REPUBLIC OF SOUTH AFRICA

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

Case Number: 2024-127825

(1)	REPORTABLE: **NO**
(2)	OF INTEREST TO OTHER JUDGES: **NO**
(3)	REVISED: **YES**

10 April 2026 ______________________

DATE SIGNATURE

In the matter between:

S[...] L[...] R[...] Applicant

and

TEE JAY TRADING (PTY) LIMITED
(REGISTRATION NUMBER: 1981/009723/07) Respondent

Summary

Winding-up – bona dispute on reasonable grounds – discretion

JUDGMENT

DANIELS AJ

Introduction

[1] This an application for the winding up of the respondent in terms of section 345(1)(a) and (c) of the Companies Act of 1973 on the basis that the respondent is unable to pay its debts.

[2] The applicant relies on a debt in the amount of R1 635 207.00 together with interest thereon, arising from a loan advanced to the respondent from on or about 1 October 2015.

[3] The respondent's inability to pay the debt is not meaningfully disputed. Whether this amount constitutes a debt, at all (and whether it is debt that was meant to be repaid), is.

[4] The applicant and Mrs. T[...] J[...] R[...] (the deponent to the respondent's answering affidavit) are married. The marriage relationship has broken down, and the R[...]s are in the throes of a contested (and by all accounts, acrimonious) divorce.

[5] In happier times, the R[...]s were co-directors of the respondent, *mari et femme*. The applicant resigned as a director of the respondent on 24 June 2024, and Mrs. R[...] is now the sole director. The applicant's resignation coincided, more or less, with the R[...]s' separation.

[6] In October 2003 the respondent acquired the immovable property, situated at portion 364 (a portion of portion 161) of the Farm Hekpoort 504 with the intention of a house and cottages to be built on the property.

[7] The applicant obtained a loan, in his personal capacity, during 2009. This loan was appropriated towards establishing infrastructure on the property, and to make the property

habitable. This loan was repaid partly by the respondent and partly by its shareholder. During the period 2015 to 2021 the applicant again borrowed from Standard Bank. The monies lent and advanced to the applicant by Standard Bank were advanced to the respondent for purposes of renovations and refurbishments to the property, and new buildings were erected in the process. This loan is secured by a deed of suretyship by the respondent in favour of Standard Bank, who also registered a covering bond over the property.

[8] On receipt of the loan from Standard Bank, the applicant advanced funds to the respondent, by way of loan, which funds were used by the respondent to improve the property.

Overview of the disputes and issues

[9] The applicant's case is, relatively speaking, uncomplicated. The applicant relies on the debt in the amount of in the sum of R1 635 207.00, which is made up of advances over the period August 2015 to March 2021. It was made clear in argument (and this is the case made by the applicant in the affidavits) that the relief sought in this application is based on, and confined to this (effectively, the second) loan. This debt has not been repaid and it is reflected as such in the respondent's annual financial statements which, up to a point, were co-signed by Mrs. R[...] and the applicant.

[10] The respondent opposes the application on two broad grounds.

[11] First, the respondent contends that the application ought to be refused, because, if it were to be granted, the Court will in effect sanction and condone fictitious or simulated claims by the applicant in the financial statements of the respondent, which constitute a fraud on the respondent, the shareholder (the Lee Jane Trust), Mrs. R[...] and possibly the *fiscus*, which financial statements (so the respondent argues) were compiled by the applicant in breach of his duties as a director of the respondent.

[12] Second, the respondent contends that the application has been brought for the ulterior motive of forcing a settlement of the pending divorce action, thwarting the Rule 43

order that was made in the pending divorce action, and undermining the ability of the divorce Court to make an equitable redistribution of the asset of the respondent. The asset is the property of which the respondent is the registered owner, and the shares in the respondent are wholly owned by the Trust.

The disputed debt

[13] Whilst the respondent contends that the application is one that has been launched for an improper purpose, the main thrust of the respondent's case is that the debt that forms the basis of the application, is the subject of a *bona fide* dispute. Against this background, the applicable principles ought to be considered.

