



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Case no: 2025-085734

In the matter between:

SHAUN ROBERT BARNES

Applicant

and

VINEYARD LOGISTICS (PTY) LTD

Respondent

JUDGMENT

Coram: NJOKWENI AJ

Heard on: 19 NOVEMBER 2025

Delivered on: 15 APRIL 2026

Summary: Company law – provisional liquidation – rule *nisi* – inability of the company to pay its debts – s344(f) read with s345(1)(c) of the Companies Act, 61 of 1973 – item 9 of schedule 5 of the Companies Act, 71 of 2008 – postponement application – abuse of process – punitive costs – *locus standi* – test at provisional liquidation stage – Badenhorst test confirmed and applied – Plascon Evans test – Intervening application – leave to file further affidavit – provisional order granted - rule nisi issued.

ORDER

1. The applicant has the *locus standi* to bring the application for liquidation of the respondent.
2. Mr Gareth Barns ("intervening party") is granted leave to intervene in the liquidation application against the respondent as the second respondent.
3. The late filing of the intervening party's answering affidavit is condoned.
4. The intervening party's affidavit in support of the intervention application shall serve as his answering affidavit to the founding affidavit in support of the liquidation application against the respondent.
5. Applicant is granted leave to file a supplementary replying affidavit, and the affidavit filed by the applicant in support of the application for leave to file a the supplementary replying affidavit shall serve as the applicant's supplementary replying affidavit.
6. The respondent is placed under provisional liquidation at the hands of the Master of the High Court, Cape Town.
7. A rule nisi is hereby issued, calling upon all interested parties to appear in this Court on a date to be arranged by the registrar of this Court, if any, why the following order should not be granted:
 - 7.1 that the respondent be placed under final liquidation.
 - 7.2 That the costs of this application be costs in the liquidation.
8. A copy of this provisional order shall be served on:
 - 8.1 Respondent at its registered address in accordance with 346A(1)(c) of the Companies Act, 61 of 1973 ("the Act");
 - 8.2 Any registered trade union representing the respondent's employees in accordance with sections 346A(1)(a) and (2) of the Act;

- 8.3 Respondent's employees and any applicable trade unions in accordance with section 346A(1)(b) of the Act;
- 8.4 South African Revenue Services in accordance with section 346A(1)(c) of the Act; and
- 8.5 The Master of the High Court.

JUDGMENT

NJOKWENI AJ

INTRODUCTION

[1] This judgment concerns an application by the applicant for the liquidation of the respondent. The applicant alleges to be one of the respondent's creditors in that the respondent is allegedly indebted to him for R1 201 355 and despite demand for payment of the said amount, the respondent is unable to pay the same. As a result, the applicant brings this application in terms of s344(f) read with s345(1)(c) of the Companies Act, 61 of 1973 ("1973 Act") because of the respondent's alleged inability to pay its debts, alternatively in terms of s344(h) of the 1973 Act on the basis that it would be just for the respondent should be wound up

The parties

[2] The applicant is Shaun Robert Barns ("applicant"), and the respondent is Vineyard Logistics (Pty) Ltd ("respondent"), a private company with limited liability and which is registered as such in terms of the Companies Act, 71 of 2008. The respondent has two directors, Mr Gareth Hamilton Barns ("Mr Gareth Barns") and Mr John Andrew Barns ("Mr Andrew Barns"). The latter two mentioned gentlemen and the applicant are brothers.

Relief sought

[3] The applicant issued this application on 6 June 2025 on an urgent basis (terms) for hearing on 6 August 2025. The applicant *inter alia* seeks the following relief against the respondent, that:

- a. The application be heard on an urgent basis and that forms and services prescribed by the rules be dispensed with in terms of uniform rule 6(12).
- b. the respondent be placed under provisional liquidation.
- c. a rule *nisi* be issued calling upon interested parties to show cause why the respondent should not be placed under final liquidation.
- d. the provisional liquidation order be served on the respondent, its employees, registered trade unions, the Master of the High Court, and the South African Revenue Services in terms of s346A of the Companies Act.
- e. the costs of the application be considered as costs in the liquidation of the respondent.

RELEVANT FACTS

[4] The applicant and his two brothers (Mr Gareth Barnes and Mr Andrew Barnes) are sons to the late Mr Barnes and Mrs Elizabeth Barnes. During his lifetime, the late Mr Barnes incorporated a group of companies for various business and investment purposes. The group of companies established by the late Mr. Barnes consists of three main entities: Vineyard Logistics (Pty) Ltd, Mischa Wines (Pty) Ltd, and Mischa Premier Vines (Pty) Ltd, which are interrelated through ownership, operations, and financial arrangements. Vineyard Logistics (Pty) Ltd incorporated in 2004 as a property holding company owns the farm Mischa Estate, which is leased to Mischa Vines (Pty) Ltd for vineyard operations and to Mischa Wines (Pty) Ltd for wine production. Mischa Vines (Pty) Ltd operates a large-scale nursery for propagating grape varieties and leases the farm Mischa Estate from Vineyard Logistics (Pty) Ltd and is responsible for maintaining the infrastructure on the farm Mischa Estate under the lease agreement. Mischa Wines (Pty) Ltd produces wines at its cellar in Wellington, using grapes cultivated by Mischa Vines (Pty) Ltd. The respondent has two shareholders, Mr Gareth Barnes and Mr Andrew Barnes, each holding 50% of the issued shares.

