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REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2025-061161

(1)	REPORTABLE: no
(2)	OF INTEREST TO OTHER JUDGES: no
(3)	REVISED: yes

26 May 2026

GB ROME

In the matter between:

ABSA BANK LIMITED

Applicant

and

ZEVOLI 298 (PTY) LTD

Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded onto CaseLines. The date and time for hand-down is deemed to be on 26 MAY 2026

ROME AJ

Introduction

- [1]. This is an application by Absa Bank Limited for the final winding-up of Zevoli 298 (Pty) Ltd. Absa relies on sections 344(f) and 345(1)(c) of the Companies Act 61 of 1973, read with item 9 of Schedule 5 to the Companies Act 71 of 2008, and contends that Zevoli is unable to pay its debts.
- [2]. Zevoli opposed the application. In its papers it also sought counter-relief, including a stay and business rescue. By the time of the joint practice note for the hearing on 4 May 2026, however, Zevoli no longer persisted with either the counter-application to stay proceedings or the alternative counter-application for business rescue. The only issue that remains is whether Absa is entitled to a final winding-up order.
- [3]. In my view, it is. Absa has established its status as creditor, Zevoli's indebtedness, Zevoli's commercial insolvency, and compliance with the statutory requirements. Zevoli's opposition does not raise a bona fide dispute on reasonable grounds. Nor does its asserted factual solvency answer the case based on commercial insolvency.

The parties

- [4]. Absa is a public company, a bank, and a registered credit provider. It is a secured creditor of Zevoli.
- [5]. Zevoli is a private company with registration number 2010/017070/07. Its registered address is 6[...] T[...] P[...], Sandhurst, Sandton, Gauteng. It is a property-owning company. It does not trade and, on its own version, has no operating business from which it earns income. The immovable property at 6[...] T[...] P[....] is its principal asset.

The material facts

- [6]. On 15 December 2010, Absa and Zevoli concluded a written mortgage

loan agreement in terms of which Absa advanced R8 million to Zevoli under account number 8[...]. The loan was secured by a mortgage bond over Zevoli's immovable property. On 8 April 2011, a first mortgage bond was registered over the property in favour of Absa.

- [7]. On 8 June 2018, Absa and Zevoli concluded a second written mortgage loan agreement. Absa advanced R4.9 million to Zevoli under account number 8[...]. That facility too was secured by a mortgage bond over the property. On 4 July 2018, the second mortgage bond was registered.
- [8]. On 19 November 2020, Absa and Megaphase Trading 242 CC concluded an overdraft facility agreement in terms of which Absa made available to Megaphase a facility of R2 million.
- [9]. On the same day, Zevoli executed a local demand guarantee in favour of Absa in respect of Megaphase's indebtedness. Zevoli bound itself as principal obligor, and not merely as surety, limited to the capital sum of R2 million plus interest and costs. A third mortgage bond was registered over the property as security.
- [10]. On 4 August 2023, Absa's attorneys addressed letters of demand to Zevoli and Megaphase calling upon them to remedy their breaches. On 5 September 2023, further demands were sent requiring payment of the total outstanding indebtedness. Zevoli and Megaphase did not pay.
- [11]. On 2 May 2025, Absa instituted this winding-up application. On 19 May 2025, the Master issued a certificate of tendered security. Zevoli delivered its answering affidavit on 7 August 2025, and Absa delivered its replying affidavit on 4 September 2025. The matter was thereafter enrolled on the opposed insolvency roll for 4 May 2026.

The indebtedness

- [12]. Absa's founding affidavit sets out the contractual basis of the

indebtedness and attaches the material agreements and certificates of balance. As at 19 February 2025, Zevoli was indebted to Absa in the following amounts:

12.1. R10 047 819.41, plus interest at 10.85%, capitalised monthly from 20 February 2025 to date of payment, in respect of the first loan facility;

12.2. R6 715 471.18, plus interest at 10.85%, capitalised monthly from 20 February 2025 to date of payment, in respect of the second loan facility; and

12.3. R2 510 595.53, plus interest at the prevailing prime rate, capitalised monthly from 20 February 2025 to date of payment, in respect of the Megaphase facility as guaranteed by Zevoli.