[14] Liquidation proceedings ought not to be resorted to as a means to "enforce" the payment of a debt, the existence of which is *bona fide* disputed on reasonable grounds. This is known as the Badenhorst rule.[1] This was explained in Gap Merchant Recycling CC v. Goal Reach Trading 55 CC[2] by Rogers J (as he then was) as follows:

> *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. Liquidation proceedings are not intended as a means of deciding claims which are genuinely and reasonably disputed…A distinction is thus 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 respondent's liability, on the other hand, the question is whether the applicant's claim*

1 Badenhorst v. Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T) at 347 - 348

2 2016 (1) SA 261 (WCC) at [20]

is disputed on reasonable and bona fide grounds; a court may reach this conclusion, even though on a balance of probabilities (based on the papers) the applicant's claim has I 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.

[15] Consequently, where a provisional order is sought and *prima facie* the indebtedness exists, the respondent bears the *onus* to show on a balance of probability that its indebtedness to an applicant is disputed on *bona fide* and reasonable grounds.[3]

[16] *Bona fides* relate to the respondent's subjective state of mind, while reasonableness has to do with whether, objectively speaking, the facts alleged by the respondent constitute in law a defence.[4]

[17] The Court in Room Hire[5] explained what is required of a respondent, as follows:

> *…a bare denial of applicant's material averments cannot be regarded as sufficient to defeat applicant's right to secure relief by motion proceedings in appropriate cases. Enough must be stated by respondent to enable the Court…to conduct a preliminary examination of the position and ascertain whether the denials are not fictitious, intended merely to delay the hearing. The respondent's affidavits must at least disclose that there are material issues in which there is a bona fide dispute of fact capable of being decided only after viva voce evidence has been heard.*

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3 Kalil v. Decotex (Pty) Ltd 1988 (1) SA 943 (A) at 980B - D

4 Gap Merchant Recycling *supra* at [26]; see also, Orestisolve (Pty) Ltd t/a Essa Investments v. NDFT Investment Holdings (Pty) Ltd and Another 2015 (4) SA 449 (WCC) at [9] to [12]

5 Room Hire Co (Pty) Ltd v. Jeppe Street Mansions (Pty) Ltd 1949 (3) SA 1155 (T) at 1165

[18] In Reynolds N.O v. Mecklenberg (Pty) Ltd[6] the Court held as follows:

> *In motion proceedings for relief other than a provisional sequestration order or a provisional winding-up order, a Court does not easily reach the conclusion that one or other party to a dispute of fact has no honest belief in his own allegations and accordingly lacks bona fides. In such a case it is not merely a matter of weighing the probabilities. It has rightly been observed that a disputed proposition of fact which may appear relatively probable or improbable in affidavit evidence, when the words have often been chosen with great care by an experienced legal draftsman, may assume a dramatically different aspect when the deponent himself seeks to defend the proposition in the witness-box. Therefore it is only when the absence of bona fides of one of the parties in relation to every relevant dispute of fact is abundantly clear, and altogether manifest, and substantially beyond question, that a court is justified in disbelieving the affidavit evidence of one of the parties and in granting or refusing relief accordingly.*

[19] The dispute of a debt must not only be *bona fide* or genuine but must be on good, reasonable or substantial grounds. "Genuine" in this context means, not fabricated for the purposes of the proceedings or not just thought up or advanced without genuine belief. There can be no genuine dispute if there are not substantial grounds for disputing the debt.[7]

[20] Where the other requirements for liquidation (other than the indebtedness) are opposed and factual disputes are raised, the question is whether on the evidence there is a *prima facie* case for the grant of such order which has been established on a balance of probabilities.[8] Where on the affidavits there is a *prima facie* case (i.e. a balance of

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6 1996 (1) SA 75 (W) at 81H

7 Joubert, LAWSA, Vol. 4, Part 3, paragraph 113

8 Henochsberg at pg. 727 - 728

probabilities) in favour of an applicant, then a provisional order of winding up should normally be granted and save in exceptional circumstances, the Court should not accede to an application by the respondent that the matter be referred to the hearing of *viva voce* evidence.[9]

[21] Much of the respondent's case was aimed at the financial statements of the respondent, and understandably so. The applicant's position is, simply, that Mrs. R[...]'s signature on the financial statements is confirmation by Mrs. R[...] (and by implication, of the respondent) of the debt that is owed to the applicant.

