REPUBLIC OF SOUTH AFRICA

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

CASE NO: 2025-229591

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

....[redacted].....
DATE SIGNATURE

In the matter between:

MUZIWEN HOLDINGS (PTY) LTD Applicant

and

PALADAR RESOURCES (PTY) LTD Respondent

JUDGMENT

ILES AJ:

INTRODUCTION

1. The applicant seeks an order for the winding-up of the respondent on the basis that the applicant is a creditor of the respondent in the amount of R5 million. The application is brought in terms of sections 344(f) and 344(h) of the Companies Act 61 of 1973 as read with item 9 of schedule 5 of the Companies Act 71 of 2008. The applicant initially sought either a provisional or a final winding-up order, but in oral argument sought only a provisional order.

2. The debt in question arises from an acknowledgement of debt concluded between the respondent and Rock Iron (Pty) Ltd on 26 August 2024, and subsequently ceded by Rock Iron to the applicant on 22 November 2024. Subsequent to the alleged cession, the applicant delivered a demand to the respondent under section 345 of the 1973 Companies Act. The respondent responded to the demand by denying liability.

3. The respondent opposes the application. It contends that the applicant did not discharge the onus of demonstrating that it is a creditor of the respondent because the cession agreement relied on by the applicant, although a written cession, was not attached to the founding affidavit.

4. Further, even if the court were to find that a *prima facie* case had been made out, the respondent submitted that the applicant's debt was disputed on *bona fide* and reasonable grounds, and the application

thus fell to be dismissed. The defence centred on the contention that the debt recorded in the acknowledgement of debt was extinguished prior to the cession. It was thus contended by the respondent that the application for winding-up was an abuse, given the defences raised, which defences were known to the applicant prior to the institution of this application.

THE MATERIAL FACTS

5. The applicant alleged that Rock Iron concluded a loan facility agreement with the respondent on 22 September 2022 in terms of which Rock Iron loaned R2,750,000.00 to the respondent, and the respondent became obliged to repay R5,500,000.00 to Rock Iron.

6. A pledge and cession agreement pertaining to shares in an entity known as Connaught Mining (Pty) Ltd was allegedly concluded on the same date as security for the respondent's obligations to Rock Iron.

7. Later, on 26 August 2024, the respondent signed an acknowledgement of debt in favour of Rock Iron in which it acknowledged indebtedness to Rock Iron in the amount of R5 million.

8. Subsequently, and on 22 November 2024, according to the applicant, Rock Iron by way of a written cession ceded the debt in the acknowledgement of debt to the applicant.

THE FAILURE TO ATTACH THE WRITTEN CESSION

9. The written cession in terms of which the applicant took cession of the debt was not annexed to the founding affidavit. When this omission was criticised by the respondent in answer, the cession was produced in reply. The respondent contends that it is impermissible to introduce the cession in reply given its centrality to the question whether the applicant is a creditor of the respondent.

10. The omission of the cession was curious. Copies of the facility agreement and the pledge and cession of shares were attached to the founding affidavit even though these were not the basis of the applicant's claim and were described by the applicant as irrelevant. The acknowledgement of debt was also attached. No explanation was provided in the founding papers (or the replying affidavit) for the omission.

11. Although the attachment of a copy of the cession would have been preferable, its omission is not fatal to the applicant's case. First, the cession allegation was not a 'bare allegation', as contended by the respondent. The applicant described what had been ceded and when. It identified when the cession had been entered into. It further relied on an affidavit by Mr Muller, a director of Rock Iron. In that affidavit Mr Muller stated that Rock Iron, represented by him: had concluded the

written loan facility agreement with the respondent in September 2022 and had lent it R2,750,000, that the respondent had failed to make any payments under the loan agreement to Rock Iron, that the parties had concluded a written pledge and cession of shares in Connaught Mining as security for the obligations of the respondent under the loan agreement, that Rock Iron and the respondent had concluded a written acknowledgement of debt in August 2024, that the respondent had failed to perform any of its obligations under the acknowledgement of debt, that on 22 November 2024 Rock Iron (represented by Mr Muller) and the applicant (represented by Ms Buthelezi) had concluded a written cession in terms of which Rock Iron ceded to the applicant the respondent's indebtedness to it in the sum of R5,000,000, and finally that Rock Iron and the applicant had performed their respective obligations under the cession agreement.

12. However, Mr Muller also stated that he had read the founding affidavit of one Ngcebo Ingrid Buthelezi. Ms Buthelezi had not deposed to an affidavit in the founding papers and it was thus unclear what affidavit Mr Muller was referring to when he stated that he had read the founding affidavit of Ms Buthelezi, and it was unclear whether he had in fact read the founding affidavit deposed to by Mr Brews.

