IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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

[redacted]

16 APRIL 2026

....
SIGNATURE

....
DATE

Case No: 2023/091315

EILEEN ROXANNE DARNE NO Applicant

(In her capacity as the duly appointed Executrix in the

Estate of the Late Melanie Patricia Schaup)

and

DRUIDS GARDEN (PTY) LTD Respondent

(Registration Number: 2019/054714/07)

JUDGMENT

LABUSCHAGNE J

[1] The applicant is the executor of the deceased estate of Ms M Schaup.Ms Schaup had lent and advanced R1.1m to the respondent in terms of a written loan agreement that contains provisions providing for the conversion of the loan into equity. For the first 24 months the agreement would be a loan unless the conversion had taken place.

[2] On 19 April 2024 I dismissed the applicant's urgent application for the liquidation of the respondent on two grounds. The existence of the debt was disputed on bona fide grounds as the respondent's director says the loan was converted into shares in Druid Gardens Holdings at a meeting on 2 April 2020.The share register reflected the deceased as a shareholder. In a draft agreement with Chrysalis shortly thereafter, for the acquisition of shares, Ms Schaup was reflected as a 1% shareholder of Druid's Garden Holdings.

[3] The second ground for dismissal was for non- compliance with the peremptory service requirements of sec 346(4A)(a).

[4] An application for leave to appeal was argued on 5 December 2024, the applicant being represented by senior counsel. A letter was uploaded by the respondent indicating that it would abide the court's decision and would not be represented.

[5] The grounds for leave to appeal include two contentions central to the order dismissing the main application. The first is in respect of compliance with the compulsory service on employees and trade unions. In EB Steam Company *P/L v Eskom Holdings SOC Ltd 2015 (2) SA 526* SCA it was found that if a provisional winding up order had been granted then compliance with sec 346(4A)(a) can be proven before a final order is granted.

[6] The main application was for a winding up order, not merely for a provisional order. A provisional order would however be competent, despite the aforesaid. On this ground there are prospects of success.

[7] The second ground relates to the evidence of the meeting at which a conversion of shares has taken place. It bears mentioning that the respondent contended that the loan to the respondent had been converted at the April 2020 meeting into a 1% shareholding in Druid's Garden Holdings P/L. The contract envisaged a conversion into shares in the respondent directly. The evidence of a discharge of the debt to the respondent by a conversion was supported by the share register of Druid's Gardn Holdings P/L.

[8] I am still satisfied that the existence of the debt is disputed. The issue is whether conflicting statements by the deponent of the respondent both directly and via his attorney give traction to an argument that the debt is not disputed reasonably on bona fide grounds. The deponent could not explain why he made reference to interest on the debt, when it had been extinguished by conversion into shares.

[9] In response to a demand for payment from the applicant's attorney, the deponent of the respondent consulted his attorney and instructed him to write a response dated 24 June 2021. In response to the demand for repayment of the loan the attorney of the respondent meticulously quotes the financial meeting requirement set out in the

loan agreement and contends that that meeting has not yet been called and the claim for payment is premature as only 18 months of the 24 months within which it could be called, had expired.

[10] In par 3.9 he states: "Our client is not yet obligated to repay your client, has not called the peremptory financial meeting and is not insolvent. "It is this response that suggests that the conversion defence raised in the answering affidavit may not be bona fide. The conversion envisaged in the loan agreement was a shareholding in the respondent, which clearly did not take place as the share register reflects a 1% shareholding in Druid's Garden Holdings P/Nevertheless, it would be a complete answer to say that the debt was extinguished by taking up shares in Holdings.No question of repayment would then arise. Section 17 (1)(a)(i) requires this court to be satisfied that an appeal would have prospects of success. I am so satisfied.

[11]

In the premises I make the following order:

1.1 Leave to appeal is granted to the Full Court of this division.
1.2 Costs of this application will be costs in the appeal

[redacted]

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LABUSCHAGNE

APPEARANCES:

COUNSEL FOR APPLICANT : VAN RENSBURG SC

ATTORNEY FOR APPLICANT : DLBM ATTORNEYS INC

UNOPPOSED