IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable

Case no: 7114/2024

In the matter between:

FIRST RAND BANK LIMITED **APPLICANT**

and

KHUMONETIX PROPRIETARY LIMITED **RESPONDENT**

Neutral Citation: *First Rand Limited v Khumonetics (Pty) Ltd* (7114/2024) [2026] ZAFSCH 280 (7 May 2026)

Coram: MOLITSOANE J

Heard: 06 March 2025

Delivered: 7 May 2026

Summary: Company law – final winding up – whether the respondent is unable to pay its debts as contemplated in s 344*(f)* read with s 345 of the Companies Act 61 of 1973.

ORDER

1 The respondent company is hereby placed in final liquidation.

2 The costs of application, including the costs of two counsel on scale C, shall be the costs in the winding up of the respondent.

JUDGMENT

Molitsoane J

[1] This is an extended date for the rules *nisi* to make final an order in terms of which the applicant, Rand Merchant Bank (RMB), was granted relief placing the respondent, Khumonetix Propriety Ltd (Khumonetix), under provisional liquidation in the hands of the Master of the High Court. RMB has complied with the terms of the provisional order. The dispute is pursuant to the monies lent and advanced by RMB to Khumonetix in terms of two written credit facilities, titled 'Facilities "B" and "G"' respectively.

[2] In order to establish its *locus standi*, RMB avers that it is a creditor of Khumonetix pursuant to monies lent and advanced by it to the latter and in terms of two credit facilities. Firstly, there is an agreement titled 'Facility B and C Agreement' (facility B[1]), concluded between the parties on or about 29 June 2018 and amended in terms of addenda dated 4 December 2018,30 September 2021 and 1 December 2022. Another addendum between the parties in respect of this credit facility was concluded on the same day, 1 December 2022, which RMB

[1] Rand Merchant Bank and Khumonetix are parties to Facility B Agreement.

contends Khumonetix had breached. An amount of R534 650 000 was made available to Khumonetix in terms of this facility while R115 000.00 was made available for facility C. The final repayment date for facility B was 31 July 2024. Facility C has apparently been repaid and plays no role in these proceedings.

[3] Secondly, there is another agreement titled 'Facility G Agreement'[2] (facility G) concluded on 30 September 2021 between the RMB and Khumonetix and other Obligors[3]. This agreement was amended in terms of the addenda dated 27 October 2021 and 1 December 2022 respectively. In terms of facility G, RMB granted a loan facility in the capital sum of R1 135 782 398.00 to Khumonetix. The final repayment date of this loan agreement was 30 November 2025.

Recalibration between facilities B and G

[4] The December addendum provided for the recalibration between facility B and G to take place when a prepayment was made by Khumonetix to RMB. In the founding affidavit, it is stated as follows:

'The December Addendum provides that, following the sale of a property comprising the Secured Portfolio,(i) proceeds in respect thereof shall be applied as a prepayment of facility B and (ii)immediately thereafter, the recalibration formula shall be applied for the purposes of deriving an appropriate allocation of the overall debt quantum between facility B and facility G. Depending on the result, an amount would either:

i. be lent or advanced under facility B and applied by the applicant (on the respondent's behalf) as a repayment of the amount outstanding under Facility G (thereby resulting in an increase of facility B outstanding and a reduction in the facility G outstandings;) or

ii. be lent or advanced under facility G and applied by the applicant on the respondents behalf as a repayment of the amount outstanding under facility B (thereby resulting in an increase of facility G outstanding and a reduction in facility B outstanding).

[2] Rand Merchant Bank, Khumonetix, Fourways Precinct Propriety Ltd and The Michael Family Trust are parties to the Facility G Agreement.

[3] Obligor refers to a person who binds him- or herself contractually to perform some obligation.

iii. In or about May 2023 the applicant received the proceeds in terms of the Abbeydale Sale Agreements (Abbeydale Proceeds)) and in accordance with the contractual arrangements set out in the December Addendum.

iv. The Abbeydale proceeds in an amount of R 629 398 975.11 were applied as a repayment reduction of facility B outstanding.

v. Immediately thereafter and pursuant to the recalibration exercise it was determined that an amount of R 475 744 556 .17 should be readvanced under facility B resulting in an increase of the amount outstanding thereunder an applied by the applicant on the respondents behalf as a repayment reduction of the facility G outstandings.'