[5] The late Mr Barns had unsecured loan account against the respondent and which upon his death he bequeathed as follows:

- a. Shaun Robert Barns - Loan account of R 1,201,355.00.
- b. Mrs. Elizabeth Barns - Loan account of R 875,273.00, which has been ceded to ABSA Bank as security.
- c. Mr. Andrew Barns - Loan account of R 1,200,080.00.

The grounds for winding up

[6] The applicant was prompted to bring this application for the urgent liquidation of Vineyard Logistics (Pty) Ltd due to the following alleged reasons:

- a. The respondent, Vineyard Logistics (Pty) Ltd, is unable to pay its debts as envisaged in section 344(f), read with sections 345(i)(c) of the Companies Act, 61 of 1973. The applicant is owed R1,201,355.00, which remains unpaid despite formal letters of demand.
- b. The respondent is factually and commercially insolvent, with liabilities exceeding assets and accumulated losses. Its financial statements for 2022 and 2023 show significant financial deterioration, including unpaid creditors and minimal income.
- c. The respondent's directors, Gareth Hamilton Barns and John Andrew Barns, are in a management deadlock, which has led to a lack of control and oversight of the company's affairs. This has allegedly resulted in mismanagement and neglect of the respondent's assets.
- d. Mischa Estate, the respondent's primary asset, is allegedly being mismanaged and rendered commercially useless due to the insolvency of Mischa Vines, which leases the property. Mischa Vines has failed to maintain the infrastructure and pay for municipal services, breaching its lease agreement with the respondent.
- e. The financial distress of other entities in the Group, such as Mischa Wines and Mischa Vines, has had a cascading effect on the respondent. Mischa Vines is facing liquidation applications from creditors, and its insolvency threatens the financial stability of the respondent and other entities in the Group.

f. The applicant believes that the respondent's continued trading under insolvent circumstances will cause further prejudice to its creditors, including the applicant, and worsen the financial position of the respondent and other entities in the Group.

g. The applicant cites the lack of cooperation and meaningful engagement from one of the directors, Gareth Barns, as a contributing factor to the respondent's deteriorating situation.

[7] In summary, the applicant seeks the urgent liquidation of the respondent to address its insolvency, resolve the management deadlock, prevent further financial damage, and protect the interests of creditors.

Opposition and intervening application

[8] On 4 August 2025, Mr Gareth Barns filed an application for leave to intervene in the main application ("intervening application") for hearing on 6 August 2025 to 8 August 2025, the same dates set down for hearing of the main application. The intervening application was served on the applicant's attorneys of record on 4 August 2025 at 14:31. On 6 August 2025, the intervening application was opposed by the applicant, and as a result, the hearing of both the intervening and main application on the urgent Court roll were stood down to the chambers of the Judge President for a decision on special allocation on the semi-urgent roll. On 9 September 2025 the Judge President postponed the hearing of the intervening application and the main application to 19 November 2025. The applicant was ordered to file his answering affidavit to the intervening application, if any, by no later than 15 September 2025. Costs stood over for later determination.

[9] On 19 September 2025, the applicant delivered a "replying affidavit" together with three confirmatory affidavits of Mrs Elizabeth Barns, Mr Andrew Barns, and Mr Gregor Wolters. In this "replying affidavit", the applicant:

a. consents that leave be granted to Mr Gareth Barns to intervene in the liquidation application.

b. deems the affidavit of Mr Gareth Barns in support of the intervening application to constitute the answering affidavit of both the respondent and Mr Gareth Barns in the liquidation application.

c. does not take issue with the “belated” filing of the deemed answering affidavit of Mr Gareth Barns and the respondent.

[10] On 28 October 2025 the applicant filed an interlocutory application supported by a founding affidavit seeking leave to file a supplementary replying affidavit, and should leave be granted, applicant sought that founding affidavit serve as his supplementary replying affidavit. On 17 November 2025 (two days before the hearing of the liquidation application and interlocutory applications) the intervening party filed an answering affidavit in opposition to the applicant’s application for leave to file a supplementary replying affidavit.

[11] On the same date, 17 November 2025, the intervening party filed an application for the postponement of the hearing of the liquidation proceedings on 19 November 2025 *sine die*, alternatively to a date not preceding the date of hearing of the liquidation proceedings against the respondent’s interrelated company (Mischa Premier Vines) which is currently set down for 19 October 2026. On 18 November 2025, the applicant filed an opposing affidavit in opposition to the intervening party’s postponement application. The matter was then argued before me on 19 November 2025 and I reserved judgment.

