IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

(1)	**NOT REPORTABLE**
(2)	**NOT OF INTEREST TO OTHER JUDGES**

CASE NO: 2025-039262

DATE: 20 MAY 2026

In the matter between:

MMB INVESTMENTS (PTY) LTD t/a BOARDMART Applicant

and

TRACY HILL N O First Respondent

MARTHINUS JACOBUS DEWALD BREYTENBACH N O Second Respondent

SANJA STRAUSS-KRUGER N O Third Respondent

[The above respondents are cited nomine officio *in their Official capacities as the duly appointed Joint Liquidators of* **TOTALLY BOARD (PTY) LTD (in liquidation)**]

THE MASTER OF THE HIGH COURT, JOHANNESBURG Fourth Respondent

Neutral Citation: *MMB Investments v Hill NO and Others (2025-039262)* **[2026] ZAGPJHC ---** (20 May 2026)

Coram: Adams J

Heard: 5 May 2026

Delivered: 20 May 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 10:30 on 20 May 2026.

Summary: Company – winding-up – unlawful alienations and preferences – void disposition – whether court may validate disposition made after commencement of voluntary winding-up order – Companies Act 61 of 1973, s 341(2) – and s 352, which provides that 'a voluntary winding-up of a company shall commence at the time of the registration in terms of section 200 of the special resolution authorizing the winding-up' – the default position is that post-liquidation dispositions are void *ab initio* – the Court has a discretion to validate them – the purpose of s 341(2) is to ensure equality amongst creditors –

Court refused to exercise its discretion in favour of applicant despite its *bona fides* – payments were received when the applicant was not aware that the liquidated company was in financial distress – and were made when it had no knowledge of the fact that the liquidated company was being wound up – default position nevertheless prevailed – applicant could not be allowed to enjoy the benefit of its claim being settled in full, whilst the other creditors would have to be content with whatever residue might still be available –

Application for validation of payments dismissed – counter-application succeeds and applicant ordered to repay amounts received,

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ORDER

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(1) The applicant's application for the validation in terms of section 341(2) of the Companies Act, 1973, of certain payments made by Totally Board (Pty) Ltd (in liquidation) to the applicant, totalling R311 250.87, after the commencement of its winding-up, be and is hereby dismissed with costs.

(2) The respondents' counter-application succeeds.

(3) The applicant is ordered to repay to the respondents the said sum of R311 250.87, together with interest thereon at the applicable legal rate of interest of 11.75% per annum from 17 April 2024 to date of final payment.

(4) The applicant shall pay the respondents' costs of this opposed application, as well as the costs of the counter-application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

JUDGMENT

Adams J:

[1]. This matter, which came before me as an opposed application on Tuesday, 5 May 2026, concerns the application of the provisions of s 341(2) of the Companies Act 61 of 1973 (Companies Act, 1973). The applicant (MMB Investments) applies for an order – in terms of the rider to the said section – validating payments totalling R311 250.87, made by Totally Board (Pty) Ltd (in liquidation) to the applicant after the commencement of its winding-up. The application is brought against the first to the third respondents ('respondents') in their official *nomine officio* capacities as the Joint Liquidators of Totally Board (Pty) Ltd (in liquidation).

[2]. Section 341(2) reads as follows: -

'**341 Dispositions and share transfers after winding-up void –**

(1) … … …

(2) Every disposition of its property (including rights of action) by any company being wound-up and unable to pay its debts made after the commencement of the winding up, shall be void unless the court otherwise orders.'

[3]. Section 341(2) should, in the case of a voluntary liquidation, be read together with s 352, which, under the heading 'Commencement of voluntary winding-up', provides that the 'a voluntary winding-up of a company shall commence at the time of the registration in terms of section 200 of the special resolution authorizing the winding-up'.

[4]. The respondents oppose the application on the basis that the *proviso* contained in s 341(2) does not find application to the facts in this matter. They therefore seek a dismissal of the applicant's application. They have also preferred a counter-application against the applicant, claiming an order declaring the payment of the said amounts of R311 250.87 to be void, as well as an order that the applicant repays to them the said sum, together with interest thereon and costs of suit.

[5]. The parties are *ad idem* that the payment was made by the liquidated company after the commencement of its winding up. The crisp issue for determination is whether the applicant has made out a case for the validation of the said disposition. Put another way, the main issue for determination is whether this Court, in terms of section 341(2) could, and should, exercise its discretion to validate the payments in favour of the applicant. That issue is to be decided against the factual backdrop of the matter, the facts in the matter, as set out in the paragraphs which follow, being by and large common cause.

[6]. The payments totalling R311 250.87, which are the subject of this application, were made to the applicant by Totally Board between 12 and 17 April 2024, after the commencement of Totally Board's winding-up. The exact dates

on which the individual payments were made are as follows: - on 12 April 2024 – R162 940.54; on 15 April 2024 – R 57 310.33 was paid; on 16 April 2024 – R76 000; and R15 000 was paid on 17 April 2024.