[5] It is the case of RMB that, notwithstanding this recalibration following the Abbeydale proceeds, Khumonetix remained indebted to RMA and further failed to repay by the date agreed and despite the demand, remained in breach of its contractual obligations.

[6] It is further the case of RMB that Khumonetix defaulted on facility G. It relies on a number of events in proof of allegations of breach of the terms and default of the facility. Clause 21.3.13 of facility G states as follows on cross default events:

'An event of default shall occur if any financial institution including the lender in its capacity as lender to the Borrower and or any of the Material Parties requires the early repayment of any loan agreement or agreements including but not limited to any of the Structure Facility Agreements following a breach thereof by the borrower or the applicable Material Party and/or exercises any security rights against the Borrower or the applicable Material Party and such breach is not remedied within a period of 20 business days.'

[7] The first event relates to the loan to Fourways Precinct Propriety Ltd (FWP). FWP is a material party as defined in facility G and referred to in clause 21.2.13 above. RMB and Investec Bank Ltd (Investec), as lenders, advanced a loan to FWP in terms of the Facility Agreement (Fourways Precinct and Amended and Restated Facility Agreement) during or about August 2015. RMB

and Investec accelerated the payment of the outstanding balance owed by FWP. In the letter of acceleration, a demand was also made on behalf of RMB and Investec demanding settlement of outstanding balance due to RMB and Investec. FWP did not adhere to the demand.

[8] The second event relates to Michael Family Trust (MFT). It is also included in the definition of material parties in terms of the facility G agreement. RMB and Investec advanced a bridging loan to MTF. The money owing in terms of this loan was due by 30 November 2024. RMB and Investec accelerated the payment of the full outstanding balance owed by MFT also in respect of this loan agreement. The acceleration of the outstanding balances constituted breach of clause 21.2.13 of facility G.

[9] It is important to note that the breach of the FWP facility agreement and MFT loan agreement arose directly from breaches by Azrapart Propriety Ltd (Azrapart) of the Amended and Restated Facility Agreement dated 12 August 2022 concluded between RMB, Investec and Azrapart. In his explanatory affidavit, the deponent in opposition of this application explains that RMB and Investec are involved in litigation with the companies of which he is a director, trustee or hold and interest in, including Azrapart.[4]

[10] A number of these entities, including Azrapart, are interwoven in agreements involving RMB and Investec on the one hand and the entities on the other. The breach of Azrapart arises on its alleged failure to pay the amount demanded by letter dated 10 July 2024 by RMB. The case for RMB is that Azrapart breached the interest cover ratio as set out in the letter of demand sent

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[4] The entities include Michael Family Trust, Azrapart Proprietary Ltd, Macrospace Trading Proprietary Limited, Fourways Precinct (Pty) Ltd,
Loch Logan Waterfront (Pty) Ltd and Karmel Trust.

to it. Azrapart was involved in the business rescue application in this court before Loubser J. On 27 March 2025, Loubser J handed down a provisional judgment in which he held, *inter alia*, that it was common cause between the parties that the total outstanding amount due by Azrapart to RMB and Investec was R2.3 billion, and as Azrapart was unable to pay its debt.

[11] The third event of default is premised on clause 21.2.4 of the facility G agreement which provides that an 'event of default shall occur if the Borrower fails to comply with any of the Financial Covenants and such breach is not rectified within 30(thirty) days after receipt of written notice from the lender calling upon the borrower to do.' It is the case of RMB that on 15 August 2024, a letter was addressed to Khumonetix in terms of which it was notified of the breach of the interest cover ratio and was required to remedy the breach within 30 days. On the version of RMB, Khumonetix failed to rectify the breach.

[12] The third event of default is based on the alleged failure to comply with the undertakings as stipulated in clause 21.2.12 which provides that 'an event of default shall occur if any Obligor breaches any of its obligations in terms of and/ or undertakings given under any of the Finance Documents and failed to remedy such breach within 5(five) business days after receipt of written notice from the Lender calling upon the Borrower to do so.'