The basis of the intervening party’s opposition

[12] The respondent and the intervening party, Mr Gareth Barns, oppose the relief sought by the applicant on the bases that:

a. there is no deadlock in the management of Vineyard Logistics (Pty) Ltd. He claims that the company has been operating effectively under his sole management and that the alleged deadlock pertains to Mischa Wines (Pty) Ltd, not Vineyard Logistics.

b. the liquidation application is not a genuine effort to address insolvency but rather a weapon in a family feud orchestrated by the applicant and Mr Andrew Barns to dismantle the respondent and Mischa Premier Vines (Pty) Ltd for personal gain.

c. The respondent is on a trajectory of recovery and will achieve solvency within three to six months. He highlights efforts to reduce expenditures, secure alternative

funding, and improve operations, claiming that the company is in its best financial position in years.

d. liquidation would be unjust and inequitable, as it would harm creditors, employees, and the family legacy built since 1969. They believe the application is an abuse of process and that the company should be allowed to continue its recovery.

e. the validity of the loan terms cited by the applicant, arguing that the loans are inherited family bequests and not commercial loans. He claims that the loans were never intended to be repayable on demand and that the applicant's unilateral demand for repayment is invalid, and as such the applicant's *locus standi* is disputed.

f. the family context of the dispute, including inheritance issues, alleged manipulation of their mother by the applicant and another brother, and the sale of family farms against their mother's wishes.

g. alternative solutions, such as share swaps or continued operations under improved management, could resolve the issues without resorting to liquidation.

[13] In summary, the opposition is based on the arguments that there is no deadlock, the company is on a path to solvency, the application is an abuse of process rooted in a family dispute, and liquidation would be unjust and inequitable.

The applicant's reply to the intervening party's opposition to respondent's liquidation

[14] The applicant replied to the intervening party and respondent's opposition to the respondent's. In essence, the applicant:

a. does not object to Mr Gareth Barns being joined as a second respondent and does not oppose the late filing of Gareth's answering affidavit.

b. disputes the claim by Mr Gareth Barns that the respondent is not insolvent. He argues that the respondent's financial statements for the last two years show accumulated losses, increased liabilities, and an inability to pay debts as they become due.

c. also refutes Mr Gareth Barns' claim that "unquestionable solvency is imminent," stating that solvency cannot be based on uncertain future events.

d. highlights the deadlock between the two directors of Vineyard Logistics, Mr Gareth Barns and Mr Andrew Barns, which has led to mismanagement and an

inability to make decisions. He points out the lack of cooperation and persistent mistrust between the directors, which has debilitated the company's management.

e. refutes Mr Gareth Barns' claim that the loan accounts inherited from their late father are not payable on demand. He argues that these are normal loan accounts, not shareholder or director loans, and are due and payable. He also disputes Gareth's assertion that repayment requires consensus between the parties, stating that this position is impractical and unreasonable.

f. denies Mr Gareth Barns' allegations about their mother's mental health and manipulation by Shaun and Andrew. He provides evidence from Ms. Elizabeth Barns' attorneys and a geriatrician confirming her cognitive capacity and her support for the liquidation application.

g. requests condonation for the late delivery of his replying affidavit, citing administrative errors, the complexity of the case, and delays caused by the availability of legal counsel. He argues that the delay was not intentional and that the balance of prejudice weighs in his favour.

[15] In summary, the applicant asserts that the respondent is insolvent and that it is just and equitable to wind up the company. He argues that Gareth's opposition lacks merit and does not provide a valid defence against the liquidation application. He persists on seeking an order for the respondent's winding up and emphasizes the urgency of resolving the disputes to protect the interests of creditors and other stakeholders.

[16] The applicant filed an application for leave to file a further affidavit, a supplementary replying affidavit. I deemed it apposite to deal with this application at the commencement of this judgment.

Application to file a supplementary replying affidavit

[17] The applicant, Shaun Robert Barns, seeks leave to file a supplementary replying affidavit to address two significant recent events that are relevant to the case and occurred after the submission of his initial replying affidavit and which occurred after the filing of the applicant's replying affidavit. The recent events mentioned are:

a. Three farms—Dunedin, Eventide, and Talana Hill—were sold by Ms. Elizabeth Barns, with the proceeds used to reduce her exposure as surety for the debt of Mischa Premier Vines. The fourth farm, Mischa Estate, remains under the respondent's ownership but faces potential operational challenges as the new owner of the sold farms plans to terminate Mischa Premier Vines' right to use those properties.

b. ABSA Bank terminated Mischa Premier Vines' overdraft and term loan facilities due to liquidation proceedings and reassessment of the company's risk profile. This cancellation demands immediate repayment of R4,120,627 for the term loan and R5,450,606 for the overdraft, with additional interest and penalties.

[18] These events highlight the financial instability of Mischa Premier Vines and the respondent, which strengthens the applicant's case for the relief sought. The termination of credit facilities and the sale of farms demonstrate the respondent's inability to meet its financial obligations, supporting the applicant's argument for the court to intervene and address the disputes in the interest of justice. The respondent and the intervening party opposes this application for leave to file the supplementary replying affidavit.

