IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

1. REPORTABLE: YES.
2. OF INTEREST TO OTHER JUDGES: YES.
3. REVISED: NO.

SIGNATURE: [redacted]

Case number: 65023/2020

In the matter between:

SCANIA FINANCE SOUTHERN AFRICA (PTY) LTD	Applicant
and	
MATHAFENG INVESTMENT HOLDINGS (PTY) LTD	Respondent

Delivered: *This judgment was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date and time for hand-down is deemed to be 10:00 on 24 March 2026.*

Summary: Company Law – Winding-up – Return day of provisional order – Applicant's *locus standi* – Debt paid after provisional liquidation – Whether payment void under s 341(2) of Companies Act 61 of 1973 – Effect of creditor's formal admission of satisfaction of debt.

Insolvency – Section 341(2) of Companies Act 61 of 1973 – Void dispositions – Requirement that company must be both "being wound-up" and "unable to pay its debts" – Payment made by respondent company during provisional winding-up – Whether creditor may rely on voidness despite accepting payment.

Procedure – Application for final winding-up – Badenhorst Rule – Applicant must prove on return day that it is an unpaid creditor and statutory grounds persist.

Held: The respondent paid the full indebtedness in terms of a settlement agreement post provisional winding-up. Payment was received and acknowledged by the applicant.

Email correspondence from the applicant's attorneys expressly recording that the applicant was satisfied that no indebtedness remained constituted a **formal admission** under s 15 of the Civil Proceedings Evidence Act 25 of 1965, binding upon the applicant and relieving the respondent of any burden to prove payment.

Applicant's subsequent reliance on s 341(2) to contend that the payment was void could not revive locus standi, nor could the applicant contradict its formal admission.

For section 341(2) to apply, it must be shown not only that the company is "being wound-up", but also that it is "unable to pay its debts". On the admitted facts, the indebtedness was extinguished and no further evidence of inability to pay existed.

On the return day the applicant must establish that it remains an **unpaid creditor**. The **Badenhorst Rule** applies at the final stage: a winding-up court will not grant a final order where indebtedness is genuinely disputed on reasonable grounds.

Applicant failed to establish ongoing indebtedness or a statutory basis for final liquidation. No other creditors or liquidators sought to proceed with the winding-up. Provisional order discharged.

JUDGMENT

F.J. LABUSCHAGNE, AJ

[1] This matter came before me on the extended return day of a provisional winding-up order granted on 14 November 2022.

[2] In essence a question of onus on the return day for a winding-up order is raised, coupled with the application of section 341(2) of the Companies Act 61 of 1973 (the 1973 Companies Act).[1]

[3] The respondent as company in provisional liquidation paid the debt forming the subject matter of the winding-up application (in terms of a settlement agreement) and payment was accepted by the applicant, then refused premised upon a contention that the payment is void *viz*., the operation of section 341(2).

[4] The respondent delivered a supplementary affidavit under cover of an application in terms of Uniform Rule of Court 6(5)(e) on 13 March 2026 and the applicant opposed the application, but nevertheless delivered a supplementary replying affidavit on 19 March 2026 (one day prior to the hearing of this matter).

[5] At the commencement of the hearing the applicant contended that it is not opposing the interlocutory application by the respondent, with the reservation that its supplementary replying affidavit should be accepted.

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1 For some reason some legal practitioners still refer to the "Old Companies Act" *viz*., the 1973 Companies Act and the "New Companies Act" *viz*., the Companies Act 71 of 2008 (despite the 2008 Companies Act having been assented to on 8 April 2009 and commenced on 1 May 2011). There is thus nothing new about the 2008 Companies Act and reference to the 1973 Companies Act would suffice as is, or as the "repealed" or "previous" Companies Act.

[6] The court may in its discretion permit the filing of further affidavits with the fundamental consideration that the matter should be determined having regard to all the relevant facts. The respondent's further affidavit introduced factual evidence which occurred only after the delivery of its answering affidavit.

[7] In the premises, the two sets of further affidavits were accepted and argument proceeded on the evidence introduced as such. The last minute exchange of supplementary affidavits narrowed the issues which had to be adjudicated upon as aforesaid.

