

REPUBLIC OF SOUTH AFRICA



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

CASE NUMBER: 2024-145483

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

27 March 2026

DATE

SIGNATURE

In the matter between:

RAWSON RESIDENTIAL FRANCHISEES (PTY) LTD

FIRST APPLICANT

RAWSON COMMERCIAL (PTY) LTD

SECOND APPLICANT

and

DAVICOL (PTY) LTD

RESPONDENT

Heard: 27 October 2025

Delivered: 27 March 2026

This judgment is handed down electronically by circulating to the parties or their legal representatives by email and by uploading the judgment onto CaseLines. The date and time for hand down of the judgment are deemed to be 10:00 on 27 March 2026.

JUDGMENT

MATLAPENG A.J

INTRODUCTION

[1] This is an application for the provisional winding-up of the Respondent in terms of Section 344 (F), read with Section 345 of the Companies Act 61 of 1973 (The Companies Act)¹, on the basis that the Respondent is unable to pay its debts.

[2] The application is opposed by the Respondent.²

BACKGROUND FACTS

[3] The following facts are either common cause or not seriously disputed by the Respondent. Firstly that the Applicants and the Respondent concluded franchise agreements³ and a credit agreement, which regulated their commercial relationship.

¹ CaseLines: Founding Affidavit 04-10 para 11.

² CaseLines: Notice to Oppose 07-1.

³ CaseLines: Founding Affidavit 04-13 and Annexure "FA3" read with para 19 of the Answering Affidavit where the Respondent state that it admits the conclusion of the agreement however, the agreement is legally unenforceable.

- [4] It is also a common cause fact that the Respondent conducted its business pursuant to those agreements concluded between the parties⁴ and that the Applicants complied with their obligations in terms of the agreements.
- [5] It is also so that the Respondent became indebted to the Applicant in the amount of approximately R749,550.42 and R148,743.41 respectively.⁵
- [6] It is also common cause that the Respondent, made written admissions of liability and sought indulgences regarding payment and despite demand, the Respondent has failed to discharge its indebtedness to the Applicant.⁶
- [7] The Respondent's opposition, rest primarily on general denials, and three points *in limine*⁷ and assertions of solvency.
- [8] In motion proceedings, a Respondent is required to engage fully with the allegations made. The failure to do so, may result in the Court rejecting such denials as insufficient.

FIRST POINT IN LIMINE

- [9] The Respondent's first point *in limine* contends that Applicant failed to comply with Section 345 (1)(a) in that, the demand was not served at the registered

⁴ CaseLines: Founding Affidavit para 22 read with para 20 of the Answering Affidavit where the Respondent admit the material terms of the agreements which regulated the relationship between the parties.

⁵ CaseLines: Founding Affidavit 04-21 para 36.

⁶ CaseLines: Founding Affidavit 04-23 para 40 as well as para 56 Annexure “**FA19.1**” and “**FA19.2**” read with para 52-53 of the Answering Affidavit.

⁷ CaseLines: Answering Affidavit paras 5-7.

office, and that it was sent by registered post and as such, the non-compliance, renders the demand null and void.⁸

[10] This contention is legally unsustainable. I say so because Section 345 (1)(a) provides a deeming provision and not a jurisdictional prerequisite. Secondly, a creditor may rely on Section 345 (1)(c), namely proof that the company is unable to pay its debts.

[11] Thirdly, the Respondent does not deny receipt of the demand in substance⁹ but rather raises a technical objection as to the manner of service. This point *in limine*, is therefore without merit and is dismissed with cost.

SECOND POINT IN LIMINE

[12] The Respondent initially raised *lis pendens* at paragraph six of the Answering Affidavit.¹⁰ This point, was not persisted in the Respondent's Heads of Argument and in any event, the existence of pending proceedings, does not preclude liquidation proceedings which serve a distinctive purpose. This point *in limine* is accordingly dismissed with costs.

THIRD POINT IN LIMINE

[13] The Respondent raises a technical point which is essentially tied with the second point *in limine* which the Court has already dismissed above. However, the Respondent attempts to bolster this point by stating that it raise meritorious

⁸ CaseLines: Answering Affidavit 08-6 paras 5.3-5.7.

⁹ CaseLines: Founding Affidavit 04-27 para 56 read with Answering Affidavit 08-33 pars 50 where the Respondent expressly and unequivocally admit receiving the letters of demand.

¹⁰ CaseLines: Answering Affidavit 08-7 para 6.

grounds to oppose the liquidation and are *bona fide* and enjoy reasonable prospects of success.¹¹

[14] This Court finds that this is not a point *in limine* but a red herring which must be dismissed with costs.