Opposition to the application for leave to file supplementary replying affidavit

[19] The basis of opposition to the application for leave to file a supplementary replying affidavit is outlined in Mr Gareth Barns' answering affidavit. The key points of opposition include contentions that:

a. the supplementary replying affidavit constitutes a further abuse of process in an already protracted family dispute. He claims the application is not a genuine effort to address the alleged insolvency of the respondent but part of a vendetta by the applicant and their other brother, JM Andrew Barns, to dismantle the family businesses for personal gain.

b. the "recent events" cited in the supplementary affidavit, such as disputed farm sales and ABSA's communications regarding MPV's credit facilities, do not advance the case for the respondent's liquidation. Instead, they highlight the viability of the respondent under his management and the interdependence of the respondent and Mischa Premier Vines (Pty) Ltd.

- c. adjudicating the Vineyard Logistics application before the final determination of the related MPV liquidation application is procedurally and substantively inappropriate. He argues that the financial position and viability of MPV are central to the respondent's fate, and the two matters should be resolved together to avoid inconsistent outcomes and unnecessary disruption.
- d. the late filing of the supplementary affidavit is a tactical manoeuvre designed to overwhelm the court with selective information and prejudice him and the respondent. He argues that the Uniform Rules permit further affidavits only in exceptional circumstances, which are not met in this case.
- e. the validity of the farm sales and ABSA's purported termination of MPV's credit facilities is disputed, arguing that these matters are contested and subject to ongoing resolution. He highlights his efforts to address ABSA's concerns and his legal challenge to the farm sales based on his mother's alleged lack of mental capacity.
- f. the court should either postpone the application for respondent's liquidation to align with the MPV proceedings or consolidate the two matters to ensure a holistic resolution and prevent piecemeal adjudication.

[20] In summary, Mr Gareth Barns opposes the application on the grounds that the supplementary affidavit is an abuse of process, introduces irrelevant and contested evidence, and would cause prejudice and procedural misalignment. He seeks dismissal of the application and requests postponement or consolidation of the related proceedings.

[21] The court has to consider and decide the matter as it is in the discretion of the court to allow the further affidavits. In *Africa Oil (Pty) Ltd v Ramadan Investments* 2004 (1) SA 35 NPD Moleko J held at 38 I - J:

*"Normally in motion proceedings three sets of affidavits are allowed and no further affidavits may be filed without leave of Court. Such leave is in the discretion of the Court and such discretion is to be exercised judicially upon consideration of the facts in each case. In Herbstein and Van Winsen Civil Practice of the Supreme Court of South Africa at 359 it is stated that leave of Court will only be granted in special circumstances or if the Court considers such a course advisable. **Special circumstances exist where something unexpected or something new emerges from applicant's replying affidavit. There***

must be a satisfactory explanation which negatives mala fide as to the reason why the information was not placed before the court at an earlier stage.” (Court's emphasis)

[22] The court will not grant leave to file further affidavits if there was *mala fides* for not placing the information before Court in the first instance. Should new issues arise from the affidavits filed which do not constitute a reply, the court will not grant leave to file further affidavits. The court must also be satisfied that the filing of further affidavits will not prejudice the applicant. In *Standard Bank of South Africa v Sewpersadh* 2005 (4) SA 148 (C) at 154 the court set out the legal principles governing the acceptance of further affidavits:

*“The Court will exercise its discretion to admit further affidavits only if there are special circumstances which warrant it or if the Court considers such a course advisable. (See Rieseberg v Rieseberg 1926 WLD 59; Joseph & Jeans v Spitz and Others 1931 WLD 48.) In Bangtoo Bras and Others v National Transport Commission and Others 1973 (4) SA 667 (N) it was held among other things that a litigant **who seeks to serve an additional affidavit is under a duty to provide an explanation that negatives mala fides or culpable remissness as the cause of the facts and/or information not being put before the Court at an earlier stage. There must furthermore be a proper and satisfactory explanation as to why the information contained in the affidavit was not put up earlier, and what is more important, the Court must be satisfied that no prejudice is caused to the opposite party that cannot be remedied by an appropriate order as to costs.**”* (Court's emphasis)

[23] In *Stein Brothers Ltd v Dawood and Another* 1980 (3) SA 275 W le Roux J held at 282 C:

“I am of the view that litigation of this nature is not a game; that the object of all litigation is to arrive at the truth and at a fair, just and expeditious solution and that, when a fourth and fifth set of affidavits have been placed before a Court, it is clearly entitled to look at them and should not shut its eyes to facts which may lead to a just decision of the matter by reason of the existence of a mere technicality.”(Court's emphasis)

[24] I am persuaded that the applicant has provided a proper and satisfactory explanation as to why the information contained in the further affidavit for which leave

to file the same is sought was not put up earlier, and what is more important, I am satisfied that no prejudice is caused to the respondent and Mr Gareth Barns that cannot be remedied by an appropriate order as to costs. As a result, the applicant is granted leave to file its supplementary replying affidavit. Accordingly, the affidavit in support of the application for leave to file the supplementary affidavit shall serve as the applicant's supplementary affidavit.