Factual conspectus

[8] The factual landscape has materially altered since the provisional order was granted on 14 November 2022 (with the application for leave to appeal dismissed on 12 November 2024).

[9] The application was originally instituted on the basis that the applicant was an unpaid creditor and that the respondent was unable to pay its debts. It was on that footing that the provisional order was obtained.

[10] On 3 February 2026 the applicant's attorneys confirmed that the respondent was indebted in the sum of R1 650 291.59 and recorded that the applicant would accept payment of that amount in full and final settlement of the matter.

[11] On 11 February 2026 the applicant confirmed acceptance of the respondent's payment proposal on certain stated terms.

[12] It is common cause that an amount of R620 000.00 was paid on 11 February 2026 and that the balance of R1 030 291.59 was paid on 18 February 2026, directly into the applicant's bank account.

[13] Upon receipt of the second payment, the applicant adopted the stance that the payment was void, contending that it had been made by a company in provisional liquidation in respect of a pre-liquidation debt and in circumstances where a *concursus creditorum* had been established.

[14] The applicant's attorneys thereafter indicated on 24 February 2026 that it would hold the funds in trust pending payment by a third party (upon which it will repay the settlement payment to the respondent) and persisted in seeking confirmation or extension of the provisional order (with the extension sought in order for the appointed provisional liquidators to investigate the respondent).[2]

[15] In correspondence dated 16 March 2026, however, the applicant's attorney reiterated its stance that the payment was void, recorded that the applicant was satisfied that it had received payment and that the respondent was no longer indebted to the applicant.[3]

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2 Due to its stance to remedy the void payment it contended was made by the respondent.

3 CL054-91.

[16] The applicant further contended through its attorneys that it was prepared to consent to the discharge of the rule subject to proposed conditions relating to suretyship and costs. Those conditions were not accepted by the respondent.

[17] On 18 March 2026 (some 4 years after their appointment on 23 December 2022), one of the two joint liquidators (Mr. GLS De Wet of Kaap-Vaal Trust) wrote ostensibly for the first time to the respondent and advised as to his appointment, attaching the certificate of appointment issued by the Master of the High Court; indicating that the attorneys for the respondent represents its director; confirming that he has “recently” been informed that the matter is to be heard on 20 March 2026 after an extension of the rule; and recording his “understanding” that the application for leave to appeal was dismissed.

[18] I am unable to discern from the court file whether the powers of the joint liquidators ever were extended and counsel did not know, neither did the instructing attorneys.

[19] Based on the lack of information as to an extension and the provisional liquidators’ belated 18 March 2026 correspondence, calling *inter alia* for a statement of affairs (which ought to have been delivered 14 days after their appointment) it is inferred that no extension of powers ever occurred.

[20] The provisional liquidators took no apparent steps for close to four years, until prompted by the applicant’s attorneys.

Legal position

[21] The applicant relies heavily on section 341(2) of the 1973 Companies Act which provides that every disposition of property by a company being wound-up after the commencement of the winding-up is void.

[22] In support of the proposition by the applicant, reliance was placed on the *ipsissima verba* of the legislative provision and on the decision in ***Cooper NO and Others v Blue Label Distribution (Pty) Ltd*** 2024 JDR 2878 (GJ), where the court held that payments made after a provisional winding-up order constituted void dispositions and were recoverable by the liquidators.

[23] Section 341 provides as follows:

> ***341. Dispositions and share transfers after winding-up void.***
> *(1) Every transfer of shares of a company being wound up or alteration in the status of its members effected after the commencement of the winding-up without the sanction of the liquidator, shall be void.*
> *(2) Every disposition of its property (including rights of action) by any company being wound-up and unable to pay its debts made after the commencement of the winding-up, shall be void unless the Court otherwise orders.*

[24] The present matter is distinguishable from ***Cooper*** in material respects. For one, ***Cooper*** concerned the question of whether or not payments made by the third applicant (the insolvent company) into the bank account of the respondent (*BlueLabel*) after the insolvent company's provisional winding-up, constitute dispositions as contemplated in section 341(2) or not.