[7]. The applicant is a long-established supplier of melamine board, high-gloss board, chipboard, MDF, hardboard, post-form tops, edging and other related wood-based products, supplied nationally to trade buyers for use in *inter alia* kitchen installations. Totally Board was, from approximately October 2017 until its liquidation, a longstanding customer of the applicant, purchasing goods for resale in its hardware and board retail business.

[8]. The trading relationship was originally conducted on an insured credit facility with a limit of R1 000 000 (exclusive of VAT), underwritten by Credit Guarantee Insurance Corporation of South Africa (‘CGIC’). By the end of March 2024, Totally Board had reached its credit limit. By mutual agreement, and considering the trusted commercial relationship, the parties agreed that any further sales from 3 April 2024 onwards would be on a strict cash-on-delivery (‘COD’) basis, with payment required upon or immediately following delivery. And between 3 April 2024 and 17 April 2024, the applicant sold and delivered goods to Totally Board, supported by contemporaneous tax invoices and delivery notes.

[9]. The four payments in dispute, made between 12 and 17 April 2024 and totalling R311 250.87, each correspond to specific deliveries during that period and reflect, so it is contended by the applicant, value given to Totally Board in the ordinary course of the COD arrangement. Unbeknownst to the applicant, and on 25 March 2024, Totally Board’s sole director resolved to place the company in voluntary winding-up. The special resolution was registered at the Companies and Intellectual Property Commission (‘CIPC’) on 11 April 2024, thereby commencing the winding-up and establishing the *concursus creditorum* in terms of s 352(1) of the Companies Act, 1973.

[10]. The applicant had no prior notice or knowledge of Totally Board's intention to liquidate itself. On 17 April 2024, a representative of CGIC advised the applicant that Totally Board's credit cover was withdrawn due to 'adverse information' becoming available concerning Totally Board. CGIC did not explicitly inform the applicant that Totally Board had commenced with a voluntary winding-up of its affairs. Upon a representative of the applicant conducting a CIPC search on 22 April 2024, the applicant first confirmed the liquidation status of Totally Board.

[11]. On 17 October 2024 the applicant received correspondence from the respondents' attorneys, demanding that the amount of R 311 250.87 be repaid to the liquidators. The applicant's attorneys thereafter engaged with the liquidators seeking either validation of the payments, or restitution of the goods. The respondents confirmed that restitution was impossible as the goods had been sold. And since the respondents refused to sanction the payments and abandon their claim against the applicant, the applicant launched the current application in terms of s 341(2) of the Companies Act.

[12]. That brings me to the application of the law to the aforegoing facts.

[13]. The default position is that post-liquidation dispositions are void *ab initio*, but the Court has a discretion to validate them. The purpose of s 341(2) is to ensure equality amongst creditors and to provide a safety valve, through the Court's discretion, where invalidation would produce an unjust result.

[14]. In *Pride Milling Company (Pty) Ltd v Bekker NO and Another*[1], the Supreme Court of Appeal (SCA) explained as follows the reasoning behind a Court of Law being granted this discretion: -

'[30] The provisions of s 341(2) could not be clearer. They, in unequivocal terms, decree that every disposition of its property by a company being wound up is void. Thus, the default position ordained by this section is that all such dispositions have no force

[1] *Pride Milling Company (Pty) Ltd v Bekker NO and Another* 2022 (2) SA 410 (SCA).

and effect in the eyes of the law, ie the disposition is regarded as if it had never occurred. The mischief that s 341(2) seeks to obviate is plain enough. It is to prevent a company being wound up from dissipating its assets and thereby frustrating the claims of its creditors.'

[15]. *In casu*, it is contended on behalf of the applicant that this Court should exercise its discretion in favour of the applicant for the simple reason that the payments were directly linked to same-day or next-day deliveries under a COD arrangement, which is the epitome of in the ordinary course of business and reciprocal trading. In this regard, the applicant rendered full and fair value in exchange for the impugned payments, evidenced *prima facie* by delivery notes, invoices and bank statements. Goods were delivered and were further disposed of and the value included in the Liquidation & Distribution account of the Liquidated company.

[16]. Moreover, so the contention on behalf of the applicants continues, the goods were sold by Totally Board and/or its liquidators, generating revenue which remains in the insolvent estate. Unlike the mischief section 341(2) aims to prevent, there was no depletion of without value, no secret preference and no collusion. Also, there was no knowledge, intention or suspicion on the applicant's part as to the pending liquidation. The applicant was not privy to Totally Board's internal resolutions and only became aware *ex post facto*.