ISSUES FOR DETERMINATION

[25] Having considered the foreshadowed facts, the issues for determination have crystallised as follows:

- a. Whether the applicant has the *locus standi* to bring liquidation proceedings against the respondent.
- b. Whether the respondent is indebted to the applicant for the alleged loan account which the applicant inherited from the late Mr Barns in the amount of R1 201 355 or for any amount in excess of R100.
- c. Whether the applicant's loan account against the respondent, if so established, is due and payable on demand or is it due and payable on review of the circumstances in which the respondent "finds itself at a specific given time".
- d. Whether the dispute about when the applicant's loan account and those of Mr Andrew Barns and Mrs Elizabeth Barns become due and payable by the respondent renders the demand for payment thereof invalid and the respondent not insolvent.
- e. Whether the applicant has established that the debt *prima facie* exists and whether the has established that the debt, even though established, is disputed on *bona fide* grounds.
- f. Whether under the circumstances it is just and equitable to place the respondent on provisional liquidation.

THE APPLICABLE LAW

[26] The applicable law in this matter primarily revolves around insolvency laws and the companies act. Section 344 of the Companies Act, 61 of 1973 ("old act") in relevant part provides:

“344 Circumstances in which company may be wound up by Court

A company may be wound up by the Court if-

...;

(f) the company is unable to pay its debts as described in section 345;

(g) ...;

(h) it appears to the Court that it is just and equitable that the company should be wound up.”

[27] Section 345 of the old act in relevant part provides:

“345 When company deemed unable to pay its debts

(1) A company or body corporate shall be deemed to be unable to pay its debts if-

(a) a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than one hundred rand then due-

(i) has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; or

...; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts....”

[28] In turn, the relevant part of Schedule 5 of the Companies Act, 71 of 2008 (“new act”) provides:

“Schedule 5

TRANSITIONAL ARRANGEMENTS

1. Interpretation.—(1) In this Schedule—

(a) “general effective date” means the date on which section 1 of this Act came into operation; and

(b) “previous Act” means the Companies Act, 1973 (Act No. 61 of 1973).

9. Continued application of previous Act to winding up and liquidation.—

(1) Despite the repeal of the previous Act, until the date determined in terms of subitem (4), Chapter 14 of that Act continues to apply with respect to the winding up and liquidation of companies under this Act, as if that Act had not been repealed subject to subitems (2) and (3).”

APPLICATION OF THE FACTS TO THE LAW

Does the applicant have the *locus standi* to institute liquidation proceedings against the respondent

[29] In para 12 of the founding affidavit attached to the notice of motion initiating liquidation proceedings against the respondent, the applicant avers:

“ The respondent is indebted to me in the sum of R1 202 355 in terms of a loan account. I do not have security for my claim against the respondent. I am an unpaid concurrent creditor of the respondent and so have locus standi to apply for its winding up on the basis of inability to pay its debts.”

[30] At para 20 of his affidavit in support of the intervention application, the deponent, Mr Gareth Barns disputes the applicant’s *locus standi*, he states:

“20. AD PARAGRAPH 12:

20.1. This is denied.

20.2. The loan on which applicant relies on is not due on demand, and applicant has failed to evidence any facts to support this notion.

20.3. No terms of the loan are addressed in the founding affidavit.

20.4. The reality is that the loan is a family inheritance, and given this, the context for repayment purposes is of utmost importance.

20.5. It was never contemplated or understood by any concerned party that any loan would simply be due and payable on demand, given that such circumstances would always subject the respondent to inherent liquidity risks.

20.6. What was contemplated, always, was that should any party – who has a loan against respondent - wish to secure payment the thereof, such prospect would have to be discussed and considered, and the prospect of repayment would especially be considered during the annual review of the respondent's statements.

20. 7. Applicant, accordingly, is opportunistic, and this application is an abuse.”

[31] The respondent, through Mr Gareth Barnes, acknowledged the loan accounts of the late Mr Barnes were claims in favour of the estate late Mr Barnes (JH Barnes). This much is recorded in the respondent's annual financial statements (“AFS”) for year-end February 2022, as follows:

“7. LOANS FROM SHAREHOLDERS

	2022	2021
Estate late - JH Barnes	-	4,479,338
GH Barnes	1,201,355	
JA Barnes	1,201,355	
	(2,402,710)	(4,479,338)

The loans are unsecured, bear no interest and are not repayable on demand. These terms are reviewed on an annual basis”.

“8. OTHER FINANCIAL LIABILITIES

At amortised cost

... E Barnes	875,273
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This loan is unsecured, bears no interest and is not repayable on demand. These terms are reviewed on an annual basis.

SR Barnes	1 201 355
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This loan is unsecured, bears no interest and is not repayable on demand. These terms are reviewed on an annual basis.

Mischa Premier Vines (Pty) Ltd	2,581,551
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This loan is unsecured, bears interest at prime rate and is not repayable on demand. These terms are reviewed on an annual basis

4,398,336”

[32] The entries in item 8 of the respondent’s Feb 2022 AFS records the applicant as the loan account holder against the respondent in the amount of R1 201 355 in terms of the late Mr Barns Last Will and Testament. The respondent does not and cannot dispute on *bona fide* and reasonable grounds the respondent’s indebtedness to the applicant in respect of the applicant’s loan account and the amount thereof against the respondent. Mr Gareth Barns further does not deny respondent’s liability to repay the applicant’s loan. What he disputes, is the period when such repayment becomes due and payable and the process to be followed to make that determination.

