

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO.: 2025-142915

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

Date: 4 June 2026

E van der Schyff

In the matter between:

ANTON OTLIE NOORDMAN N.O.

FIRST APPLICANT

MOHAMMED YASEEN KHAMMISSA N.O.

SECOND APPLICANT

AMELIA STRECKER N.O.

THIRD APPLICANT

JUSTI STROH N.O.

FOURTH APPLICANT

MUHAMMED FAZEL SULAMAN N.O.

FIFTH APPLICANT

ADRIAAN WILLEM VAN ROOYEN N.O.

SIXTH APPLICANT

and

IMMSA (PTY) LTD

RESPONDENT

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JUDGMENT

VAN DER SCHYFF J

Introduction

- [1] The applicants seek a final winding-up order against the respondent on the grounds that it is unable to pay its debts. In the alternative, they seek monetary judgments under three claims aggregating R902 521.28.¹
- [2] Since the application was issued, the case for liquidation has narrowed substantially. Claim 2, in respect of the proportionate April 2025 rental, has been paid and is no longer pursued. Claim 3, arising from invoice 109917, is genuinely disputed on the facts and is consequently not relied on to support the liquidation application. What remains is an alleged unpaid balance of R336 579.67 under an acknowledgment of debt signed on 18 November 2024 (“the AOD”).
- [3] To dispel the notion that it is unable to pay the disputed claim, and mindful of the severe commercial consequences of a liquidation order, the respondent contends that it has paid an amount equal to the value of Claim 1 into its attorneys’ trust account as security. It has also disclosed its draft annual financial statements for the year ended 28 February 2025.
- [4] The respondent contends that a proper appraisal of the papers reveals this application to be a debt-collection exercise, pursued via liquidation proceedings against an active trading company.

Background

- [5] Prior to its liquidation, Valoworx 266 (Pty) Ltd (“Valoworx”) leased premises situated in Rosslyn, Pretoria, to the respondent. The parties are *ad idem* that this lease relationship survived the liquidation of Valoworx on 27 June 2024 and continued until the underlying property was transferred to a third-party purchaser in April 2025.
- [6] During November 2024, an enquiry in terms of sections 417 and 418 of the Companies Act was conducted into the affairs of Valoworx. At that stage, negotiations took place concerning arrears allegedly owing by the respondent.
- [7] It is common cause that the parties subsequently concluded the AOD on 18 November 2024. Invoice 109917 was expressly excluded from the scope of the AOD

¹The monetary figures in the papers are not consistent. The acknowledgement of debt balance appears as R336 579.67 (notice of motion), R345 579.67 (founding affidavit para 5.4.5) and R336 576.67 (the section 345 demand, annexure “A10”). The founding affidavit puts the aggregate of the three claims at R911 521.28 (para 5.13.1), whereas the sum of the amounts pleaded in the notice of motion (R336 579.67, R201 158.05 and R364 783.56) is R902 521.28.

and was to be dealt with independently. Following its signature, the respondent made substantial payments to the applicants pursuant to the AOD.

The applicants' case

- [8] The applicants contend that the AOD constitutes a binding, independent cause of action. They argue that the respondent is precluded from revisiting the acknowledged indebtedness by attempting to credit historic payments made directly to the City of Tshwane. The applicants submit that statutory set-off cannot operate after the date of Valoworx's liquidation.
- [9] Regarding invoice 109917, the applicants maintain that the respondent remains liable for the full amount. They state that while a reduced settlement figure of R115 063.21 was negotiated, this compromise was strictly conditional upon payment being made within a stipulated timeframe. Because the respondent failed to pay timeously, the settlement lapsed and the original invoice liability revived.
- [10] Finally, the applicants assert that the respondent is commercially insolvent, relying primarily on the respondent's own financial disclosures.

The respondent's case

- [11] The respondent disputes liability under the AOD. It contends that the principal debt reflected in the AOD was calculated from accounts that erroneously included municipal electricity charges for February, March and April 2024. According to the respondent, these charges were paid directly by it to the City of Tshwane after the municipality disconnected the electricity supply to the leased premises due to arrears on Valoworx's account. These payments occurred prior to the execution of the AOD.
- [12] The respondent states that it paid approximately R480 705.09 directly to the municipality to restore the electricity supply. It argues that requiring it to pay the same charges again to the applicants would amount to inequitable double payment.
- [13] In respect of invoice 109917, the respondent asserts that the compromise constituted a final and binding settlement. It maintains that the compromised sum of R115,063.21 was fully discharged and that the applicants cannot unilaterally resurrect the original invoice value.