[13]. In addition, Zevoli was indebted to the City of Johannesburg in respect of rates, taxes, water and refuse charges. The founding affidavit referred to approximately R1 424 314.71 as at September 2024, and the replying affidavit states that the indebtedness had increased to more than R1.6 million.

[14]. It is common cause that Zevoli has not paid Absa. It is also common cause that Zevoli is not a trading company and has no ordinary business income. On the papers, Zevoli has no liquid or readily realisable assets available to meet its debts as they fall due, other than the immovable property that is subject to Absa's mortgage bonds.

The applicable law

[15]. The application is brought under the winding-up provisions of the 1973 Companies Act, which continue to apply by virtue of the transitional arrangements in the 2008 Companies Act. Section 344(f) of the 1973 Act provides that a company may be wound up by the court if it is unable to

pay its debts. Section 345(1)(c) provides that a company is deemed unable to pay its debts if it is proved to the satisfaction of the court that the company is unable to pay its debts.

- [16]. Commercial insolvency is enough. A company may be wound up if it cannot pay its debts as they fall due, even if it contends that the value of its assets exceeds the amount of its liabilities. Willis JA. Confirmed that distinction in **Boschpoort Ondernemings (Pty) Ltd v Absa Bank Ltd**ⁱ.
- [17]. In **Afgri Operations Ltd v Hamba Fleet (Pty) Ltd**ⁱⁱ, the Supreme Court of Appeal reaffirmed that, generally speaking, an unpaid creditor has a right *ex debito justitiae* to a winding-up order against a company that has not discharged its debt, and that the court's discretion to refuse such relief is narrow and exercised only in special or unusual circumstances.
- [18]. The Badenhorst rule remains important. Winding-up proceedings are not to be used to enforce payment of a debt that is bona fide disputed on reasonable grounds. The respondent must show both bona fides and objectively reasonable grounds for the dispute. In **Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another**ⁱⁱⁱ, Rogers J explained that

The test for a final order of liquidation is different. The applicant must establish its case on a balance of probabilities. Where the facts are disputed, the court is not permitted to determine the balance of probabilities on the affidavits but must instead apply the Plascon-Evans rule

The difference in approach to factual disputes at the provisional and final stages appears to me to have implications for the Badenhorst rule.

At the final stage, therefore, the Badenhorst rule is likely to find its main field of operation where the applicant, faced with a genuine dispute of fact, seeks a referral to oral evidence. The court might refuse the referral on the basis that the debt is bona fide disputed on reasonable grounds and should thus not be determined in liquidation proceedings. (In the present case neither side requested a referral to oral evidence.)

If, on the other hand, and with due regard to the application of the Plascon-Evans rule, the court is satisfied at the final stage that there is no genuine factual dispute regarding the existence of the applicant's claim, there seems to be limited

scope for finding that the debt is nevertheless bona fide disputed on reasonable grounds.

[19]. For final relief on motion, factual disputes are approached in accordance with **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd**, but that does not require a court to accept allegations that are bald, far-fetched, untenable or not genuinely raised.

The respondent's opposition

[20]. Zevoli's opposition may be summarised as follows. First, it says there is a bona fide dispute about the indebtedness, and that the loan arrangements cannot be viewed in isolation from the wider relationship between Absa, Zevoli, Megaphase and Mr George Prokas. Secondly, it says that it is a non-trading property-holding company and that Absa knew its payment obligations would in practice be met through its "financiers", including Megaphase and Mr Prokas.

[21]. Thirdly, Zevoli says that Absa acted in a way that impaired or prevented those financiers from generating or making payment, linked to disputes about a fraud listing, the freezing of accounts, and other litigation involving Mr and Mrs Prokas and Absa. Fourthly, it says there are pending proceedings in which related issues are being litigated, and that a triable defence has allegedly been recognised in summary judgment proceedings involving sureties. Fifthly, it says that it is factually solvent because the immovable property is valuable.

