IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2024-009628

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED.
(4) Date: 20 April 2026
Signature: [redacted]

In the matter between:

MARALCO BUSINESS ADVISORS CC t/a MARALCO PLANT SERVICES Applicant

And

GMK CIVILS (PTY) LTD Respondent

JUDGMENT

NYATHI J

A. Introduction

[1] This is an application in which the applicant seeks the *final winding-up* of the respondent on the basis that the respondent is unable to pay its debts as contemplated in section 344(f), read with section 345(1)(c), of the Companies Act 61 of 1973. The claimed indebtedness is R817 994.50, arising from plant rental provided on an alleged thirty-day facility supported by a certificate of balance.

[2] The respondent opposes, contending inter alia that:

(a) there is no valid contract between the parties—its sole director did not conclude nor authorise the facility relied upon;

(b) even on the applicant's version the alleged facility is void for uncertainty regarding an essential term (rental rates) and the invoices cannot found indebtedness; and

(c) the applicant is abusing winding-up proceedings to collect a disputed debt, contrary to the established **Badenhorst**[1] rule.

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[1] **Badenhorst v Northern Construction Enterprises (Pty) Ltd** 1956 (2) SA 346 (T) held that liquidation proceedings should not be used to enforce payment of a debt that is *bona fide* disputed on reasonable grounds. If a debtor shows a genuine, reasonable dispute, the liquidation application should fail.

[3] Two preliminary matters loom:

first, whether the respondent's late answering affidavit should be entertained (and by parity the applicant's reply delivered late).

second, whether on the papers the applicant has established its entitlement to a final order or any order at all.

B. Chronology

[4] A letter of demand was sent by the applicant on 29 September 2023, calling upon the respondent to pay R817 994.50 within five days. The application was issued around 5 February 2024; a notice of intention to oppose was delivered on 22 April 2024. The matter was initially enrolled as unopposed for 30 October 2024, but by that stage the respondent had delivered an answering affidavit on 24 October 2024 accompanied by a prayer for condonation. The matter was removed from the unopposed roll, with a wasted costs order against the respondent. The applicant delivered its replying affidavit on 24 November 2024—also late, and without a discrete condonation application

C. Issues

[5] The issues for determination are:

5.1 Whether condonation should be granted, expressly or tacitly, for the late delivery of the respondent's answering affidavit (and correspondingly the applicant's replying affidavit).

5.2 Whether the applicant has established that the respondent is indebted and commercially insolvent, such that a final winding-up order should issue; or whether the debt is bona fide disputed on reasonable grounds, in which event liquidation relief should be refused.

5.3 Costs.

D. Condonation

[6] The applicant contends the respondent has "abused procedure" and failed to provide a full, accurate account for its delay as contemplated in **Uitenhage**

Transitional Local Council v SARS[2] and related authorities; hence, condonation should be refused and the answering affidavit disregarded.

[7] The respondent answers that the applicant acquiesced to the lateness by filing a substantive reply on the merits without moving to set aside the answering affidavit as an irregular step, and that both sides have now filed all material papers such that a formal condonation skirmish would be "pointless" and inimical to expedition. It also points to the wasted costs order made when the matter was removed from the unopposed roll.

E. Analysis

[8] The legal approach to condonation is trite: the defaulting party must provide a satisfactory explanation for the delay, show prospects of success, and demonstrate that the grant of condonation will not unduly prejudice the opponent. The applicant is correct that the explanation must be full and frank. Condonation is not there for the asking, an applicant must show good cause.

[9] However, litigation is not a game. Where, as here, the applicant elected to deliver a substantive replying affidavit engaging the merits rather than promptly invoke Rule 30 or insist upon striking the answering affidavit, that conduct is inconsistent

[2] 2004 (1) SA 292 (SCA)

with a stance that the answering affidavit “does not exist”. The respondent’s contention that the applicant thereby took a further step and acquiesced to late delivery has force. The entire record is before me; no concrete prejudice from considering the full set of affidavits is demonstrated beyond the ordinary burdens of opposition, and the wasted costs of the aborted unopposed hearing have already been addressed by order.

[10] In these circumstances, the interests of justice favour granting condonation (to both parties, to the extent necessary) and deciding the matter on the merits.

Conclusion on condonation: Condonation is granted for the late delivery of the respondent’s answering affidavit and the applicant’s replying affidavit.

F. The merits: is the debt established or bona fide disputed?

Applicant’s case

[11] The applicant's case is that a 30-day rental facility was extended to the respondent; plant was provided; payments were made from time to time; and a certificate of balance reflects the amount due in the sum of R817 994.50. Demand was made and not met. The applicant relies on the certificate clause as *prima facie* proof of indebtedness and invokes section 344(f) read with section 345(1)(c) for an order *ex debito justitiae.*

[12] The applicant further argues that the respondent impermissibly **approbates and reprobates** by both disputing the contract and seeking refuge in its terms, and that, in any event, s 20(7) of the Companies Act 71 of 2008 permits a counterparty dealing in good faith to presume compliance with internal formalities.