[25] The present case deals with the return date where a final order is sought.

[26] In ***Cooper***, the first and second applicants were the joint liquidators of the insolvent company, having been so appointed by the Master on 25 September 2020. They contended that eight payments made by the insolvent company after the date of its provisional winding-up constitute void dispositions, as envisaged in section 341(2). They therefore sought orders declaring each of the eight payments made by the insolvent company to Blue Label to be void dispositions in terms of section 341(2) of the Act, as well as monetary orders for the repayment of the various amounts so paid, together with interest thereon, and an order for costs.

[27] *In casu*, the joint provisional liquidators are not before court with an application declaring the payments void and seeking repayment. Before court is the return day of an extended rule *nisi* for the provisional winding-up of the respondent company.

[28] On the return day of a rule *nisi* the court must determine whether to confirm the order and grant a final winding-up order, or to discharge it and restore the company to its directors.

[29] The court is tasked with deciding if cause has been shown by the respondent (the company) or other creditors as to why the provisional order should not be made final.

[30] No other creditors are before court, nor the provisional liquidators' report (the latter which is not surprising having regard to their ostensible lack of interest in executing their legislative mandate).

[31] In ***Cooper***, the duly appointed liquidators instituted proceedings to recover payments made after the commencement of winding-up, in order to protect the *concursus creditorum* and the interests of the general body of creditors. The issue before the court in that matter was whether those payments constituted void dispositions recoverable at the instance of the liquidators.

[32] In the present matter, no application has been brought by the provisional liquidators to set aside or recover the payment made to the applicant.

[33] The relief sought before me is confirmation or extension of the provisional winding-up order.

[34] The applicant has received payment in full and expressly acknowledged that no indebtedness remained, only thereafter to adopt the contrary stance.

[35] The question to be determined is whether, in these circumstances, the applicant retains *locus standi* to persist in seeking a final winding-up order or the continuation of the provisional order and what the effect is of section 341(2) on the facts of this matter.

[36] The dispute in the present matter is not factual but legal in nature. The material facts relating to payment are common cause. The issue is the legal effect of those payments in the context of section 341(2) and the applicant's standing on the return day.

[37] What section 341(2) does as its predominant purpose is to decree that all dispositions made by a company being wound-up are void. This provision must of course be read with section 348, which provides that the winding-up of a company by a court shall be deemed to have commenced at the time of the presentation of the application for winding-up to the court. The effect is that the payments are potentially invalid at the moment they are made, because the grant of a winding-up order will render section 341(2) operative.

[38] In ***Pride Milling Company (Pty) Ltd v Bekker NO and Another***,[4] the Supreme Court of Appeal referred to ***Lief NO v Western Credit (Africa) (Pty) Ltd*** 1966 (3) SA 344 (W) which dealt with section 115 of the 1926 Companies Act, which was couched in identical terms as section 348.

[39] In ***Lief NO,*** it was pointed out that the mischief that the section was designed to obviate was a possible attempt by a dishonest company, or directors, or creditors or others, to snatch some unfair advantage during the period between the presentation of the petition for a winding-up order and the granting of that order by a Court, by, for example, dissipating the assets of the company or, as it happened in this case, preferring one creditor above another to the prejudice of the *concursus creditorum*.

[40] ***Pride Milling***[5] is authority for the position held that the effect of a winding-up order is to establish a *concursus creditorum*, and nothing can thereafter be allowed to be done by any of the creditors to alter the rights of the other creditors. In dealing with the effect of dispositions made subsequent to the grant of a provisional winding-up order the learned authors M S Blackman *et al* in their Commentary on the Companies Act (after analysing the judgment in ***International Shipping Co (Pty) Ltd v Affinity (Pty) Ltd and Another*** 1983 (1) SA 79 (C) (at 680) and other decisions of the Supreme Court of Appeal), summarised the position when a company is being wound-up on the grant of a provisional order of liquidation. Once that stage is

4 ***Pride Milling Company (Pty) Ltd v Bekker NO and Another*** (393/2020) [2021] ZASCA 127; [2021] 4 All SA 696 (SCA); 2022 (2) SA 410 (SCA) (30 September 2021) at [14].