[33] Mr Gareth Barns contends that the applicant and Mrs Elizabeth Barns’ loan accounts against the respondent become due and payable after any of them party who wishes to secure payment thereof has been discussed and considered, and the prospect of repayment would especially be considered during the annual review of the respondent’s statements. As a result, the applicant’s *locus standi* is established. Similarly, the issue of the respondent’s indebtedness and liability to repay the applicant’s loan account in the amount of R1 201 355 cannot be disputed on *bona fide* and reasonable grounds. This *prima facie* establishes applicant as respondent’s creditor who is owed by an amount in excess of R100.

Was the liquidation application launched prematurely?

[34] On 16 April 2025, by way of a statutory letter of demand in terms of section 344(f) and section 345(1) of the old act, the applicant demanded payment of his loan account in full. The respondent contends that the applicant’s loan account is not due and payable. He places reliance on the notes contained in the respondent’s 2022 and 2023 AFS (i.e. “This loan is unsecured, bears interest at prime rate and is not repayable on demand. These terms are reviewed on an annual basis.”). But these notes do not suggest the interpretation given to them by Mr Gareth Barns (i.e. that payment of

the applicant's loan account is subject to review of the liquidity health status of the respondent at any given time). All they provide is that the terms of the loan accounts are reviewable annually – But by who and how, Mr Gareth does shed any light in this regard.

[35] The argument of Mr Gareth Barns in this regard is contradictory. This is because, as a director of the respondent, agreed to for cession of Mrs Elizabeth Barn's loan account in favour of ABSA as security for Mischa Premier Vines. It must be remembered that Mr Gareth Barns is a shareholder in Mischa Premium Vines. If the terms of the loan account are as averred by Mr Gareth Barns (i.e. that they were not payable on demand) then Mrs Elizabeth Barns' loan account would serve no meaningful security to ABSA for financial obligations of Mischa Premium Vines.

[36] Even if I am wrong that the applicant has *prima facie* established that he is the respondent's creditor that is owed not less than R100, he has established that he is a contingent creditor. This because, section 346(1)(b) of the old act provides:

“346 Application for winding-up of company

(1) An application to the Court for the winding-up of a company may, subject to the provisions of this section, be made:- ... (b) by one or more of its creditors (including contingent or prospective creditors);...”

[37] A prospective liability is one which, by reason of an existing *vinculum iuris* [a legal link] between the creditor and the company, will become enforceable on a date determinable by reference to future events.¹ In *casu*, the *vinculum iuris* is the loan claim inherited by the applicant from the late Mr Barns. Accordingly, the liquidation application against the respondent was not launched prematurely.

[38] The test to be applied to disputes of fact on the papers in applications for liquidation is set out in *Orestisolve (Pty) Ltd t/a Essa Investments v Ndft Investment Holdings (Pty) Ltd and Another* 2015 (4) SA 449 (WCC), in a way that highlights the

¹ *Du Plessis v Protea Inryteater (Edms) Bpk* 1965 (3) SA 319 (T) at 320G – H.

difference in the test at the provisional order and final order stages. At this stage, applicant seeks a provisional order. Rogers J (as he then was) said the following:

“[7] In an opposed application for provisional liquidation the applicant must establish its entitlement to an order on a prima facie basis, meaning that the applicant must show that the balance of probabilities on the affidavits is in its favour (Kalil v Decotex (Pty) Ltd and Another 1988 (1) SA 943 (A) at 975J – 979F). This would include the existence of the applicant's claim where such is disputed. (I need not concern myself with the circumstances in which oral evidence will be permitted where the applicant cannot establish a prima facie case.)

[8] Even if the applicant establishes its claim on a prima facie basis, a court will ordinarily refuse the application if the claim is bona fide disputed on reasonable grounds. The rule that winding-up proceedings should not be resorted to as a means of enforcing payment of a debt, the existence of which is bona fide disputed on reasonable grounds, is part of the broader principle that the court's processes should not be abused. In the context of liquidation proceedings the rule is generally known as the Badenhorst rule, from the leading eponymous case on the subject, Badenhorst v Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T) at 347H – 348C, and is generally now treated as an independent rule, not dependent on proof of actual abuse of process (Blackman et al Commentary on the Companies Act vol 3 at 14 – _82 to 14 – _83). A distinction must thus be drawn between factual disputes relating to the respondent's liability to the applicant and disputes relating to the other requirements for liquidation. At the provisional stage the other requirements must be satisfied on a balance of probabilities with reference to the affidavits. In relation to the applicant's claim, however, the court must consider not only where the balance of probabilities lies on the papers but also whether the claim is bona fide disputed on reasonable grounds. A court may reach this conclusion even though on a balance of probabilities (based on the papers) the applicant's claim has been made out (Payslip Investment Holdings CC v Y2K Tec Ltd 2001 (4) SA 781 (C) at 783G – I). However, where the applicant at the provisional stage shows that the debt prima facie exists, the onus is on the company to show that it is bona fide disputed on reasonable grounds (Hülse-Reutter and Another v HEG Consulting Enterprises (Pty) Ltd (Lane and Fey NNO Intervening) 1998 (2) SA 208 (C) at 218D – 219C).

