing with reference to actual trading results and, when the working capital loans become due and payable, Raw Berry will be able to effect repayment of the loans.

[4] Mr Pulles explains that he was introduced to the first applicant by a mutual acquaintance and they discussed a detailed business plan for the juice

manufacturing business after which the first applicant confirmed that a trust under his control would acquire a 50% interest in Raw Berry, which trust had secured funding of R10 million. To demonstrate its commitment, prior to the signing of the MOA SS1T deposited R300 000 into Raw Berry's bank account on 23 January 2023. The MOA referenced that payment as a payment towards the purchase price of the 50% interest. Subsequent thereto, SS1T breached the MOA by only paying R1,5 million towards the purchase price even though the R3 million purchase price became due and payable on date of signature of the MOA. SS1T supplied working capital to Raw Berry, as reflected in a Table, in an amount of R2 665 742.35 over a period up to 5 February 2025. The Table also reflects that it paid an additional R450 000 towards the purchase price of the shares, after date of signature of the MOA, bringing the total paid up to R1 950 000.

[5] Raw Berry thus raise two defences to the application for winding-up. In the first place, it challenges the Middletons' *locus standi* as it avers that the payments to Raw Berry were made by SS1T and not the Middletons. Secondly, it disputes that the debt on which the Middletons rely is due and payable and says it disputes the existence of the debt on *bona fide* and reasonable grounds.

[6] In reply, the Middletons aver that Raw Berry is not *bona fide* in its dispute as to its indebtedness. The averment is based on the following: The annual financial statements for the tax year ending on 30 June 2023 ("*the 2023 AFS*") recorded 'J Middleton' as the creditor and also recorded that there were no repayment terms. Furthermore, Raw Berry's attorney, when

answering the Demand, acknowledged the company's indebtedness to the Middletons. Raw Berry is conflating its indebtedness to the Middletons with shareholder obligations to provide working capital, and, in respect of the latter, the MOA provides that the provision of working capital must be agreed to by the parties in writing. In addition it complains that Raw Berry has used the Middletons' money to repay loans to TPFT.

<u>The applicable legal principles</u>

[7] It is well-established that an application by a creditor for the winding-up of its debtor is inappropriate in matters in which the debt in issue is disputed by the alleged debtor *bona fide* and on reasonable grounds. Liquidation proceedings are not intended as a means of deciding claims which are genuinely and reasonably disputed. The principle has become known as 'the Badenhorst rule' after the judgment of Hiemstra AJ in ***Badenhorst v Northern Construction Enterprises (Pty) Ltd***.[1] The onus on a respondent to show that the creditor-applicant's claim is disputed *bona fide* and on reasonable grounds arises only if the applicant has made out a *prima facie* case on the papers for a provisional order of winding-up.

[8] The onus on an applicant to establish that he has *locus standi* to bring the application, is, however, not limited to a *prima facie* case.[2] The relevant passage in the ***Commonwealth Shippers***-case reads as follows:

> *"… if there is prima facie a valid claim by the applicant so as to make it a creditor within the meaning of sec. 346(1)(b), then it is for the respondent to disturb that prima facie situation by showing a dispute on bona fide and reasonable grounds. Overall, however, it seems to me that the position must be that, in order to establish that the applicant has locus standi to bring the application, it must show, on a balance of probabilities, that it is a creditor (where of course that is the*

[1] 1956 (2) SA 346 (T).
[2] ***Commonwealth Shippers Ltd v Mayland Properties (Pty) Ltd*** 1978 (1) SA 70 (D) at 72D-F.

ground relied upon to establish its locus standi)."

[9] Determining whether the alleged debt is disputed *bona fide* and on reasonable grounds requires an assessment of the evidence on the basis described by Corbett JA in ***Kalil v Decotex (Pty) Ltd***.[3] The onus on the respondent is not to show that it is not indebted to the applicant: it is merely to show that the indebtedness is disputed on *bona fide* and reasonable grounds. A convenient summary of the considerations involved in determining whether a respondent in a winding-up application has established that the debt is disputed *bona fide* and on reasonable grounds, is set out in ***Gap Merchant Recycling CC v Gool Reach Trading 55 CC***[4] at para 20-29 (per Rogers J). At the provisional stage the other requirements for liquidation must be satisfied on a balance of probabilities with reference to the affidavits. In relation to the respondent's liability, on the other hand, the question is whether the applicant's claim is disputed on reasonable and *bona fide* grounds – a court may reach this conclusion even though on a balance of probabilities the applicant's claim has been made out.