[22]. I am not persuaded that any of those contentions raise a bona fide dispute on reasonable grounds.

[23]. The starting point is the written agreements. Zevoli concluded the loan agreements, caused the mortgage bonds to be registered, and executed the guarantee. Those documents contain ordinary repayment obligations.

- They do not make Zevoli's liability conditional upon Megaphase, Mr Prokas or any other financier generating income.
- [24]. The first and second loan agreements require Zevoli to pay. The guarantee binds Zevoli for Megaphase's indebtedness within the agreed limit. The agreements contain no term that Absa must first look to Megaphase or Mr Prokas before Zevoli becomes liable. Nor do they contain any term that Zevoli's obligations are suspended if Megaphase or Mr Prokas cannot trade, bank, or generate income.
- [25]. Zevoli's attempt to introduce such a condition is inconsistent with the written agreements. No case of fraud, misrepresentation, duress, undue influence, mistake or rectification has been made out in relation to the loan agreements or guarantee. The so-called "community of contracts" does not assist Zevoli. The fact that Absa had commercial dealings with Zevoli, Megaphase and Mr Prokas does not convert Zevoli's direct repayment obligations into conditional obligations dependent on the performance of third parties.
- [26]. Zevoli's inability to pay because its alleged financiers cannot or will not fund it is not a defence to liability. At best, it is an explanation for non-payment. It does not extinguish the debt, nor render performance objectively impossible. The defence of supervening impossibility requires objective impossibility, not mere financial inability or commercial difficulty.
- [27]. The pending proceedings involving Mr and Mrs Prokas also do not create a bona fide dispute as to Zevoli's indebtedness. Zevoli is a separate juristic person. Its obligations arise from written agreements and mortgage bonds. The existence of related litigation does not, without more, provide a defence to a liquidation application.
- [28]. Nor does the alleged recognition of a triable defence in summary judgment proceedings involving sureties avail Zevoli. Even if that occurred,

summary judgment is a different procedure with a different inquiry. The decisive question here is whether Zevoli has shown a genuine and legally cognisable defence to Absa's claim against it. It has not.

[29]. The debt is documented in written agreements, mortgage bonds, the guarantee and certificates of balance. Zevoli has not paid. It has no income. It has not tendered payment. Its opposition does not answer the core fact of commercial insolvency.

Commercial insolvency and factual solvency

[30]. Zevoli places emphasis on the alleged value of the immovable property. That does not answer Absa's case. The question under section 345(1)(c), read with section 344(f), is whether Zevoli is able to pay its debts. It is not enough to say that it owns valuable immovable property if it cannot pay debts as they fall due.

[31]. Zevoli has not shown the existence of liquid or readily realisable assets available to meet Absa's claims. The immovable property is bonded to Absa. It is not a source of liquidity from which Zevoli has paid or can immediately pay its debts in the ordinary course. Zevoli also owes substantial amounts to the City of Johannesburg. That reinforces, rather than weakens, the conclusion that it is commercially insolvent.

[32]. The best evidence of solvency is payment. Zevoli has not paid. It has not demonstrated the ability to pay. It has not produced a credible plan to pay. Its case is at most that, if related disputes are resolved favourably and if third parties or related entities can resume generating income, the debts may eventually be paid. That is not solvency.

[33]. I am satisfied on a balance of probabilities that Zevoli is commercially insolvent and unable to pay its debts.

Statutory compliance

- [34]. Absa has complied with the statutory requirements for a winding-up application. The application was served on Zevoli at its registered address. The sheriff's return records service by affixing a copy to the principal door after the premises were found locked and no other manner of service was possible.
- [35]. Absa took steps to serve the application on employees and trade unions, if any. The record reflects multiple attempts at the registered address, and Zevoli's attorney later confirmed that Zevoli has no employees. It follows that there are no trade unions representing employees requiring service. The application was also served on SARS by email and on the Master. The Master issued a certificate of tendered security.
- [36]. I am satisfied that sections 346(3), 346(4) and 346(4A) of the 1973 Companies Act have been complied with.