[13] The last event of default relates to the so-called 'material adverse event and termination of material lease. In terms of the facility G agreement, material term leases included the list of certain properties as well as the controlling body of a certain sectional title scheme known as Waterclub Body Corporate (Waterclub) in respect of the Radisson lease agreement. Radisson Company references Macrospace Trading Proprietary Ltd. As alluded to above, Macrospace is one of the obligors in the facility G agreement. Macrospace guaranteed the obligations

of the respondent to RMB in respect of facility G and facility B agreements. In this regard Macrospace concluded a security cession with RMB on or about 27 July 2018 in terms of which Macrospace ceded the rentals payable in terms of the Radisson lease agreement to the applicant.

[14] The legal representatives of RMB addressed a letter to Macrospace informing it that it (RMB) was enforcing its security cession. A letter was also sent to Waterclub Body Corporate demanding that rentals were to be paid to RMB and not Macrospace, following the enforcement of the cession. Waterclub Body Corporate responded to this letter and indicated that in arbitration proceedings conducted between Macrospace and it, the arbitrator held that the Radisson lease agreement was unlawful and that the Macrospace security cession was thus not enforceable. It appears that Macrospace did not pay the rentals it received from Waterclub which triggered the default event as envisaged in facility G.

[15] Khumonetix denies any indebtedness to RMB in respect of facility B. Its case is that this facility has been paid in full through the proceeds of Abbeydale. It contends that deficit, if any, was brought about by RMB which impermissibly, improperly and unlawfully resurrected facility B by transferring money from an account which has been closed into facility G. In this case, as I understand the argument, Khumonetix avers that RMB unlawfully created a non-existent debt for Khumonetix.

[16] Khumonetics further opposes the application for its final winding up on the basis that it has demonstrated that its opposition of the application was on *bona fide* and reasonable grounds. On this basis it implores this court to exercise its discretion and refuse to wind it up.

[17] Section 344 of the Companies Act 61 of 1973 (Companies Act) provides

different circumstances in which a company may be wound up. RMB contends that Khumonetix is unable to pay its debts when they became due. Section 344*(f)*, read with s 345, sets out circumstances when the company is deemed to be unable to pay its debts. Section 345, in relevance to the case before me, *inter alia* provides that a company shall be deemed to be unable to pay its debts if: (i) a creditor to whom the company is indebted in a sum of less than R100 is due; (ii) in circumstances where a company has been served with a demand requiring it to pay the sum due and such demand having been served on the company by leaving the letter of demand at its registered office; (iii) it is proved to the satisfaction of the court that the company is unable to pay its debts.

[18] It is common cause that RMB and Investec advanced money as lenders to Khumonetix as a borrower in terms of facilities B and G. RMB contends that Khumonetix owes it money. Notwithstanding the strenuous opposition by Khumonetix, the *locus standi* of RMB is unchallenged and has been established. Even in respect of facility B, which Khumonetix contends had been closed, the evidence reveals the contrary and thus the standing of RMB is beyond question.

[19] It is common cause that statutory letters of demand in respect of both facilities were served on Khumonetix at its registered address as required by s 345(1)*(a)*(i) of the Companies Act. In terms of these demands, RMB alleged that Khumonetix was indebted to it in the amount of R514 861 656.84 in respect of facility B and R696 844 859.41 in respect of facility G, plus further interest flowing from both debts.

[20] It is perhaps convenient to start with the issue of facility G. It is common

cause that in respect of that claim arising out of this facility, the due date for its final payment was 30 November 2025. In its answering affidavit, Khumonetix states the following:

'Khumonetix will when the sum falls due for payment, have sold sufficient of its assets namely (immovable properties comprising shopping centers, office blocks and the like) before then to be able to pay whatever sum is due in terms of this facility on that date.'

[21] As a starting point, the above paragraph expels any doubt that Khumonetix admitted that it was indebted to RMB so much so that it intended to sell its immovable properties in order to liquidate the debt. An allegation is made in the answering affidavit that the total reasonable realizable value of the assets of Khumonetix is about R1 664 106 538.00, the value of which Khumonetics avers far exceeded whatever is owed to RMB. Subsequent to the granting of the provisional order, Khumonetix filed a comprehensive further affidavit setting out what it calls 'developments concerning Khumonetix's good faith and reasonable defences opposing the confirmation of the rule nisi.' What one would not find in that affidavit, is any reference to the sale of any property spoken about in the answering affidavit as quoted in para 20 above.