[22] To meet this issue, the respondent has devoted considerable effort towards illustrating that the financial statements are not what they purport to be, and that the applicant was solely responsible for the preparation of the financial statements of the respondent. The case goes further, in an endeavour to show that the debt in question is fictional, and it is contended that the applicant manipulated the financial statements to the prejudice of the respondent, the shareholder of the respondent (the Trust), the *fiscus* and Mrs. R[...]. This, the applicant is said to have done for his own benefit and the applicant, in this manner (according to the respondent) knowingly breached his fiduciary duty to the respondent to act in its best interests.

[23] Mrs. R[...] (now the sole director of the respondent) disavows knowledge of the financial statements, or how the financial statements were prepared. This, according to the respondent, was entrusted to the applicant, as an experienced businessman, and it was accordingly only the applicant who was responsible for the compilation of the financial statements.

[24] It is the respondent's position that, to the extent that Mrs. R[...] signed the financial statements, she did so without knowledge of the loan in question because she trusted the applicant, as her husband, to compile the financial statements in a proper manner. When Mrs. R[...] was asked to sign the financial statements, she was rushed and hurried by the applicant, and she never had the opportunity to consider them properly. Whilst Mrs. R[...] signed the financial statements, historically, she explains that when the applicant

[9] Kalil v. Decotex *supra* at 979 E

requested her to sign the 2022 financial statements, she no longer trusted him and after taking the financial statements to a chartered accountant she realised that the loans in question were never authorised and were fictitious. This prompted Mrs. R[...]'s refusal to sign them, because the annual financial statements incorrectly reflected the loans which were never agreed to. It is the respondent's case that Mrs. R[...] never, as a director, had (or would have) consented to the loan(s) as she herself had made a substantial financial contributions to the initial purchase of the property from the proceeds of the sale of the former matrimonial home.

[25] The respondent's case, at least on this issue, to a large degree turns on the contention to the effect that Mrs. R[...] was unaware of the liabilities recorded as such in the respondent's financial statements and obviously, the related contentions to the effect that the applicant had taken sole responsibility for the financial statements, to ultimately support the point that the financial statements are unreliable and that the applicant had committed fraud in the compilation of the financial statements.

[26] The respondent's case is that, in truth, the applicant contributed to family expenses in terms of his common law duty of support which were administered by the respondent, on his behalf, and that the respondent was never intended to be (nor was it used as) a trading entity, and was never expected to make a profit or be a business venture where the shareholder or the R[...]s would invest funds in the expectation of a return.

[27] The respondent has gone to great lengths to illustrate *inter alia* how funds paid to the respondent were for the maintenance and sustenance of the applicant and his family, and thus, that these were family expenses, and that no income was earned other than that which was contributed by the applicant.

[28] In Moraitis Investments (Pty) Ltd and Others v. Montic Dairy (Pty) Ltd[10] the Court was confronted by a party denying that a trustee had been authorised by a trust to conclude a transaction, despite previously – when the transaction was being concluded – saying that it had been authorised. Wallis JA said this:

10 2017 (5) SA 508 (SCA)

> *[33] The issue can be summed up in a single, stark question. In executing the settlement agreement Mr Moraitis said expressly that he was authorised to represent 'his' trust. In his affidavit he said that he was not so authorised. Why should we believe that he was lying when he signed the settlement agreement, but telling the truth in his affidavit?*

[29] I accept that the facts in Moraitis are not on all fours with the facts of this application, but the same principle is applicable, and I am of the view that the respondent is faced with the same dilemma.

[30] Directors of companies are saddled with certain responsibilities. This includes responsibility for ensuring that annual financial statements are prepared, and whilst directors are not expected to carry out the duties and functions of auditors, they nevertheless take responsibility for providing information, and for the accuracy of the information that is ultimately relied upon in the process of preparing and compiling annual financial statements. Directors sign off the annual financial statements, and in doing so, they give assurances as to the reliability and accuracy of what is recorded in the financial statements.

[31] Annual financial statements must be prepared, and third parties rely on annual financial statements. This includes the *fiscus* and it appears from the respondent's affidavits that Mrs. R[...] was alive to the fact that the annual financial statements would be provided to, *inter alia*, SARS. If the respondent's version on this issue is accepted, it means that the likes of SARS would have been provided with financial statements that had no bearing in reality. Expenses and liabilities that appeared to be those of a trading entity, were not legitimate expenses and in fact, expenses were claimed (presumably, as permissible deductions) despite the respondent, so it is suggested, not being a trading entity at all.