[10] Mr Oosthuizen SC also referred me to ***Hülse-Reutter and Another v HEG Consulting Enterprises (Pty) Ltd (Lane and Fey NNO intervening)***.[5] The reasonableness of the basis for the dispute will depend on the cogency with which the grounds for disputing the debt are expressed. The particularity of material facts given in the answering affidavit will be a relevant consideration bearing not only on reasonableness in the relevant

[3] 1988 (1) SA 943 (A) at 980.
[4] 2016 (1) SA 261 (WCC).
[5] 1998 (2) SA 208 (C) at 219F-220C.

sense, but also on *bona fides*. Sufficient facts must be provided, which, if approved at a trial, would constitute a good defence to the claims made against the company.

<u>The *locus standi* challenge</u>

[11] In order to determine the issue of *locus standi* it is necessary to examine the basis upon which the Middletons allege that they are creditors of Raw Berry. In the founding affidavit, the first applicant alleges as follows:

> *12. In and during the period 25 February 2023 to 14 June 2024 (both inclusive), and at the Respondent's special instance and request, the Applicants lent and advanced monies to the Respondent in an amount of R 3 672 023,61 (three million six hundred and seventy-two thousand and twenty-three Rand and sixty-one Cents) ("the Loan").*
>
> *13. My wife and I advanced the Loan to the Respondent in order to provide working capital needed by the Respondent to operate and grow its business enterprise.*
>
> *15. Mr Pulles further advised us that Liandri and I would eventually benefit by being issued shares in the Respondent at a future point in time.*

[12] Raw Berry disputes these averments as it avers that payments were made by SS1T, represented by the Middletons, in accordance with the written provisions of the MOA.

[13] It is evident from the MOA that the second applicant signed the agreement on behalf of SS1T on 21 February 2023. The clauses in the MOA relevant to the *locus standi* dispute are as follows:

> *3.1 Subject to the terms and conditions herein and further subject to sub-clause 3.2 herein, the Parties agree that the purchase price for 50% of the Company, including 50% of all the assets and product owned by the Company shall be R3 000 000.00 (three million Rand) which will become due and payable on signature of this Agreement by both Parties.*
>
> *3.2 The Parties agree that the Purchaser has already made payment in the amount of R300 000.00 (three hundred thousand Rand) of the purchase price reflected in sub-clause 3.1 herein.*

3.4 The parties further agree that any and all reasonable working capital and or running costs required for the running of the Company past the Effective Date shall be disclosed in full, discussed, agreed and recorded upon by both Parties in writing and shall be shared equally between the Parties."

[14] The Middletons argue that clause 3.4 amounts to nothing more than an agreement to agree and that no further written agreement had been concluded between SS1T and the TPFT. Any variation to the agreement must be in writing in terms of the non-variation clause in the MOA. They argue that monies advanced by them to Raw Berry are independent of the MOA and that the 2023 AFS recorded 'J Middleton' as the creditor. In Raw Berry's attorney's reply to the Demand there is the repeated use of the phrase "*your client*", which point to an effective acknowledgement of the debt to the Middletons by Raw Berry. In WhatsApp communications between Mr Pulles and the first applicant, the latter repeatedly referred to "*I*" and not the trust in respect of requests to advance money.

[15] Mr Sing referred me to ***Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd***[6] and submitted that the Badenhorst rule does not preclude this court from determining a legal point based on facts that are common cause. The argument is simply that Raw Berry's contention that monies were advanced in terms of the MOA cannot be sustained on the common cause facts. These facts are that clause 3.4 embodies an agreement to agree, the MOA embodies a non-variation clause and no subsequent agreement was concluded. In addition, clause 3.4 itself records that the agreement to agree must be in writing.

[16] Usually the *contra preferentem* rule would assist in interpreting clause 3.4

[6] [2017] ZACC 32.

but in this matter there are two opposite versions as to who the author of this clause is. Mr Pulles avers that the second applicant, who is a commercial lawyer, drafted the MOA and sent it to him via email. This is, however, denied by the first applicant who avers that the MOA was sent to the second applicant by Mr Pulles who arranged for the MOA to be drafted. The second applicant signed a confirmatory affidavit confirming that she read the replying affidavit and confirms the correctness thereof insofar as it applies to her.[7]

[17] I must therefore interpret the clause by giving the words their ordinary grammatical meaning, subject to the context in which they are used. I must also look at the purpose of the provision, the background circumstances, and the contract as a whole to determine what a reasonable person would have understood the language to mean. In doing so I must be mindful that an interpretation that leads to unbusinesslike, insensible, or absurd results should be avoided in favour of a commercially sensible meaning.