5 ***Pride Milling*** *ibid* at [15] and [16].

reached, the court (although it can ratify a disposition made **before** the winding-up order) no longer has the power in terms of section 341(2) to authorise a company to make a disposition of its property.

[41] The question is whether the payment is to be considered void or not, and if so, it is sufficient to be considered to be a defence to a final winding-up order or not.

[42] More particularly, whether *in casu* the payment constitutes a dispute to the applicant's *locus standi* or not.

[43] In my view, the email from the applicant's attorneys of 16 March 2026 to the respondent's attorneys is dispositive of the matter.[6] It reads:

Dear Sir

I refer to our discussions regarding the above matter.

As you know, we are of the view that the payment made by the company in provisional liquidation is void.

Our client is, however, satisfied that it has received payment and that Mathafeng is no longer indebted to our client. Our client is prepared to consent to the upliftment of the provisional winding up order on the following conditions:

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[6] Annexure JV13 to the applicant's supplementary replying affidavit at CL054-91.

1. *That the director of your client binds himself as surety and co-principal debtor in favour of our client for payment of the amount of R1 030 291.59 in the event that Mathafeng is again placed in liquidation within a period of 24 months from the payment date.*

2. *That Mathafeng be liable for the costs (if any) of the provisional liquidators.*

Please taken an instruction and revert to us at your earlier convenience.

Regards.

[44] The "***Badenhorst Rule***" provides that winding-up proceedings ought not to be resorted to in order to enforce payment of a debt, the existence of which is *bona fide* disputed by the company on reasonable grounds and the procedure for winding-up is not designed for the resolution of disputes as to the existence or non-existence of a debt.[7]

[45] In ***Gap Merchant Recycling CC v Goal Reach Trading 55 CC,***[8] Rogers J held that liquidation proceedings are not intended as a means of deciding claims which are genuinely and reasonably disputed with reference to ***Badenhorst.***

7 ***Badenhorst v Northern Construction Enterprises (Pty) Ltd*** 1956 (2) SA 346 (T) at 347H-348C.

8 ***Gap Merchant Recycling CC v Goal Reach Trading 55 CC*** (2480/2014) [2014] ZAWCHC 53; 2016 (1) SA 261 (WCC) (15 April 2014).

[46] In ***Afgri Operations Limited v Hamba Fleet (Pty) Ltd***,[9] Willis JA referred to the finding *a quo* in respect of onus where a final winding up order was sought and confirmed that the applicant bears the onus of showing that the respondent was indebted to it and that the respondent bears the onus of demonstrating that the indebtedness was disputed on *bona fide* and reasonable grounds.

[47] It is now well established, following the decisions of the Supreme Court of Appeal in ***Afgri Operations Ltd*** and ***Freshvest Investments (Pty) Ltd***, that the ***Badenhorst*** principle continues to apply at the stage where a final winding-up order is sought.

[48] Winding-up proceedings are not designed to enforce payment of a debt which is genuinely disputed on *bona fide* and reasonable grounds. Although the applicant may at the provisional stage rely on *prima facie* proof of indebtedness, at the final stage it must establish on a balance of probabilities that it is indeed an unpaid creditor.

[49] In the present matter, the respondent has established that payment of the full indebtedness was made and received.

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9 ***Afgri Operations Limited v Hamba Fleet (Pty) Limited*** (542/2016) [2017] ZASCA 24; 2022 (1) SA 91 (SCA) (24 March 2017) [16].

[50] The applicant does not dispute receipt. Its case is that the payment is void in terms of section 341(2) and that the debt thus remains unpaid in law. That contention raises, at the very least, a substantial legal dispute concerning the continued existence of indebtedness.

[51] In these circumstances, the applicant has failed to establish, on a balance of probabilities, that it remains an unpaid creditor. The ***Badenhorst*** principle therefore finds application, and the application cannot succeed.

[52] *In casu* the payment of the debt is common cause, what is more, the 16 March 2026 email aforesaid is an admission on the record in respect of the *locus standi* of the applicant.

