IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number: 2025 - 018390

(1)	REPORTABLE: **No**
(2)	OF INTEREST TO OTHER JUDGES: **No**
(3)	REVISED: **Yes**

6 May 2026 ___________ [redacted]

SIGNATURE

In the matter between:

HERZA AUCTIONEERS (PTY) LTD Applicant

and

F AND A PROPERTIES CC Respondent

The judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be 14:00 on 6 May 2026.

JUDGMENT

J Vorster, AJ

[1] The applicant seeks the liquidation of the respondent on the basis of an alleged unpaid indebtedness arising from an oral agreement concluded during or about August 2022. In terms of that agreement, the respondent purchased livestock on auction from the applicant at its instance and request. It is alleged that, over the period September 2022 to June 2024, the respondent incurred indebtedness to the applicant in an amount of approximately R757,708.00, supported by a statement of account and a series of written acknowledgements of debt signed during 2023 and 2024 reflecting a total indebtedness of approximately R758,450.00.

[2] The applicant alleges that, notwithstanding certain payments and credits applied to the account, a balance of approximately R697,707.98 remains due and payable. A statutory demand in terms of section 69 of the Close Corporations Act was served on the respondent on 2 December 2024, and it is contended that the respondent has failed to discharge, secure, or compound the debt to the applicant's satisfaction. On this basis, the applicant contends that the respondent is unable to pay its debts, alternatively that it is commercially insolvent.

[3] The respondent opposes the application on the basis that it is not insolvent, either factually or commercially. The respondent denies that the applicant has established insolvency and contends that the allegations in the founding affidavit are largely conclusory. In support of its position, the respondent annexes financial statements for the 2021, 2022 and 2023 financial years, which, it is contended, demonstrate that the respondent's assets exceed its liabilities and that it remains solvent.

[4] The respondent disputes the factual basis of the alleged indebtedness. In particular, it denies that it purchased livestock as alleged and challenges the correctness of the applicant's statement of account. It further disputes that the documents relied upon by the applicant constitute valid acknowledgements of

debt. The respondent avers that various payments were made to the applicant during 2024 and early 2025, which have not been properly accounted for, thereby reducing or extinguishing any alleged indebtedness.

[5] The respondent further contends that it holds assets of substantial value, including immovable property which has been placed on the market and is said to have a value in excess of R4 million. It is accordingly denied that the respondent is unable to pay its debts. The respondent also raises procedural concerns, including that it employs staff who have not been served with the application. On this basis, the respondent submits that the application falls to be dismissed with costs.

[6] As referenced earlier herein, the applicant served a demand in terms of section 69 of the Close Corporations Act. As a result of the respondent's Failure to satisfy the demand it is deemed unable to pay its debt. The application is not based on the respondent's factual insolvency, but rather its commercial insolvency.

[7] The difference between factual and commercial insolvency is important. Commercial insolvency refers to an inability to pay debts from available cash resources. Factual insolvency refers to a comparison between assets and liabilities.[1] The liquidation application is based on the respondent's commercial insolvency – i.e. its inability to pay its debts from available cash-flow.

[8] By reason of the respondent's failure to comply with the demand served in terms of section 69, it is deemed to be unable to pay its debts. In those circumstances, the respondent bears the evidential burden of placing facts before the Court to demonstrate that it is, notwithstanding the deeming

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1 **Boschpoort Ondernemings v ABSA Bank** 2014 (2) SA 518 (SCA) at [21] and [22].

provision, commercially solvent.[2] In an attempt to discharge that burden, the respondent relies on its annual financial statements for the reporting periods ending February 2021, 2022, and 2023. Before considering the content of those statements, it is necessary to record that the respondent has not disclosed its financial statements for the 2024 and 2025 reporting periods, and no explanation is furnished in the answering affidavit for this omission.

[9] It is necessary to distinguish between the differing levels of assurance associated with annual financial statements, depending on the nature of the engagement undertaken. Financial statements that are **audited** are subjected to an independent examination conducted in accordance with prescribed auditing standards, with the result that the auditor expresses a positive opinion as to whether the statements fairly present the financial position of the entity. By contrast, **reviewed** financial statements are subjected to a more limited form of scrutiny, typically involving enquiries and analytical procedures, and result only in the expression of a negative assurance, namely that nothing has come to the practitioner's attention to suggest that the financial statements are materially misstated. **Compiled** financial statements, however, involve no independent verification or assurance at all; they are prepared on the basis of information supplied by management, without the practitioner expressing any opinion or conclusion as to their accuracy. The evidential weight to be attached to such statements must accordingly be assessed with due regard to the level of assurance underpinning them.

[10] The financial statements annexed to the answering affidavit are compilation reports and therefore offer the lowest possible assurance of accuracy. For purposes of this judgment, it is merely necessary to refer to the 2023 financial

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2 **Ter Beek v United Resources CC an Another** 1997 (3) SA 315 (C) at 331F: "*In view of the fact that in terms of s 68 of Act 69 of 1984 a Court's discretion in regard to the winding-up of a close corporation operates even in those instances where the application for winding-up is based on a deemed inability on the part of the close corporation to pay its debts, I incline to the view that the provisions of s 69(1) of Act 69 of 1984 are merely supplementary (ie extending what the subject-matter includes) and prima facie (ie rebuttable). Accordingly, first respondent is not precluded from assailing the 'conclusion of law' … which results from a failure to appropriately respond to a statutory demand in terms of s 69(1)(c) of Act 69 of 1984.*".

statements, which reveal that during the 12-month trading period the respondent's commercial activities resulted in a loss of -R85,903.00, and that the respondent had a negative cashflow position of -R121,384.00 at the end of the financial year.

[11] In my judgment, the evidence advanced by the respondent is insufficient to displace the presumption arising from its failure to comply with the section 69 demand, and an order for the respondent's liquidation should be granted.

[12] In respect of the additional payments referred to by the respondent, the evidence reveals that there have been limited further payments of small amounts. A statement annexed to the replying affidavit as "RA1" reflects that, even when these additional payments are taken into account, a capital liability of R667,707.98 remains. As such, the limited additional payments do not assist the respondent. If anything, these payments support the applicant's contention that the respondent is unable to pay its debts.

[13] Lastly, the respondent placed service of the liquidation application on its employees in dispute. First, it must be kept in mind that in accordance with section 197B of the Labour Relations Act, the respondent had a duty to bring the liquidation application to the attention of its employees. Second, the applicant produced evidence that on 18 February 2025, the sheriff served the application on employees in the manner prescribed by section 346(4A) of the Companies Act, 61 of 1973. Consequently, this defence must fail.

[14] What remains to be considered is whether I should grant a final or a provisional liquidation order. The respondent opposed the grant of a winding-up order. The issues have been fully ventilated, and the respondent has put nothing forward to persuade me that further relevant facts would be forthcoming if a rule *nisi* were issued.[3]

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[3] **Johnson v Hirotec (Pty) Ltd** 2000 (4) SA 930 (SCA) at [9].

[15] The following order is made:

1. The respondent, F and A Properties CC (registration number: 1991/015446/23), is placed in final liquidation.
2. The costs incurred by the applicant in this application shall be costs in the administration of the respondent's winding-up and shall be taxed on scale C.

[redacted]

J VORSTER, AJ.

Acting Judge of the High Court

Date heard: 6 May 2026.

Judgment date: 6 May2026.

Appearances:

For the applicant:

Counsel: CLH Harms

Instructed by: Mills & Groenewald Attorneys

For the respondent:

No appearance.