[14] As regards solvency, the respondent denies commercial insolvency. It points to its financial statements, ongoing business operations and continued financial support from the Industrial Development Corporation.

The issues

[15] The crisp issues for determination are:

(a) whether the indebtedness relied upon by the applicants is *bona fide* disputed on reasonable grounds; and, if so,

(b) whether any of the alternative claims for monetary relief can nevertheless be granted on motion proceedings.

[16] The applicants also relied on the respondent's alleged commercial insolvency. In view of the conclusion reached below, it is unnecessary to determine that issue.

Authority to oppose

[17] In their replying papers, the applicants raised a preliminary objection, contending that the deponent to the answering affidavit, Mr Botha, failed to annex a company resolution authorising him to act. Consequently, they argue that the opposition is not properly before the court. This point does not warrant extensive analysis. Mr Botha is the respondent's commercial director and has sworn under oath that he is duly authorized to oppose the relief. It is trite that the inquiry in motion proceedings is whether the *legal proceedings themselves* have been authorised by the litigating entity, not whether the individual deponent has appended a formal board resolution to the affidavit.² A litigant seeking to challenge authority must deploy the mechanism provided under Uniform Rule 7(1). The applicants failed to invoke this procedure, meaning there is no proper challenge to the authority of the opposition before this court. The objection is without merit and is dismissed.

Legal principles

[18] Winding-up proceedings are not an appropriate mechanism for the enforcement of a debt that the company disputes on *bona fide* and reasonable grounds.³

² *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA).

³ *Freshvest Investments (Pty) Ltd v Marabeng (Pty) Ltd* (1030/2015) [2016] ZASCA 168 (24 November 2016) at para 1.

- [19] A winding-up order will generally be refused where the debt relied upon is *bona fide* disputed on reasonable grounds. The principle, often referred to as the *Badenhorst* rule, has consistently been endorsed by our courts.⁴ It functions as an independent rule that does not require proof of an actual abuse of process.⁵
- [20] The question is not whether the respondent's defence will ultimately succeed. The enquiry is whether the respondent has shown that the indebtedness is genuinely disputed on grounds which are not fictitious, unreasonable or *mala fide*; it is enough that the respondent has alleged facts which, if proved at trial, would constitute a good defence.⁶ A want of *bona fides* is not readily inferred.⁷
- [21] Similarly, motion proceedings are unsuitable for the resolving material disputes of fact that cannot be determined on affidavit. Where final relief is sought, the matter falls to be decided on the respondent's version together with the admitted facts in the applicant's affidavit, unless the respondent's version is so far-fetched or untenable as to be rejected on the papers.⁸
- [22] Service of a statutory demand under section 345(1)(a) does not convert a contested claim into an undisputed liquidation debt. The term "neglected" as used in that subsection cannot describe a refusal to pay a claim that is *bona fide* disputed on substantial grounds. A refusal to pay a contested amount is fundamentally distinct from an inability to pay it.⁹

Discussion

- [23] The applicants' remaining claim for purposes of liquidation rests entirely on the AOD.

⁴*Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 347H–348C; *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at 980A–E.

⁵*Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another* 2015 (4) SA 449 (WCC) at para 8.

⁶*Hülse-Reutter and Another v HEG Consulting Enterprises (Pty) Ltd* (Lane and Fey NNO Intervening) 1998 (2) SA 208 (C) at 219F–220C.

⁷*Robson v Wax Works (Pty) Ltd* 2001 (3) SA 1117 (C) at para 15.

⁸*Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E–635C. In the winding-up context, *Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another* 2015 (4) SA 449 (WCC) at paras 9 and 11.

⁹*Payslip Investment Holdings CC v Y2K Tec Ltd* 2001 (4) SA 781 (C) at 788A–D.