[32] Against this background, it is in the first instance not clear on what basis it can be said that the applicant had committed fraud on Mrs. R[...]. I have some difficulty in seeing how fraud can ever be said to have been committed, when the financial statements where (according to the respondent) the very fraud is expressly documented, is presented to the would-be victim of the fraud to sign. It should follow, for the same reasons, that fraud on

the respondent, or the shareholder (the Trust) is not a finding that can be sustained on the facts of this application.

[33] As for fraud against third parties (the likes of SARS), if fraud has been committed, it was committed by the directors, that is, by both the applicant and Mrs. R[...]. It would be nothing short of extraordinary if a director, who had signed annual financial statements, could seriously say that these were signed in ignorance and that, in fact, the financial statements were signed without being familiar with the contents. This is not a case where Mrs. R[...] can say that she was unaware of the fact that she was a director, or that she was unaware of the need to prepare and sign annual financial statements, or the purpose of financial statements. It is also not suggested that Mrs. R[...] was asked to sign the annual financial statements in an incomplete form, and it would not assist Mrs. R[...], should the respondent ever be taken to task over what is recorded in the financial statements, to say that she was unaware of what it said.

[34] Much is made of the fact that the latest financial statements were not signed by Mrs. R[...]. Her refusal to do so, as I understand it, coincided with the breakdown of her marriage to the applicant, but the more important consideration, is the fact that earlier financial statements were signed by her, and in the earlier financial statements, the loan in question was recorded.

[35] The loan in question did not surface in the financial statements, out of the blue. There is evidence that Mrs. R[...] signed annual financial statements, reflecting the loan in question, even in 2019 (at the time, putting her signature to the 2017 annual financial statements of the respondent) and I am not persuaded by the suggestion that Mrs. R[...] was ignorant and entirely uninvolved. If Mrs. R[...] was not meant to be involved in the affairs of the respondent, it is not clear why she was appointed as a director to begin with, and it would then have been far simpler for the applicant, as the sole person responsible, to also be the sole director.

[36] Mrs. R[...] is also the sole director of Hosgro Farm (Pty) Limited and she has been involved in other businesses, and she is the trustee of another trust, the Rosebank Farm Trust. Importantly, there is also evidence that Mrs. R[...], on occasion, dealt with the bookkeeper/accountant of the respondent and it is said that Mrs. R[...] controlled the

respondent's bank account. On the facts that I have been presented with, I am not persuaded that Mrs. R[...] was ignorant, or, for that matter, a director of the respondent only in name.

[37] I accordingly find it highly improbable that this debt, as recorded in the annual financial statements, would have gone unnoticed, for years, and I am for these reasons also unable to agree with the submission to the effect that, on the balance of probabilities, the debt is disputed on *bona fide* and reasonable grounds, or that it appears to be highly probable (in the respondent's words) from the facts that the applicant manipulated the financial statements to the prejudice of *inter alia* the respondent. The financial statements also address a further issue, namely that debts owed to the respondent by the applicant ought to be set off against the debt in question. The financial statements, however, do not reflect this debt, and whilst there is some explanation on the papers as to how this debt (the one owed by the applicant) has been settled, the fact that it does not appear in the financial statements settles the question.

[38] The case for the fabricated nature of the financial statements turns on the say-so the respondent (and Mrs. R[...]), which brings me back to what I perceive to the fundamental shortcoming in the respondent's case on this issue, namely that I am asked, now, to disregard what the respondent said before, and I should accept what it says now. Stated differently, all of what is said in the respondent's answering affidavit is directly contradicted by what the respondent and Mrs. R[...] had acknowledged and confirmed in annual financial statements, more than once. The financial statements provide the clearest possible evidence, in writing, of the understanding of the parties (the applicant, the respondent, and Mrs. R[...]) as to the nature, terms and *quantum* of the loan in question and I am accordingly not persuaded that the respondent's indebtedness to the applicant is *bona fide* disputed, on reasonable grounds.

[39] I do not understand the question of commercial insolvency to be genuinely disputed, and whilst the respondent's position is that the loan in question is not the type of loan that has to be repaid, the respondent does not say that, if it is wrong on this question, it is nevertheless able to repay it. I am accordingly satisfied, in principle (and subject to the second ground of opposition) that the applicant has made a proper case for at least a provisional order.