[53] The legal effect of the aforesaid admission is provided for in section 15 of the **Civil Proceedings Evidence Act 25 of 1965**, negating the proof of the fact or facts admitted and prohibiting the applicant from disproving the admitted fact or facts.

[54] In terms of the Civil Proceedings Evidence Act 25 of 1965, section 15:

It shall not be necessary for any party in any civil proceedings to prove nor shall it be competent for any such party to disprove any fact admitted on the record of such proceedings.

[55] The consequence of a formal admission is that it becomes unnecessary to prove the admitted fact and that such fact may not be disproved.[10] A court is entitled to adjudicate a matter simply on an admitted fact.[11]

[56] Further, the doctrine of contradictory statements operating through estoppel and approbation and reprobation further precludes the applicant from challenging the admission.[12]

[57] As set out in ***Badenhorst***, once the respondent's indebtedness has *prima facie* been established, the onus is on it to show that this indebtedness is disputed on *bona fide* and reasonable grounds and the discretion of a court not to grant a winding up order upon the application of an unpaid creditor is narrow and not wide.

[58] Although the respondent was indebted to the applicant, that indebtedness has been paid. The onus on the respondent to show a dispute as to why a final order is not to be granted has been satisfied.

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10 Civil Proceedings Evidence Act 25 of 1965, section 15. See also ***Gordon v Tarnow*** 1947 3 SA 525 (A) 531.

11 ***Dinath v Breedt*** 1966 3 SA 712 (T) 717. See also ***Gordon v Tarnow*** *supra* and ***Van Deventer v De Villiers*** 1953 4 SA 72 (C) 75-76.

12 A party who has adopted a particular legal position, and acted upon it, cannot later adopt an inconsistent position to the prejudice of another.

See ***Hlatshwayo v Mare & Deas*** 1912 AD 242 where the Appellate Division (as it then was) held as follows: *"...the doctrine is based upon the application of the principle that no person can be allowed to take up two positions inconsistent with one another, or as it is commonly expressed to blow hot and cold, to approbate and reprobate."*

[59] When the applicant applies for a final order, and the facts are disputed, the court is not permitted to determine the balance of probabilities on the affidavits but must instead apply the ***Plascon-Evans*** rule.[13]

[60] In ***Wightman t/a JW Construction v Headfour (Pty) Ltd and Another,***[14] the Supreme Court of Appeal held that a real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed.

[61] Based on the aforesaid admission, it is not necessary for this court to apply ***Plascon-Evans.***

[62] Despite the admission, which I view as dispositive, the court is to consider the effect of the payment vis-à-vis the working of section 341(2).

[63] The applicant contends that, because the payment was made after the commencement of winding-up and during the subsistence of a *concursus creditorum*, it is void *ab initio*, with the result that the debt remains unpaid in law and that the applicant retains standing as creditor.

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13 ***Paarwater v South Sahara Investments (Pty) Ltd*** 2005 4 All SA 185 (SCA) para 4; ***Golden Mile Financial Solution CC v Amagen Development (Pty) Ltd*** [2010] ZAWCHC 339 paras 8-10; ***Badge & Others NNO v Midnight Storm Investments 265 Pty Ltd & Another*** 2012 (2) SA 28 (GSJ) para 14.

14 ***Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*** 2008 (3) SA 371 (SCA) [13].

[64] It is correct that section 341(2) decrees that dispositions made by a company being wound-up are void, but the section goes further than that. In terms of the section, the company must also be proven to be unable to pay its debts.

[65] The provision is designed to protect the *concursus creditorum* and to prevent prejudice to the general body of creditors by post-commencement dispositions of a company unable to pay its debts. This subsection is used in winding-up litigation by liquidators to recover void dispositions.

[66] The purpose of the section is protective, not tactical. It is not designed to enable a creditor who has in fact received payment, and who is content that no indebtedness remains, to disregard that payment for the sole purpose of maintaining liquidation proceedings in circumstances where neither it, nor the joint provisional liquidators have made any attempts to further the liquidation proceedings after the provisional order.