[9] The test for a final order of liquidation is different. The applicant must establish its case on a balance of probabilities. Where 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 (Paarwater v South Sahara Investments (Pty) Ltd [2005] 4 All SA 185 (SCA) para 4; Golden Mile Financial Solutions CC v Amagen Development (Pty) Ltd [2010] ZAWCHC

339 paras 8 – _10; *Budge and Others NNO v Midnight Storm Investments 256 (Pty) Ltd and Another* 2012 (2) SA 28 (GSJ) para 14.”

[39] In other words, on the return day when a final order is sought, the court “is not permitted to determine the balance of probabilities on the affidavits but must apply the Plascon-Evans rule”. However, when a provisional order is sought, the court must consider the probabilities on the affidavits. If the court is determining the existence of the applicant’s claim, and it finds that the claim is *prima facie* established on the affidavits, it should apply the Badenhorst principle and “will ordinarily refuse an application if the claim is *bona fide* disputed on reasonable grounds”. Of course, the dispute must be germane to the basis upon which the applicant relies on his claim for a winding up order, and a dispute cannot justify a dismissal of the application when it is not necessary for the dispute to be resolved in favour of the applicant for applicant’s case to be made out.

[40] In *casu*, there is no dispute as to the existence of the applicant’s claim. The dispute is limited to whether the admitted claim was due upon the giving of the demand. However, even on the application of the Badenhorst principle, it is clear that Mr Gareth Barns’ assertion that the loan was subject to elaborate repayment requirements is neither *bona fide* nor reasonable dispute. The Law of South Africa provides the following summary of the approach to the evaluation whether the claim is *bona fide* disputed on reasonable grounds:

“A debt is not bona fide disputed simply because the respondent company says that it is disputed. The dispute must not only be bona fide or genuine but must be on good, reasonable or substantial grounds. The expression “genuine dispute” connotes a plausible contention requiring the same sort of considerations as a “serious question to be tried”. It is not sufficient for the company merely to establish that there is a serious question to be tried as to whether the dispute over the debt is genuine in that the debt is disputed on the basis of an honestly held belief that it is not payable, and is not disputed merely for the purpose of delay or obstruction. “Genuine” in this context does not mean not fabricated for the purpose of the proceedings, or not just thought up or brought forward without genuine belief; there can be no genuine dispute if there are no substantial grounds

*for disputing the debt.”*²

[41] As a result of the above, there is no merit to the contention that such a demand was premature. To compound respondent’s difficulties, there are pending liquidation proceedings against Mischa Premium Vines. The respondent’s tenant and main source of income and maintenance of the respondent’s farm Mischa Estate. The respondent and Mr Gareth Barn’s grounds for opposing the granting of the provisional liquidation order against the respondent fall short of the requirement of establishing substantial grounds for disputing the debt. Even if a final order were being sought, the application of the Plascon Evans test, read with paragraph [13] of the judgment in *Wightman t/a JW Construction v Headfour (Pty) Ltd* 2008 3 SA 371 (SCA) would disregard the respondent’s version.

[42] Accordingly, the applicant has succeeded in *prima facie* establishing that the respondent’s debt in favour of the applicant exists. Accordingly, the respondent is *prima facie* unable to pay the applicant debt and that of Mrs Elizabeth Barns and Mr Andrew Barns.

The application for a postponement

[43] On the hearing of the liquidation application on 19 November 2025, I dismissed the postponement application sought by Mr Gareth Barns with a punitive costs order. Below are details reasons for that order.

[44] The reasons for the postponement application, as outlined in Mr Gareth Barns’ affidavit, are as follows:

- a. If the main application for the provisional winding-up of respondent proceeds in isolation on 19 November 2025, Mr Gareth Barns, the respondent, and its stakeholders (including employees and the broader group of companies) will suffer irreparable prejudice.
- b. The financial position of the respondent is closely tied to the operations and recovery prospects of Mischa Premier Vines. A standalone hearing of the application

² LAWSA (4)(3) p130, para 69.

for respondent's liquidation would be untenable without considering Mischa Premier Vines' financial status and recovery trajectory.

c. Postponing the respondent's liquidation application ensures procedural fairness by avoiding inconsistent outcomes, multiplicity of proceedings, and undue prejudice. For example, a provisional liquidation order for the respondent could disrupt Mischa Premium Vines lease and ongoing negotiations, leading to fragmented adjudication.

d. Premature liquidation of respondent could harm its creditors, employees (28 in total), and the family legacy by foreclosing value-creating alternatives such as business rescue or equitable restructuring.

e. The related liquidation application against Mischa Premium Vines has been set for hearing on 19 October 2026, allowing time for its recovery trajectory to be fully assessed. Proceeding with the respondent's application before this date would undermine the opportunity to evaluate MPV's viability. In summary, the postponement is sought to ensure procedural fairness, prevent prejudice, and allow for a comprehensive assessment of the respondent's financial position in light of MPV's recovery prospects.