- [24] The respondent strenuously disputes its liability for the amount of R336 579.67 claimed under this instrument. The dispute is anchored on the factual assertion that municipal electricity charges for February to April 2024 were included in the calculation of the AOD balance, despite the respondent having already paid those exact amounts directly to the City of Tshwane in August 2024 to restore power to the premises. The chronology is instructive: the direct municipal payments were made on 16 and 19 August 2024, whereas the AOD was executed three months later, on 18 November 2024. Consequently, the respondent contends that the principal sum in the AOD was inflated by charges that had already been discharged, and for which credit was omitted.
- [25] The applicants, on the other hand, contend that the respondent's defence is legally unsustainable because the AOD constitutes an independent cause of action that novated any prior indebtedness, and because set-off cannot operate after the date of Valoworx's liquidation.
- [26] The applicants advanced these contentions as discrete questions of law capable of disposing of the dispute on the papers. I am not persuaded that they have that effect. The applicants correctly submit that an acknowledgment of debt containing an unconditional undertaking to pay constitutes a self-standing and independent cause of action, enabling a creditor to sue directly on the instrument without the necessity of proving the underlying relationship or establishing *animus novandi* (see *Adams v SA Motor Industry Employers Association* 1981 (3) SA 1189 (A)). However, the self-standing status of an AOD does not render it entirely immune to a defence that the underlying calculation of the acknowledged sum was fundamentally tainted by an error.
- [27] The respondent's defence is not that the AOD is invalid for want of novation, nor does it rely on statutory set-off under section 341(2) of the Companies Act 61 of 1973 to extinguish an admitted liability. Rather, the respondent's crisp contention is that the principal sum captured in the AOD was severely overstated because it carried forward municipal utility charges that the respondent had already discharged directly to the City of Tshwane three months prior. Whether a debtor is contractually precluded from raising such a calculation error on motion, particularly where the deponent avers under oath that it did not appreciate at the time of signature that the

“double-counted” charges had been integrated into the final figure, is not a pure question of law. It is a triable issue of fact and contractual interpretation that goes directly to the accuracy and enforceability of the acknowledged sum. These arguments do not convert a genuinely contested balance into an indisputable, liquidated debt.

[28] On the papers presently before the court, the fact of payment to the municipality does not appear to be disputed. The respondent characterises the current scenario as one where it is being required to pay the same electricity charges twice. The applicant contests this, arguing that the August 2024 payments merely discharged Valoworx’s municipal account, thereby creating nothing more than a concurrent claim against Valoworx’s insolvent estate rather than a valid credit against the acknowledged indebtedness. Which of these competing characterisations is correct lies at the heart of the parties’ dispute.

[29] I express no definitive view on the ultimate correctness of the respondent’s contention. The inquiry at this stage is confined to whether the dispute is *bona fide* and founded on reasonable grounds. In my view it is. The defence is supported by a coherent factual narrative, documentation, and an objectively verifiable chronology. It cannot be dismissed as fictitious, contrived or lacking substance. Whether the payments made to the municipality legally operated to reduce or extinguish the liability subsequently captured in the AOD is a matter that must be determined in appropriate action proceedings. It cannot satisfactorily be resolved on affidavit in these liquidation proceedings.

[30] At the very least, the papers disclose a genuine and substantial dispute regarding the respondent’s liability for the amount relied upon by the applicants. In these circumstances, the applicants have failed to establish an undisputed indebtedness sufficient to sustain a winding-up order under the *Badenhorst* rule.

[31] I am mindful that the AOD contains stringent provisions upon which the applicants heavily rely. Clause 1.7 records an undertaking that the debtor shall not be entitled “for any reason whatsoever to withhold or defer” payment. Clause 6 contains an express renunciation of the exceptions *non numeratae pecuniae*, *non causa debiti*, revision of accounts, no value received and *errore calculi*. The instrument deems the debtor commercially insolvent upon default.

- [32] These terms are not without force. But their reach is itself a question of intention and interpretation. Whether clauses 1.7 and 6, properly construed, were intended to foreclose a defence that the acknowledged figure was inflated by a sum already discharged, and whether, so construed, such clauses are legally enforceable against a public policy or *errore calculi* defence, are precisely the complex questions of interpretation that must be ventilated in a trial. The presence of these standard exclusion clauses cannot transform a genuinely disputed debt into an indisputable liability for the purpose of motion proceedings.
- [33] The applicants' third claim arises from invoice 109917. The respondent contends that the parties reached a final settlement in terms whereof the amount of R115 063.21 was accepted in full and final settlement of the invoice. The applicants contend that the settlement was conditional upon payment within a stipulated period and that, because payment was not timeously effected, the original indebtedness revived.
- [34] Whether the settlement was conditional, whether a payment deadline formed a material term of the agreement, and whether the original invoice liability revived are disputes of fact that cannot satisfactorily be resolved on affidavit. The applicants themselves appear to have appreciated this difficulty: in the founding affidavit they expressly acknowledge that Claim 3 might give rise to disputes of fact requiring action proceedings.
- [35] The same factual disputes preclude the granting of final monetary relief on motion. The disputes are material, substantial, and incapable of resolution on the papers. If the applicants wish to pursue these monetary claims, they must do so via the appropriate action procedure where the evidence can be properly tested under cross-examination.