[67] It is evident that the wording of section 341(2) provides for voidness where it is proven that a company is unable to pay its debts.

[68] Is the respondent thus deemed to be unable to pay its debts in circumstances where the admission stands and the *causa* for the winding-up relief has fallen away? It has quenched its indebtedness, which is common cause and absent any other proof of it being unable to pay its debts, the court is unable to make a finding that section 341(2) applies.

[69] The critical element to the interpretation of section 341(2) is that it applies to any company being wound-up in the first instance, and in the second instance, that such company must be unable to pay its debts.

[70] Mere winding-up (whether provisional or not in terms of ***Cooper***) is not sufficient. It must also be proven that the company is unable to pay its debts prior to section 341(2) being capable of lawfully being invoked.

[71] It is trite that a petitioning creditor must establish, on the return day, that it is a creditor and that the statutory grounds for liquidation exist. The return day is not a formality. The Court must be satisfied that the requirements for final liquidation remain extant.

[72] On the facts before me, the applicant has received the full amount of its claim. It has not repaid the funds to the respondent. It does not seek to do so.

[73] No recovery proceedings have been instituted by the provisional liquidators.

[74] There is no evidence before the Court of any other creditor who has intervened or who seeks the continuation of liquidation proceedings on the basis of an unpaid debt. Nor has an independent application been brought by the liquidators for final liquidation on other statutory grounds.

[75] The applicant further submits that the provisional order should be extended to enable the provisional liquidators to investigate the affairs of the respondent, particularly in light of the change of name and the opening of bank accounts during provisional liquidation.

[76] There can be no doubt that the protection of the *concursus creditorum* and the proper administration of insolvent estates are matters of public importance.

[77] However, the winding-up jurisdiction of this Court is a statutory remedy. It is invoked upon proof of established grounds for liquidation.

[78] It is not a general investigative jurisdiction, nor a mechanism to preserve a provisional order in the abstract while investigations are undertaken, absent a proper legal foundation for the continuation of liquidation.

[79] The present application was launched on the footing that the applicant was an unpaid creditor. That *causa* has fallen away.

[80] The applicant has been paid and acknowledges that no indebtedness remains. In the absence of an unpaid creditor pressing its claim, or an independent statutory basis properly established for final liquidation, the continuation of the provisional order would extend the winding-up jurisdiction beyond its proper bounds.

[81] The fact that a provisional order was granted does not relieve the applicant of the obligation, on the return day, to satisfy the court that the grounds for final liquidation exist.

[82] Once the applicant's claim was satisfied, the foundation upon which the application was brought ceased to exist. The existence of a provisional order does not, in and of itself, justify its confirmation or indefinite extension in the absence of the statutory requirements.

[83] Nothing in this judgment precludes other creditors if they are so advised to institute proceedings against the respondent. The present decision concerns only the relief sought in these proceedings.

[84] In the circumstances, I am not satisfied that the applicant has established a proper legal foundation for the confirmation of the provisional winding-up order or for its extension. The rule *nisi* falls to be discharged.

Costs

[85] As to costs, the matter has taken a complex course. The provisional order was initially granted on the basis of an unpaid debt.

[86] Subsequent events, including the settlement and the applicant's stance regarding the payment, have given rise to further proceedings.

[87] In the exercise of my discretion, and having regard to all the circumstances, I consider it appropriate that each party bear its own costs from the date on which the final payment was effected, and that the costs prior thereto are to be paid by the respondent to the applicant on scale B.

Order

[88] In the result the following order is made:

88.1 the rule *nisi* granted on 14 November 2022 (as extended) is discharged;

88.2 the liquidation application is dismissed;

88.3 each party to bear its own costs from 18 February 2026;

88.4 the respondent to pay the applicant's costs on scale B up to 18 February 2026.

[redacted]

F.J. LABUSCHAGNE
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA
Electronically submitted and signed.

Date heard:	20 March 2026
Date delivered:	24 March 2026
For the applicant:	Adv. C. Gibson
Instructed by:	Senekal Simmonds Inc.
For the respondent:	Adv. T.P. Krüger SC
Instructed by:	KMG & Associates Inc.