The application for an improper ulterior motive

[40] Against this background, the second basis on which the application is opposed arises for consideration, and it ought to be considered with reference to the principle that, while the Court has a discretion to refuse liquidation, the discretion is narrow when dealing with an unpaid creditor. On any basis, the discretion must be exercised with reference to facts and circumstances that might justify it and the respondent contends, as I understand it, that even if the requirements for a winding-up order have been satisfied, I should exercise my discretion against it.

[41] The respondent contends that this application has been instituted in order to extort a settlement in the pending divorce proceedings from Mrs. R[...]. According to the respondent, the pressure point is the property and in the pending divorce, Mrs. R[...] filed a counter claim for a redistribution of assets in terms of section 7(3) of the of the Divorce Act 70 of 1979.

[42] One of the assets that Mrs. R[...] claims that ought to be considered for a possible redistribution is the entire share capital in the respondent, that is held by the Trust. The Trust is a discretionary *inter vivos* trust of which the R[...]s and their children are beneficiaries, and the R[...]s are trustees. It is my understanding that an application has been brought to join the respondent to the divorce action on the basis that it is the *alter ego* of the applicant and Mrs. R[...], and the property ought to be regarded by the divorce Court as an asset of the applicant and Mrs. R[...] for purposes of a possible redistribution. The respondent's concern is that an order that may be made in this application, will undermine any order for redistribution that may be made, by the divorce Court.

[43] The respondent contends also that this application has been instituted to side-step the order made in a Rule 43 application on 5 December 2024 *inter alia* directing the applicant to continue paying the monthly instalments for the personal loan for R1.9 million that is secured by the respondent's property, and that entitles Mrs. R[...] to reside on the property pending the finalisation of the divorce. The concern, as I understand it, is that an order that may be made in this application will leave Mrs. R[...] destitute.

[44] No order that can be made in this application, would preclude the joinder of the

respondent, or the liquidator of the respondent to the pending divorce. By the same token, whilst the respondent's concern is the applicant's claim against the respondent, the winding-up of the respondent does not mean that the applicant will help himself, and that his claim will be settled, in full and without more. A liquidator will be appointed and whatever payments are made to creditors (which may include more than only the applicant) will occur in a structured, orderly fashion. The liquidator will have the task of balancing the potentially competing interests of creditors and, contrary to what the respondent believes, I am of the view that the divorce Court may in fact benefit from the involvement of a liquidator in the process that might result in an order whereby assets are redistributed as part of the ultimate order to be made in the divorce proceedings.

[45] As for the Rule 43 order of 5 December 2024, I do not see that this order permits Mrs. R[...] to reside on the property, pending the outcome of the divorce. The order does not say so, and the order was in any event amended on 1 September 2025. The amended order provides for the property to be marketed and whilst the parties are not obliged to sell the property, the fact that the parties would market it, suggests that it may be sold and this is not reconcilable with the suggestion that Mrs. R[...] would have the right to reside there, indefinitely, or even pending the outcome and finalisation of the divorce action.

[46] I am, for these reasons, not persuaded that this a case where a residual discretion should be exercised against the applicant.[11]

Order:

I accordingly make the following order:

1. The respondent is placed under provisional winding-up;

[11] I mention for the sake of completes that on behalf of the applicant, an application was made to strike certain paragraphs from the respondent's answering affidavit. This included paragraphs 51 and 53, the words "fictious/simulated loan" in paragraph 66 and paragraphs 141 to 144, in their entirety. Given the findings that I have made above, I do not consider it necessary to further consider the application to strike out. The allegations, whilst they are perceived by the applicant as defamatory, scandalous and vexatious are nevertheless relevant in the context of the respondent's grounds of opposition and whilst I have taken these allegations into account, the findings that I have made, above, illustrate that these allegations have not placed the applicant at any sort of disadvantage.

2. The respondent (and any other person or party with an interest) is invited to show cause on 25 May 2026 at 10:00 or so soon thereafter as the application may be heard, why the respondent should not be placed in final winding-up; and

3. The costs of this application are costs in the winding-up.

J. DANIELS

Acting Judge of the High Court

GAUTENG DIVISION, JOHANNESBURG

HEARD ON: 19 March 2026

DELIVERED ON: 10 April 2026

For the applicant:	Adv. L Acker
Instructed by:	KWA Attorneys
For the respondent:	Adv. W B Boonzaier
Instructed by:	O'Donovan Attorney