[17]. What is more, so the applicant submits, if the payments are invalidated without restitution of goods, which is not possible in view of the fact that it has been on sold, the estate will retain both the sale proceeds of the goods and the purchase price, constituting an undeniable unjust enrichment at the applicant's expense. No prejudice is shown to the *concursus creditorum*: the estate received goods, value was added to the estate, and, as the L & D Account demonstrates, the benefits have accrued to the insolvent estate, which can distribute these in accordance with insolvency priorities. Conversely, to set aside the payments now would unjustly enrich the insolvent estate and its creditors, whilst penalising the applicant who, in good faith, supplied valuable goods.

[18]. If compelled to repay the said sum, so the applicant's argument is concluded, it would join the ranks of concurrent creditors in an estate already demonstrably unable to satisfy its debts (indebted by more than R27 million), while the estate itself retains the funds from their onward sale, without paying for the initial goods. The applicant pro-actively availed itself of the relief in terms and approached the Court to validate the payments.

[19]. For all these reasons, so the applicant contends, the court's discretion should be exercised in its favour.

[20]. I disagree. As *in casu*, the applicant in *Pride Milling* also contended that the payments at issue are to be validated in accordance with the rider to s 341(2) and, in support of its case that they should be, alleged that the payments: (a) were made in the ordinary course of business and in good faith; (b) were not to the 'detriment of the general body of [the liquidated company's] creditors'; (c) had 'the effect of increasing the asset value of [the liquidated company] to the benefit of the body of the creditors'; (d) were received at a time when it (the applicant) was not aware that the liquidated company was in financial distress; and (e) were made when it had no knowledge of the fact that the liquidated company was being wound up.

[21]. These factors are almost carbon copies of the ones mentioned by the applicant *in casu* as considerations favouring the validation of the payments. In *Pride Milling*, the SCA nevertheless refused to validate the dispositions and, in the process, held that to validate the payments in the context of the facts of that case, would mean that the applicant would be left to enjoy the benefit of its claim being settled in full, whilst the other creditors would have to be content with whatever residue might still be available.

[22]. On the basis of this authority, I am of the view that the applicant has not demonstrated tenable reasons for me to exercise my discretion in favour of validating the payments. I am further bolstered in my conclusion by *Gainsford*

and Others NNO v Tanzer Transport (Pty) Ltd[2], in which the SCA noted that s 341(2) 'of the Act is clear in its terms' and held that:

‘The court will only order otherwise in terms of this section in limited circumstances. To have the defence proffered by Tanzer upheld in general terms would have the effect of avoiding the objects of the Act in that it would undoubtedly prefer one creditor above another.'

[23]. The SCA continued:

'It is no defence to assert as *Tanzer* does that the dispositions were made by the company's staff in ignorance of the fact that the company had been placed under winding-up. Staff at a lower level carry out instructions and in any event that does not deal with the question of whether the dispositions were made at a time after the commencement of the winding-up. *As has already been mentioned, the instances in which a court will validate a disposition are limited.* Even where a disposition was alleged to constitute "a mere administrative rectification", the fact that the effect thereof was to remove a claim from the concursus and settle it in full in favour of the creditor concerned, to the prejudice of the general body of creditors, is impermissible. This is in accordance with the principle that "the free assets of the insolvent at the commencement of the liquidation shall be distributed rateably amongst the insolvent's creditors as at that date".' (Emphasis added).

[24]. For all of these reasons, the applicant’s application falls to be dismissed. It follows that the respondents’ counter-application should succeed and an order should be granted in favour of the respondents for repayment to them of the amount in question.

Costs

[25]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are

[2] *Gainsford and Others NNO v Tanzer Transport (Pty) Ltd* 2014 (3) SA 468 (SCA); ([2014] 3 All SA 21; [2014] ZASCA 32).

good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*[3].

[26]. The applicant should therefore be ordered to pay the respondents' costs in respect of both the main application and the counter-application.

Order

[27]. In the result, I make the following order: -

(1) The applicant's application for the validation in terms of section 341(2) of the Companies Act, 1973, of certain payments made by Totally Board (Pty) Ltd (in liquidation) to the applicant, totalling R311 250.87, after the commencement of its winding-up, be and is hereby dismissed with costs.

(2) The respondents' counter-application succeeds.

(3) The applicant is ordered to repay to the respondents the said sum of R311 250.87, together with interest thereon at the applicable legal rate of interest of 11.75% per annum from 17 April 2024 to date of final payment.

(4) The applicant shall pay the respondents' costs of this opposed application, as well as the costs of the counter-application, including Counsel's charges on scale 'C' of the tariff referred to in Uniform Rule of Court 67A(3), read with rule 69.

[redacted]

L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

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[3] *Myers v Abramson*, 1951(3) SA 438 (C) at 455

HEARD ON:	5 May 2026
JUDGMENT DATE:	20 May 2026
FOR THE APPLICANT:	E Larney
INSTRUCTED BY:	Louis Gishen & Associates Inc, Sandton
FOR THE FIRST, SECOND and THIRD RESPONDENTS:	K J Braatvedt
INSTRUCTED BY:	Braatvedt Attorneys, Bryanston, Sandton