[15] .

ISSUES FOR DETERMINATION

[16] This Court is called upon to determine the following issues:

21.1 Whether the Applicant have established a liquidated claim;

21.2 Whether the Respondent is unable to pay its debt (Commercial Insolvency);

21.3 Whether the Respondent has demonstrated a bona fide dispute on reasonable grant;

21.4 Whether the Respondent's point *in limine* have merit which the Court has already dealt with above;

21.5 Whether the Court should exercise its discretion against granting a winding-up order.

¹¹ CaseLines: Answering Affidavit 08-8 para 7.3-76.

APPLICABLE LEGAL PRINCIPLES

Commercial Insolvency

[17] A company may be wound up if it is unable to pay its debts as contemplated in section 344 (f), read with Section 345 of the 1973 Companies Act.

[18] The test, is whether the company is commercially insolvent, namely whether it is able to meet its current liabilities in the ordinary course of business.¹²

[19] In *ABSA Bank Ltd vs. Rhebokskloof (Pty) Ltd* 1993 (4) SA 436 (C) at 440 G-H, it was held that commercial insolvency concerns liquidity rather than balance sheet insolvency.

[20] It is tried that winding-up proceedings, are not appropriate for the enforcement of a debt that is *bona fide* disputed on reasonable grounds.

[21] In *Kalil vs Decotex*¹³, the Appellate Division held that a Respondent needs only show that the indebtedness is disputed on *bona fide* and reasonable grounds. However, the dispute must be genuine and not merely colourable.

¹² *Selective Empowerment Investments 1 Ltd v Companies and Intellectual Property Commission* (1325/2023) [2025] ZASCA 71 (30 May 2025) at para 33.

¹³ 1988 (1) SA 943 (A) at 980 C-D

[22] In the matter of Hulse-Reutter and others v HEG Consulting Enterprises (Pty) Ltd¹⁴, the Supreme Court of Appeal confirmed that the Respondent must demonstrate that the dispute is both *bona fide* and based on reasonable grounds.

[23] It is so that a Respondent in motion proceedings, must meaningfully engage with the allegations made against it. In the matter of Wightman T/A J.W. Construction v Headfour (Pty) Ltd¹⁵ the Court held that a real and genuine dispute of fact exists only where the Respondent has seriously and unambiguously addressed the relevant facts.

“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.”

[24] Even where a ground for warning-up is established, the Court retains a discretion. However, where commercial insolvency is established, the discretion is narrow and must be exercised judicially.

[25] The above was neatly summarised in the matter of Boschpoort Ondernemings (Pty) Ltd v ABSA Bank Limited:¹⁶

¹⁴ 1998 (2) SA 208 (SCA) at 218 D-F

¹⁵ 2008 (3) SA 371 (SCA) at para 13

¹⁶ 2014 (2) SA 518 (SCA) at para 18 to 20

[18]In view of the long established and well-settled practice in our courts that commercial insolvency justifies the liquidation of a company, it must be presumed that the legislature was aware of this fact. The principle that Parliament is presumed to be acquainted with the interpretation of earlier legislation by the court, applies where there has been a settled and well- recognised judicial interpretation before the relevant legislation was passed.

[19]It has also long been a construction of interpretation of statutes that, in the absence of express wording to the contrary, the legislature did not intend to alter the law as it had previously stood. Accordingly, it must be presumed that the legislature deliberately refrained from defining 'solvency'. It must have done so with a view to ensuring that the well-oiled machinery of the courts in matters of company liquidations should not stall. The legislature must have been content that prevailing judicial interpretations of solvency and insolvency respectively should continue to have effect. The meaning of those terms must be one that leads to a sensible and business-like result. See Natal Joint Municipal Pension Fund v Endumeni Municipality.

[20]I referred earlier to the fact that s 345 of the old Act was retained in terms of subitem 9(1) of schedule 5 of the new Act. Subitem 9(2) provides that s 344 of the old Act shall not apply to the liquidation of 'solvent' companies, 'except to the extent that it is necessary to give full effect to the provisions of Part G of Chapter 2'. Part G of chapter two of

the new Act, more particularly ss 79 to 81 thereof, relate to the winding-up of solvent companies. As we have seen, s 344(f) and s 345 of the old Act are fastened together by the clasp in s 344(f) that refers to a company being unable to pay its debts 'as described in s345'. The seeming anomaly may be resolved if one recognises that s 345 was retained in subitem 9(1) to enable a determination to be made in terms of s 79(3) of the new Act that a company 'is or may be insolvent' - even though the application was made in terms of either s 80 or 81 for its winding-up as a so-called 'solvent' company. The deeming provisions concerning the inability to pay its debts, contained in s 345 of the old Act may be used to establish the insolvency of a company. In this regard, I agree with King AJ in Standard Bank of SA Ltd v R-Bay Logistics CC"

ANALYSIS

[26] The Respondent, does not meaningfully dispute the existence of the agreement or its obligations arising from the agreements. Of particular significance, it is the Respondent's failure to deal with the allegations of routine admissions of liability that is of particular concern.