[22] Khumonetix does not explain if the sales took place or not. It does not say if the sales took place what was realised in the sale. I accept that reference is made of certain sales of the assets as well as valuations but those in my view do not refer to the intended sales referred to in paragraph 20 above. If they did, there was no reason to allege that the properties will be sold in order to pay the debt in facility G.

[23] The date of 30 November 2025 has come and gone. On 1 December 2025, RMB's attorneys addressed a letter to Khumonetix, *inter alia*, calling upon it to make full payment of the outstanding balance due within five days. If any

payment had been done following the mooted sale of properties, then in that case, Khumonetix would have responded to the demand for payment, even if it was a mere explanation as to what happened to those intended sales. RMB avers in the replying affidavit that 'as at the date of that (*sic*) affidavit, Khumonetics had(*sic*) failed to repay the outstanding amount in terms of the facility G Agreement.' Khumonetix has not placed any evidence of any further payment it made following its admitted indebtedness. The attack on the certificate of balances does not assist Khumonetix in view of its admission of indebtedness.

[24] Khumonetix has not placed any evidence on record to gainsay the correctness of the facts brought by RMB as to its debt. Khumonetix does not even say what the amount, if any, was at least due by 30 November 2025 and whether it paid that amount it believed was the correct amount to be paid while also seeking a debatement of any disputed amount. It disputes everything without merits. What Khumonetix sought to do in these proceedings, was to bring forth denials of default events without any counter facts. The defence that the amount outstanding in terms of this facility was not due falls to be rejected. In light of the *Plascon–Evans* rule, I have to accept the version of RMB where in the replying affidavit it is said that, at the time of deposing of that document, Khumonetix had not made any payment.

[25] With regard to facility B, Khumonetix also raised some defences, chief of which boil down to the facility having been fully paid. This defence is anchored on the averment that RMB unlawfully transferred funds from an account which had been fully paid, the facility B. In one of the cases involving RMB and Macrospace, one of the obligors in facility B, the same challenge was raised

concerning the recalibration. That court in the unreported judgment of *First Rand Bank Ltd v Macrospace Trading Ltd*,[5] Holderness J said the following:

i. 'Moreover, it appears from the emails exchanged between Miss Swart and R and B in September, which Mr Giorgio was copied in, that the recalibration and transfers between facilities B and G was clearly communicated to Macrospace, and culminated in the subsequent agreement to extend three payment dates in terms of facility B to July 2024.

ii. It appears that even if, at best for Macrospace, the recalibration was inaccurate or not lawfully done in terms of the contractual arrangements, this would result in an increase in the amount owing under facility G, Macrospace remains indebted to RMB.'

[26] I agree with the sentiments expressed in Macrospace case. The reason is that what applies to Macrospace equally applies to Khumonetix in these proceedings. On this basis alone, nothing further needs be said and in view of the *stare decisis* doctrine, though this Court is not bound by that decision, I have no reason to depart from what the court in that case held. I hold the view that it articulated the correct position with regard to the recalibration which applied equally to Macrospace and Khumonetix. Even if it could be said that the debt in facility B was opposed on *bona fide* and reasonable grounds, which I do not agree with, Khumonetix would still be saddled with the issues in facility G and winding up may still follow without considering the indebtedness of Khumonetix in facility B. For this reason, the alleged 'revival' of facility B takes this matter no further. The December addendum as quoted in paragraph 4 above clearly sets out how the calibration ought to be applied. RMB applied it as agreed. I cannot see any inkling of unlawfulness in that application.

[27] Khumonetix contends that the estimated rental income of at least four obligors was not considered by RMB in the performance of the recalibration.

[5] Unreported case number 2025-008682, Western Cape Division delivered on 3 November 2025.

These obligors are FWP, Basfour, Mr Georgiou, Artic and Carul. In the further affidavit, Khumonetix stated that:

'Had the rental income of all of the seven obligors estimated by Khumonetix being brought into account, and had the potential rental income in respect of the vacant spaces and provisional leases during the ensuing 12 months also been taken into account, the recalibration would have yielded a figure that would not have allowed for recalibration exercise to be conducted.'