Respondent's case

[13] The respondent avers that its sole director did not sign the facility nor authorise anyone to do so. It says the purported agreement is prima facie invalid—crucially, that it does not record an essential term (the rental rate or a method to determine it), rendering it void for vagueness; and that no engagement ever took place with the director regarding the rental rates. On this footing, the invoices are not underpinned by a valid agreement and are contested. The respondent

contends that liquidation is an abuse where the debt is genuinely disputed on reasonable grounds (the **Badenhorst** principle as restated in **Imobrite**[3]).

G. Applicable principles

[14] It is well settled that winding-up proceedings are not designed to resolve material disputes about the existence of a debt. An applicant who invokes the company's inability to pay must show that the debt is undisputed or at least not *bona fide* disputed on reasonable grounds; if it is, the application ordinarily fails, and the creditor may pursue action proceedings.

[15] Where a certificate of balance exists, it constitutes *prima facie* proof according to its terms; but it cannot, without more, conclusively establish liability if the underlying contract is credibly impugned and the certificate's authority is itself dependent on the validity of that contract. Whether the debt is genuinely disputed must be assessed on the papers as a whole.

[3] **Imobrite (Pty) Ltd v DTL Boerdery CC** (1007/2020) [2022] ZASCA 67 (13 May 2022)

H. Evaluation

(a) Contract formation and authority

[16] The respondent's director's denial of signature or authority is squarely raised. The applicant's answer is twofold:

(i) the documents emanated from the respondent's offices; services were rendered and accepted; and part-payments were made;

(ii) section 20(7) permits the presumption of compliance with internal requirements. These are weighty considerations at the level of commercial probability, but—crucially—the director's authority (or lack thereof) is a question of fact and law that is disputed on affidavit in a manner that is neither far-fetched nor untenable. The respondent's version cannot be rejected on the papers under the **Plascon-Evans**[4] approach.

(b) Essential terms/certainty of rental

[17] The respondent advances a further independent ground:

Even if an agreement existed, the instrument relied upon **does not record** a fixed rental or an ascertainable mechanism for determining it, and the applicant

[4] **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd** 1984 (3) SA 623 (A) 1984.

identifies no compliant variation reduced to writing. The applicant's founding reliance on an **"agreed upon rentals"** formulation does not answer the complaint of voidness for vagueness where the document's **non-variation clause** requires signed written terms. The debate is not contrived; it raises a **substantive contractual contest** unsuited to motion liquidation proceedings. [emphasis added].

(c) Certificate of balance

[18] The certificate clause, if operative, aids the applicant. But where the very existence and enforceability of the facility is credibly contested, a certificate cannot bootstrap validity. The respondent presents a case that the contractual foundation for the certificate is absent or void, which—if proven in action—would defeat reliance on the certificate. That, too, is a reasonable basis for dispute.

(d) Conduct and commercial reality

[19] The applicant emphasises that services were rendered and that payments were made from time to time - indicia often consistent with a **course of dealing**. Yet those considerations do not permit me, in motion proceedings for liquidation, to **resolve** contested issues of **authority, contract formation and essential terms.** The appropriate forum to ventilate such issues is **action** with oral

evidence and discovery, not the blunt instrument of corporate death by winding-up. [emphasis added].

I. Conclusion on the merits

[20] I am satisfied that the respondent has raised a bona fide dispute on reasonable grounds regarding (i) authority/signature, and (ii) certainty of essential terms. On either ground, the debt cannot be treated as undisputed for purposes of final liquidation. The application therefore falls to be dismissed. This is not to say the applicant's claim is without merit; only that liquidation is <u>not the proper procedure to determine it.</u>

[21] The respondent asks for attorney-and-client costs, contending abuse. The threshold for punitive costs is conduct that is reprehensible or otherwise warrants censure, so the successful party is not left out of pocket. While the applicant chose an ill-suited procedure in the face of a genuine contractual dispute, I do not consider its conduct vexatious or in bad faith. It relied on a documentary trail, invoices, and a certificate often invoked in commerce. The justice of the case is met by the usual rule that costs follow the result, on a party-and-party scale. The earlier wasted costs order stands and needs no repetition.

J. Order

[22] The following order is made:

22.1 Condonation is granted for the late delivery of the respondent's answering affidavit and the applicant's replying affidavit.

22.2 The application for the final winding-up of the respondent is dismissed.

22.3 The applicant is to pay the respondent's costs on the party-and-party scale, including the costs of counsel taxable at scale B.

22.4 This order does not preclude the applicant from pursuing its alleged claim by way of action proceedings.

[redacted]

J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of hearing: 19 August 2025

Date of Judgment: 20 April 2026

Appearances:

On behalf of the Applicant: Mr. DE Bruwer

Applicant’s attorneys: Inc. D.E. Bruwer Attorneys, Pretoria

On behalf of the Respondent: Adv. MC Malatji

Attorneys for the Respondent: Rudolph Baloyi Inc.

Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 20 April 2026.