[45] The applicant opposes the postponement application filed by Mr Gareth Barns on the grounds that:

a. the postponement application is a deliberate attempt to abuse the court process and delay the hearing of the winding-up application for Vineyard Logistics (Pty) Ltd.

b. Mr Gareth Barnes had ample time to act reasonably and arrange the hearing dates in an appropriate sequence but failed to do so. He waited until the last minute to file the postponement application, which the applicant considers unreasonable and unjustified.

c. Mr Gareth Barnes has not provided specific facts or concrete evidence to support his claims that the success of Mischa Premier Vines will benefit Vineyard Logistics. Instead, he has relied on vague references to engagements with creditors and hearsay evidence.

d. Mr Gareth Barnes' current argument about the interconnectedness of Mischa Premier Vines and the respondent contradicts his earlier statements in his answering

affidavit, where he claimed that the affairs of the two entities were distinct and not intertwined.

e. postponing the application would cause him significant prejudice, as it increases the risk of ABSA Bank taking judgment against Vineyard Logistics and executing against its assets, including the farm. He asserts that a liquidator would be better suited to manage the farm for the benefit of all creditors.

f. Mr Gareth Barns' has not pursued business rescue proceedings for Vineyard Logistics, despite being invited to do so as early as June 2025. Shaun believes this further demonstrates the lack of a bona fide attempt to address the financial distress of the respondent.

g. the solvency of Mischa Premier Vines will be considered by the court in another liquidation application brought by Fleury Kwekery (Pty) Ltd, scheduled for 21 April 2026. He argues that Mr Gareth Barns should have sought a postponement to align with this earlier date rather than waiting for Mr Andrew Barns liquidation application in October 2026.

[46] In summary, Shaun contends that the postponement application is a strategic move by Gareth to buy time to attempt to rescue Mischa Premier Vines and respondent from financial distress, rather than a genuine effort to ensure proper adjudication of the matter. He requests that the postponement application be dismissed with costs.

[47] The main defence mounted by Mr Gareth Barns against the liquidation of the respondent is premised on two grounds: (a) that the debt owed to the applicant is not due and payable and as such, the liquidation proceedings are premature. I have already made a ruling that this is not the case; and (b) that respondent's main source of income and maintenance of its main valuable asset is Mischa Premier Vines ("MPV"). The reason respondent posted a loss in excess of R2 million in 2022 and 2023 is because MPV is in financial distress. This has *inter alia* resulted in MPV breaching the terms of the lease agreement between it and the respondent. There is a pending liquidation application against MPV set down for hearing on the fourth term of 2026. The other farm which MPV leased from Mrs Elizabeth Barns have been sold by Mrs Barns. The new owner has terminated MPV lease agreements.

[48] This application is premised on the applicant being a creditor or a contingent creditor of the respondent. That much cannot and is not disputed on *bona fide* and reasonable grounds. The postponement is a stratagem a dilatory tactic by Mr Gareth Barns to buy time to try and bring the respondent to financial health status. This is abuse of process.

[49] The applicant satisfied the court that he has the *locus standi* to launch liquidation proceedings against the respondent. Mr Gareth Barns has previously delayed the determination of the liquidation application by failing to oppose the main application for the respondent and by belatedly filing the intervening application. It is for these reasons that I dismissed the postponement application with a punitive costs.

CONCLUSION

[50] To conclude, having considered the conspectus of the evidence, and the facts in all affidavits filed of record, on a balance of probabilities I find that the applicant has made out a prima facie case for the provisional liquidation of the respondent. Accordingly, the application succeeds.

ORDER

[51] As a result, I make the following order:

1. The applicant has the *locus standi* to bring the application for liquidation of the respondent.
2. Mr Gareth Barns (“intervening party”) is granted leave to intervene in the liquidation application against the respondent as the second respondent.
3. The late filing of the intervening party’s answering affidavit is condoned.
4. The intervening party’s affidavit in support of the intervention application shall serve as his answering affidavit to the founding affidavit in support of the liquidation application against the respondent.
5. Applicant is granted leave to file a supplementary replying affidavit, and the affidavit filed by the applicant in support of the application for leave to file a

the supplementary replying affidavit shall serve as the applicant's supplementary replying affidavit.

6. The respondent is placed under provisional liquidation at the hands of the Master of the High Court, Cape Town.
7. A rule nisi is hereby issued, calling upon all interested parties to appear in this Court on a date to be arranged by the registrar of this Court, if any, why the following order should not be granted:
 - a. that the respondent be placed under final liquidation.
 - b. That the costs of this application be costs in the liquidation.
8. A copy of this provisional order shall be served on:

8.1 Respondent at its registered address in accordance with 346A(1)(c) of the Companies Act, 61 of 1973 ("the Act");

8.2 Any registered trade union representing the respondent's employees in accordance with sections 346A(1)(a) and (2) of the Act;

8.3 Respondent's employees and any applicable trade unions in accordance with section 346A(1)(b) of the Act;

8.4 South African Revenue Services in accordance with section 346A(1)(c) of the Act; and

8.5 The Master of the High Court.

P. NJOKWENI

ACTING JUDGE OF THE HIGH COURT

WESTERN CAPE

Appearances

For Applicant: Mr T Crookes

Instructed by: Duvenage & de Villiers attorneys

For the respondent and intervening party: Mr G J Gagliano

Instructed by: Elderstein Malumbete Inc.