13. The respondent contended that because of this Mr Muller had not confirmed '*any of the contents of Mr Brews affidavit*'. That is correct; Mr Muller did not confirm the content of Mr Brews affidavit, but neither

did he confirm the affidavit supposedly deposed to by Ms Buthelezi. Rather he said he had read a particular affidavit, and then went on to independently testify to the facts summarised above. Those facts included that there had been a cession by Rock Iron of the respondent's indebtedness to it, to the applicant. (In reply the applicant explained that its founding affidavit had been prepared in Ms Buthelezi's name but that due to certain health challenges Mr Brews deposed to it and, as a result of an oversight, the confirmatory affidavit was not amended. Ms Buthelezi confirmed these allegations in reply.)

14. Second, the contention that the allegation of cession was a 'bare' one appears to also have been premised on the contention by the respondent that Mr Brews did not have personal knowledge of that which he had attested to. There was no factual basis advanced by the respondent for denying that Mr Brews had personal knowledge of the relevant events, and he confirmed in reply that he had the requisite personal knowledge.

15. Third, neither prior to the institution of the application nor in the answering affidavit did the respondent deny the fact that there had been a cession. It limited itself to the contention that the cession had not been sufficiently demonstrated because of the failure to attach it to the founding affidavit.

16. In the reply to the applicant's section 345 demand, the respondent denied that the debt had been compromised and contended that the

acknowledgement of debt was '*simply confirmation regarding [the] agreement with Rock Iron.*' It was further contended that the applicant could not have taken cession of the debt because the respondent had not consented to the cession and '*the agreement upon which your client relies having entered into with Rock Iron had lapsed and are accordingly of no cause and effect.'* This response does not rise to the level of disputing the fact of the cession; only its validity and effectiveness was placed in issue. If the intention of the respondent's reply was to contest the fact of the cession, it was insufficiently clear to convey this to the applicant.

17. When the written cession was produced in reply it was consistent with what had been testified to concerning it. The respondent did not apply for its striking out nor did the respondent seek leave to file an affidavit dealing with the cession. I was urged by the respondent not to have any regard to the written cession, but that were it to be admitted, it would be noted that the cession recorded that the applicant had purchased the loan emanating from the Rock Iron Loan Agreement from Rock Iron, without identifying what loan agreement was being referred to. The argument that the cession does not sufficiently identify that which is being ceded does not avail the respondent in circumstances where it has not testified to the existence of any other loan with Rock Iron.

18. For the reasons set out above, I am satisfied that the applicant

demonstrated *prima facie* that it took cession of the debt owed by the respondent to Rock Iron (assuming it had not already been extinguished). This conclusion would hold, for the reasons set out above, even without having regard to the written cession advanced in reply. The applicant set out in its founding affidavit sufficient facts to make out a *prima facie* case that it was a creditor of the respondent.

THE BADENHORST RULE

19. A court will refuse an application for winding up if a respondent satisfies the court that the debt relied on is disputed on *bona fide* and reasonable grounds.[1] The onus of showing that the debt is disputed in the manner described is on the respondent.[2] The part of the Badenhorst rule which pertains to reasonableness has been interpreted to mean that a respondent must allege facts which, if proven at a trial, would constitute a good defence to the claim being advanced.[3] The contention that the debt asserted by the applicant was extinguished prior to cession would seem to satisfy the reasonableness requirement. But a reasonable defence is not sufficient, it must be both reasonable and *bona fide*. In assessing *bona fides* the court must consider the manner in which the defence is averred and, in particular, whether it is in the circumstances of the

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1 *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 347H-348C
2 *Hülse-Reutter & Another v HEG Consulting Enterprises (Pty) Ltd* 1998 (2) SA 208 (C) at 218D-219C
3 *Ibid* at 219F-220C

particular case needlessly bald, vague or sketchy.[4]

20. In this case the respondent's contentions pertaining to the extinguishing of the debt were needlessly bald, vague and sketchy. The respondent did not disclose how the debt had been extinguished. Tellingly it never said that it had paid either Rock Iron or the applicant. No proof of payment was relied on. Instead it relied on two other *indicia* as alleged evidence of the discharge of the debt.