[27] The Answering Affidavit, consists largely of general denials, which is unsupported by evidence. Such denials, do not meet the standard articulated in *Wightman* above and do not give rise to a genuine dispute of fact.

[28] The Respondent asserts that it is financially sound and able to meet its obligations however, these assertions, are unsupported by any documentary evidence.

[29] There are no financial statements, no bank records, or other objective evidence that have been placed before Court in order to make a determination and exercise its discretion in favour of the Respondent.

[30] In circumstances where indebtedness is established and payment has not been made, the absence of evidence demonstrating solvency is decisive.

[31] The Respondent asserts that it earns sufficient income and is in a growth phase.¹⁷ These assertions are unsupported by any documentary evidence there are no financial statements, no bank records, or objective indicators of solvency have been produced by the Respondent. Therefore, this Court is unable to accept the assertions made by the Respondent.

[32] It is so that the Respondent fails to engage with several material allegations include the quantum of the debt, the contractual basis of the claims, the written admissions of liability, and the failure to make payment despite demand.

¹⁷ CaseLines: Answering Affidavit 08-32 paras 49.4-49.7.

[33] This failure is quite significant under the circumstances. A Respondent cannot avoid liquidation by selective silence. They must fully engage with the material facts against them for the Court to exercise its discretion in their favour.

[34] When the Answering Affidavit is considered as a whole, the following emerge: The Respondent raises technical objections lacking merit, second, the Respondent advances general denials and fails to engage with material facts more pointed, provides no evidentiary basis for its alleged solvency and therefore leads to a conclusion that the Answering Affidavit does not disclose a genuine or sustainable defence, nor does it raise a real dispute of fact

[35] In sum, the Court is satisfied that the Respondent is commercially insolvent.

The Badenhorst Rule

[36] The Respondent contends that there is a *bona fide* dispute regarding the indebtedness. The alleged dispute, is not supported by evidence and is inconsistent with prior admissions made by the Respondent

[37] It also lacks particularity and does not demonstrate reasonable grounds and this Court is therefore not satisfied that the Respondent has established a *bona fide* dispute as contemplated in *Kalil* above.

[38] It is so that the Respondent has failed to engage meaningfully with the Applicant's case. It is also so that the Respondent has advanced bare denials and unsubstantiated assertions of insolvency.

[39] In sum, the Respondent has not placed any reliable financial information before the Court in order for the Court to exercise its judicial discretion and the defences raised, are not *bona fide* and appear to have been advanced to delay the inevitable.

CONCLUSION

[40] The Applicants have established a liquidated claim that the Respondent is unable to pay its debt and the absence of a *bona fide* dispute on reasonable grounds.

[41] There are no circumstances justifying the exercise of the Court's discretion against granting of a winding-up order.

ORDER

[42] The following order is made:

47.1 That the Respondent be placed under provisional liquidation in the hands of the Master of the High Court.

[43] That a rule *nisi* is issued calling upon all interested parties to show cause on a date to be determined by this Honourable Court, why an order in the following terms should not be made final:

48.1 That the Respondent be placed under final liquidation;

48.2 That the cost of the application, on an attorney and time scale,
should not be caused in the Respondent's winding-up;

[44] That a copy of this order be served:

49.1 By the Sheriff of this Honourable Court upon;

49.1.1 The Respondent at its registered address and principal place
of business;

49.1.2 The Respondent's employees, at the Respondent's
registered address and principal place of business;

49.1.3 Any trade unions representing the Respondent's employees
at the Respondent's registered address and principal place
of business;

49.1.4 The South African Revenue Services.

49.2 By a publication in the Government Gazette, "Die Beeld" and "The Star"
Newspapers.



MT Matlapeng

Acting Judge of the High Court, Gauteng
Division, Pretoria.

Appearances:

Applicant's Counsel:

Adv MM Van Staden .

Applicant's Attorneys:

STWB (Mr. S. Hougaard).

Respondents Counsel:

Adv Jan Minaar.

Respondents Attorneys:

Johan Van Der Vyver Attorneys.