[18] My reading of clause 3.4 is that SS1T and TPFP agreed that all reasonable working capital and/or running costs (after the effective date) must be shared equally between the parties ("*the first part*"). The *quantum* of working capital must be disclosed in full, discussed and agreed upon and recorded in writing ("*the second part*"). On this reading, to vary the first part, the parties would have to comply with the non-variation clause. The second part is not struck by the non-variation clause as it provides for a mechanism to agree on the *quantum* of working capital and for keeping record of working capital provided – usually in the financial records of the

[7] In ***Eskom Holdings SOC Ltd v Masinda*** 2019 (5 SA 386 (SCA) at 387I-388B the SCA criticised these sort of generalised confirmatory affidavits of hearsay evidence.

company. This interpretation makes commercial sense to me.

[19] I turn to the 2023 AFS, signed by Mr and Mrs Pulles as directors of Raw Berry. Note 8 recorded "*J Middleton*" as the creditor with repayment terms recorded as "*no terms*" (Note 8 records the long-term liabilities of the company). Mr Pulles avers that it is evident from the same note that the payment term was "*Payable > 5years*" and that the Middletons are attempting to convert a long-term loan into a current liability. He further avers that the description "*Middleton*" was used for ease of reference as working capital had been paid from various accounts and the first applicant was the individual controlling the various entities operating these accounts. He recorded total payments of R5 615 742.35 received by Raw Berry from SS1T of which R1 950 000 was allocated to the shares' purchase and R2 665 742.35 to long-term loans.

[20] The first applicant, in reply, avers that the second applicant, to whom he is married in community of property, had, on twelve occasions, advanced amounts totalling R3,1 million. He annexed proof of payments ("*POPs*"). Unfortunately, none of the POPs referenced which account the payment was made from or who the account holder is. Various descriptions of the second applicant appeared against the description "*payment made by*". I also noted that the POPs included a payment of R1,2 million on 23 February 2023. The date is significant as this is the date the MOA was signed and, in terms of clause 3.1, this was the date on which R2,7 million (the R3 million purchase price less the R300 000 advance payment) became due and payable. Mr Pulles avers that a meeting was convened with the first applicant on 1 March 2023 as the balance of the purchase

price was not paid. This was not denied by the Middletons in reply. Mr Pulles also avers that R1,5 million had been allocated to the share purchase commitment of R3 million, which is why the 2023 AFS recorded a loan amount of R1 185 000 only. This was again not denied by the Middletons.

[21] Although Raw Berry's attorney's reply to the Demand repeats the phrase "*your client*", this must be read in the context of the whole letter. In paragraph 4 the attorney wrote that "*The company does not deny that periodic amounts were advanced to it by your clients or entities under their agency or control.*" This is not an acknowledgement that the debt is due to the Middletons. In paragraph 5.3 of the letter the attorney recorded the MOA between SS1T and TPFP and the obligation of the shareholders to provide working capital. References after paragraph 5.3 to "*your client*" must be considered against this background. I am also not persuaded that the use of the first person in WhatsApp communications between Mr Pulles and the first applicant, within the context of sourcing working capital for "*the business*" takes the matter any further.

[22] I have also noted that the Middletons conflate their roles as trustees of the trust, which is the shareholder of Raw Berry, with their persons in a telling excerpt from the replying affidavit:

> *"The Respondent conflates its indebtedness to <u>me</u> as a creditor, and <u>my</u> obligation as a shareholder to provide working capital."*

[23] I find it hard to believe that the Middletons would, outside the terms of the MOA, advance R3,1 million (which amount is in dispute) to Raw Berry as working capital. Mr Oosthuizen SC has drawn my attention to clause 5.8 of

the MOA, which incorporates a warranty in the following terms:

"The Company has no longer obligation(s) under any other agreement and will at the Effective Date still have no obligations to any agreement other than to this Agreement."

Mr Pulles records that, in compliance with the MOA, R650 000 was repaid to a Mr Weihe on 2 March 2023. Mr Friedel Weihe had paid this sum as an advance on a R1,5 million purchase price for a 25% share in Raw Berry. I do not agree with Mr Sing's submission that this warranty is an on-going bar to future sales of shares. It clearly only relates to the date on which the MOA was signed.

[24] In light of what I have set out above, I am unable to find, on a balance of probabilities that the Middletons had discharged the onus on them to prove *locus standi* on a balance of probabilities.

<u>Costs</u>

[25] The ordinarily rule is that the successful party is entitled to its costs and I see no reason to deviate from this rule. The Middletons were made aware of the difficulties in their application on 23 October 2025 when the answering affidavit was served. They neither made application to join the trust as a party to the proceedings nor to have any factual dispute referred to oral evidence in terms of rule 6(5)(g).

[26] The order is recorded above.

ANDERSSEN J S

Acting Judge of the High Court

Appearances:

For the applicant: Adv Zelek Sing
Instructed by Allan Allschwang and Associates Inc

For the respondent: Adv A C Oosthuizen SC
Instructed by: B M Nielsen Attorneys