The court's discretion

- [36] The conclusion that the indebtedness relied upon is *bona fide* disputed on reasonable grounds is dispositive of the liquidation application. I nevertheless deal, in the alternative, with the position that would obtain were I wrong in that conclusion — that is, if clauses 1.7 and 6 of the AOD, properly construed, operate to preclude the respondent from raising its defence, thereby rendering it contractually liable for

the disputed balance notwithstanding the payments it made to the City of Tshwane. Even on that assumption, it does not automatically follow that a winding-up order must be granted.

- [37] The granting of a final winding-up order is not a matter of right. Section 347(1) of the Companies Act 61 of 1973 vests the court with a discretion to grant or refuse the order, or to make any order it deems just. The discretion must be exercised judicially upon a consideration of all relevant facts. Even where a ground for winding-up is established, including where a company is deemed unable to pay its debts by reason of non-compliance with a statutory demand, the court may decline to wind the company up where the circumstances do not warrant that step.¹⁰ Winding-up is a process directed at the orderly realisation and distribution of the assets of a company for the benefit of the general body of creditors. It is not intended to serve as a mechanism for the enforcement of a debt that is *bona fide* and reasonably disputed on substantial grounds, nor as a means of exerting pressure on a solvent and trading company to pay such a debt.¹¹
- [38] Several features of this matter would, in the exercise of that discretion, weigh against a winding-up order even on the assumption stated above.
- [39] First, contractual liability under the AOD is not the same as an inability to pay. The respondent's resistance to the claim is not founded on impecuniosity but on its contention that the amount has, in substance, already been discharged. A company's refusal to pay an amount it disputes, or which it contends it has already paid, is not evidence that it is unable to pay. The applicants did not take issue in the replying affidavit with the respondent's claim that it has paid an amount equal to the disputed balance into its attorneys' trust account as security.
- [40] Secondly, and of particular importance, the applicants do not dispute that the respondent paid the electricity charges in question to the City of Tshwane. The dispute is confined to the legal consequences of the indebtedness acknowledged in the AOD. To wind up a company in respect of a balance representing charges which

¹⁰Section 347(1) of the Companies Act 61 of 1973; *Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another* 2015 (4) SA 449 (WCC) paras 18–21.

¹¹ *Badenhorst, supra*.

might have already been paid to the municipality, even if, on a strict construction of clauses 1.7 and 6, the respondent remains contractually answerable for them, would be to deploy the winding-up jurisdiction as an instrument of debt collection. That is not its purpose.

[41] In these circumstances, even if the applicants were to establish that the respondent is contractually liable for the disputed balance under clauses 1.7 and 6 of the AOD, I would, in the exercise of my residual discretion, decline to grant a winding-up order. The appropriate course, if the applicants wish to recover the amount, is to pursue a monetary claim in proceedings suited to determining the dispute.

Costs

[42] Costs ordinarily follow the result, and I can see no reason to depart from that rule. The application was brought against a trading company on three claims, of which the second has been paid and abandoned, and the third is not pressed in support of liquidation. The first is *bona fide* disputed.

[43] I am satisfied that costs, including the costs of counsel where so employed, on Scale C as sought, are appropriate.

Order

In the result, the following order is granted:

1. The liquidation application is dismissed.
2. No order is made in respect of the applicants' alternative claims for monetary relief.
3. The applicants are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of the application, including the costs of counsel where so employed, on Scale C.

[Redacted Signature]

E VAN DER SCHYFF
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

For the applicants:

Adv. C.L.H. Harms

Instructed by:

Grundlingh & Associates

For the respondent:	Adv. B.H. Steyn
Instructed by:	VDT Inc.
Date of the hearing:	20 May 2026
Date of judgment:	4 June 2026