The discontinued counter-relief

- [37]. Zevoli initially sought a stay of the winding-up application and an order placing it under business rescue. The joint practice note records that Zevoli no longer persists with those counter-applications
- [38]. In those circumstances, they do not require determination. To the extent necessary, it is appropriate simply to record that they are not persisted in. I add that the draft judgment records that, had business rescue remained live, there was no evidence of a reasonable prospect of rescue, given that Zevoli does not trade, has no employees, and owns a single bonded residential property.

Discretion

- [39]. Once an unpaid creditor establishes that a company is unable to pay its debts, the court's discretion to refuse a winding-up order is narrow. No special or unusual circumstances exist here. On the contrary, the facts

favour liquidation. Zevoli has substantial unpaid debt. It does not trade. It has no income. Its only meaningful asset is bonded to Absa. The municipal debt is also unpaid. Absa is entitled to have Zevoli wound up so that a liquidator may realise assets and administer the concursus in accordance with law.

- [40]. A winding-up process is preferable to allowing the present position to continue indefinitely. A liquidator will be able to investigate Zevoli's affairs, deal with its assets, engage with creditors, and realise the property in an orderly manner.

Costs

- [41]. In its notice of motion, Absa sought that the costs of the application be costs in the winding-up, save in the event of opposition. The application was opposed. The loan agreements and security documents provide for legal costs on an attorney-and-client scale. There was also interlocutory non-compliance concerning heads of argument, resulting in a tender and order for wasted costs on that scale.

- [42]. However, the draft correctly records that, in a final liquidation order, it is ordinarily appropriate that the costs of the winding-up application be costs in the winding-up, unless there is a basis for a separate punitive order. The principal order should therefore be that the costs of the application are costs in the winding-up of Zevoli, with any prior interlocutory costs order remaining unaffected.

Final relief

- [43]. Zevoli submitted in its heads that Absa seeks final winding-up without first obtaining a provisional order. The draft of the order sought records that this is so. The issue however is whether, on the papers and after compliance with the statutory service requirements, Absa has established its entitlement to final relief on the applicable standard.

[44]. Zevoli has been served, has opposed the matter, has filed an answering affidavit, and has delivered heads of argument. The Master, SARS, employees and trade unions, to the extent applicable, have been dealt with in the service affidavit. There is accordingly no procedural unfairness in determining the final relief sought.

[45]. I am satisfied that Absa has established, on a balance of probabilities, the facts necessary for a final winding-up order.

Order

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

1. The respondent, Zevoli 298 (Pty) Ltd, registration number 2010/017070/07, is placed under final winding-up in the hands of the Master of the High Court of South Africa.
2. The respondent's counter-application for a stay of these proceedings and its counter-application for business rescue, to the extent that either remains before the Court, are dismissed.
3. The costs of the winding-up application are costs in the winding-up of the respondent.
4. Any costs order previously granted in interlocutory proceedings remains unaffected.

GB ROME

Acting Judge of the High Court

Gauteng Local Division, Johannesburg

Date of hearing: 4 May 2026. Date of judgment: 26 May 2026.

Appearances:

For the applicant:

Counsel: **M De Oliveira. ,**

Instructed by: **Werksmans Attorneys.**

For the respondent:

Counsel: A Whitaker.

Instructed by: **Keith Sutcliffe and Associates Inc.**

ⁱ Boschpoort Ondernemings (Pty) Ltd v Absa Bank Ltd [2014 (2) SA 518 (SCA) paragraphs [17] and [21]-[22];

ⁱⁱ Afgr Operations Limited v Hamba Fleet (Pty) Limited 2022 (1) SA 91 (SCA) at paras 6 and 12

ⁱⁱⁱ Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another 2015 (4) SA 449 (WCC) at paras 9 to 12