21. The first was an email dated 17 July 2025 and written by Mr Muller stating that he confirmed that '*the loan was settled and all agreements and cessions cancelled.*' The applicant, through Mr Brews in reply, proffered an interpretation of what Mr Muller's email meant. But as there was no evidence from Mr Muller on this issue, Mr Brews' statement about its meaning can be disregarded. The email is not evidence that the debt owed to Rock Iron was extinguished prior to the cession. For the email to be proof of this, it would need to show (i) that the liability was discharged (as opposed to the loan merely being settled, whatever that might mean) and (ii) *when* the loan was extinguished and, in particular, that it was extinguished prior to the cession in November 2024. It does not do this. It was written in July 2025. Nor did the respondent disclose the email which it had written to Mr Muller to which this was a response, or provide any facts in its

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4 *Gap Merchant Recycling CC v Goal Reach Trading 55 CC* 2016 (1) SA 261 (WCC) at para 22 - 26

answering affidavit pertaining to the context in which this email had been written.

22. The second fact relied on by the respondent was the cancellation between Rock Iron and the respondent on 26 August 2024 of the pledge of the shares in Connaught Mining. In the face of an acknowledgment of debt in the amount of R5 million being concluded on the same day as the cancellation of the cession, it is insufficient to rely on the cession alone as being any evidence of the extinguishing of the debt owed to Rock Iron.

23. Further, the cession cancellation document, which the respondent put up, makes express reference to the facility loan agreement of 22 September 2022 and records, in clauses 2 and 3, that the parties (being the respondent and Rock Iron) would enter into a memorandum of agreement and that in the event that Rock Iron did not receive payment of the amount owing to it in the memorandum of agreement by 30 October 2024, the facility loan agreement would become operative again.

24. The clear import of this is that as at 26 August 2024 money was owed by the respondent to Rock Iron. The implication is further that the money being referred to in this document is the R5 million recorded as owing in the acknowledgement of debt. The respondent, however, chose to stay silent on this and provided no explanation of what was

being referred to in this document if not the extant debt to Rock Iron. Mr Brews further stated that the debt recorded in the acknowledgment of debt was extinguished '*with effect from 26 August 2024'*. There was no explanation for why the acknowledgement of debt was concluded on 26 August 2024 if it was also extinguished with effect from that date. What was needed for this defence to rise to the level of being *bona fide* was a clear statement as to how the debt was extinguished and when. There were no such allegations.

25. It further did not assist the respondent that it contended that neither the facility agreement nor the pledge and cession of shares was of any '*evidentiary value for the purposes of this liquidation application'* because these documents were '*uninitialed and unsigned by any representative of Rock Iron'.* Apart from the proposition being legally incorrect, the respondent did not deny that these agreements had been concluded. This was indicative not of a genuine dispute regarding liability, but rather of an attempt to avoid the consequences of agreements whose existence was never seriously placed in issue.

26. The respondent also contended that the cession was invalid because it had never been requested to nor had it acceded to any request for a novation or cession of the acknowledgement of debt. This was not a reasonable defence. While the facility loan agreement contained a clause restricting cession without prior written consent, the acknowledgement of debt did not. The clause on which the respondent

relied in the acknowledgement of debt for a restriction on transfer read as follows: '*No changes in the terms, or obligation in terms of agreement (novation) or cancellation will have any effect, unless made In writing and signed by both the Creditor and the Debtor*.' The clause does not limit the transferability of the acknowledgement of debt.[5]

CONCLUSION

27. I thus find that the respondent has not raised a reasonable and *bona fide* dispute to the applicant's claim and the applicant is entitled to an order of provisional winding-up. I thus grant the following order:

27.1. The respondent is placed under provisional liquidation in the hands of the Master of the High Court.

27.2. A *rule nisi* is granted calling upon the respondent and all interested persons to appear on 17 August 2026 at 10:00 or so soon thereafter as the matter may be heard, so as to show good cause as to why:

27.2.1. A final liquidation order should not be granted; and

27.2.2. The costs of this application should not be costs in the liquidation.

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[5] *Propell Specialised Finance (Pty) Ltd v Attorneys Insurance Indemnity Fund NPC* 2019 (2) SA 221 (SCA) at para 17

27.3. This order of provisional liquidation is to be served:

27.3.1. On the respondent at its registered address and principal place of business;

27.3.2. By the sheriff on the employees (if any) of the respondent and on any trade union representing such employees (if any) at the respondent's registered address and principal place of business;

27.3.3. By email on the South African Revenue Services;

27.3.4. By hand upon the Master of the High Court;

27.3.5. By publication of the order in one publication of *The Citizen* newspaper; and

27.3.6. By publication of the order in the Government Gazette.

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K D ILES
Acting Judge of the High Court, Johannesburg

Appearances:

On behalf of the applicant: W Lüderitz SC and JA Steyn

Instructed by:	Malherbe Roos Attorneys
On behalf of the respondent:	L Acker
Instructed by:	Thomson Wilks Inc
Date of hearing:	17 June 2026
Date of judgment:	18 June 2026