[28] The applicant counters this by alleging that the deponent to the affidavit of Khumonetix was untruthful. In this regard it is contended that Khumonetix has failed to disclose the correct facts. RMB, in any case, contends that absent facility B, winding up of Khumonetix may still follow on the basis of default in respect of facility G. I agree as alluded to above and nothing further needs to be said on this point.

[29] Section 347(1) of the Companies Act clothes this court with a discretion in cases of winding up of companies. This section provides that the 'court may grant or dismiss any application under s 346, or adjourn the hearing thereof, conditionally or unconditionally, or make any interim order or any other it may deem just, but the court shall not refuse to make a winding up order only on the ground that the assets of the company have been mortgaged to an amount equal or in excess of those assets or that the company has no assets.'

[30] In the further affidavit, Khumonetix refers to the affidavit of its expert, Mr Strydom (Strydom), who was instructed by MFT to calculate its nett asset value (NSV). It is contended that based on the report of Strydom, the assets of MFT far exceed its liabilities by a wide margin. On this basis, it is contended that MFT is solvent and has substantial assets. Because MFT holds that the affidavit and report of Strydom contain confidential information, a redacted document was filed.

[31] I have difficulties with the report of Strydom. In his report, Mr Strydom alluded to the limitation he had in the compilation of the report. He makes the following statement under the heading 'Limitations':

'I have relied on the statements of Assets and liabilities and further information provided to me by MFT Management as indicated in the report. No audit was performed on the statements of Assets and Liabilities, and no opinion is expressed on the reasonableness of the information provided to me.'

[32] The first concern is the weight to be attached to unaudited statements. It seems to me that Strydom relied squarely on information which MFT management wanted him to see and work with. He does not seem to have conducted his own independent investigation concerning MFT. For example, he makes no reference to any past yearly financial statements of MFT. One wonders what the status of those unaudited statements is. On the face of it, they appear to be inadmissible on the basis of hearsay. There is no evidence as to who compiled them. What were the source documents from where they were compiled? For these reasons, I can attach no weight on his assertion that the assets of MFT exceeded its liabilities. For all intents and purposes, reliance is based on statements MFT could simply have attached to these proceedings themselves and argue that the court had regard to them and make a determination.

[33] Apart from this, on its own version, Khumonetix is commercially insolvent. In his report, Strydom deals with the valuation of the assets of shares held by MFT in Khumonetix. He states in his report that when comparing the total assets to the total liabilities, a deficit arose and therefore this meant that the shares were not worth anything. The deficit was shown as a liability of MFT. It appears on that basis that Khumonetix accepted that it was insolvent.

[34] Khumonetix wants this court to make an assessment of its solvency, yet it

found it prudent to redact important information in the report to enable the court to do just that. For the court to accept the conclusion of an expert, it needs to look into the process and facts which underpin the conclusion. This Court was denied that opportunity. Much as Khumonetix seeks to aver that the application is opposed on *bona fide* and reasonable grounds, I am unable to agree.

[35] Khumonetix further contended that the primary intention of RMB was to enforce the payment of its debt by way of liquidation, which was impermissible. I disagree. On its own version, Khumonetix started to sell some of its assets. Should this eventuate, there is a likelihood that some creditors may be prejudiced by this conduct; sale of the assets under these circumstances will not be to the benefit of the creditors and I cannot exercise my discretion by allowing acts which would disadvantage the majority of the creditors.

[36] For all the reasons stated above, I conclude that Khumonetix is unable to pay its debts and that it would be for the benefit of the creditors that Khumonetix be placed finally in liquidation for the benefit of the creditors.

Order

[37] In the result, the following order is granted:

1 The respondent company is hereby placed in final liquidation.

2 The costs of application, including the costs of two counsel on scale C, shall be the costs in the winding up of the respondent.

[redacted]

PE MOLITSOANE

JUDGE OF THE HIGH COURT

Appearances:

For applicant:	Smit SC (with PG Louw)
Instructed by:	Edward Nathan Sonnenbergs Inc, Johannesburg Phatshoane Henney Attorneys, Bloemfontein
For respondent:	S Symon (with D Sive)
Instructed by:	Fluxmans Inc, Johannesburg EG Cooper Matjiedt, Bloemfontein.