

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2025 - 105795

1. REPORTABLE: YES/ NO
2. OF INTEREST TO OTHER JUDGES: YES/NO
3. REVISED: YES/NO

DATE: 4/06/2026

SIGNATURE OF JUDGE: [REDACTED]

In the matter between:

FIRSTRAND BANK LIMITED

APPLICANT

and

MPILENG GROUP (PTY) LTD

RESPONDENT

Delivered: 4 June 2026 – This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email, by being uploaded to the CaseLines system and by release to SAFLII. The date and time for hand down is deemed to be 10h00 on 4 June 2026

JUDGMENT:

FOURIE, AJ

[1] This is the return day for a provisional winding-up order granted on 20 March 2026.

[2] The applicant, First National Bank, is the cessionary of a claim of TSA Properties (Pty) Ltd ('TSA') for arrear rental in the amount of approximately R3.5 million (as at 30 June 2025) due in terms of two lease agreements concluded by TSA as lessor and the respondent, Mpileng Group (Pty) Ltd, as lessee.

[3] The winding-up application is brought in terms of section 344(f) read with section 345(1)(a) and 345(1)(c) of the Companies Act 61 of 1973, namely that the respondent is deemed unable to pay its debts as a statutory letter of demand for payment has not been met, and because it has been proved that the respondent is unable to pay its debts.

[4] It is common cause that the applicant's attorney of record caused a letter of demand in terms of section 345(1)(a) to be delivered to the respondent's registered address on 1 April 2025, and that the respondent *neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the applicant.*

[5] In relation to the second ground, the applicant submits that the respondent defaulted on its payment obligations to TSA and fell into arrears. It executed an acknowledgment of debt in favour of TSA on 20 February 2024, and the parties concluded a settlement agreement on 4 June 2024. The respondent breached both the acknowledgment of debt and the settlement agreement and failed to settle its debts to TSA. Thereafter, the respondent failed to settle its indebtedness although demand was made by the applicant in terms of section 345. Moreover, on 30 May 2025, the respondent purported to execute a further acknowledgement of debt in favour of TSA. This pattern of conduct demonstrates commercial insolvency.

[6] The respondent raised four defences before the court hearing the application for the provisional winding up. Before this court, Mr. Mello, who appeared for the respondent, persisted only with the argument that TSA ought to have been joined to the proceedings.

[7] His submissions were as follows: the applicant has placed two agreements before the court, namely the cession it concluded with TSA dated 2 April 2024 and the

settlement agreement concluded by the respondent and TSA on 30 May 2025. (I accept that his reference to “settlement” is intended to be the acknowledgment of debt of the same date. This appears from the answering affidavit.) Neither agreement has been made an order of court. TSA was a party to both agreements, but is not before court; it should be before court as it has a direct and substantial interest in the subject matter of the proceedings. The “settlement” has not been set aside.

[8] He further submitted, albeit from the bar, that the respondent did not know of the cession when it concluded the “settlement” with TSA. The respondent had made payment to TSA pursuant to conclusion of the settlement, and the applicant must accordingly collect the outstanding money from TSA.

[9] The respondent's argument falls to be rejected for the following reasons:

[10] As apparent from annexure “FA2” to the founding affidavit, the applicant took cession of all of TSA's present and future right, title and interest in and to the property income (as defined), including all rights of action and recovery, and the proceeds on the disposal or realisation of any rights. The property income derives from leased premises, including the premises of which the respondent is or was a tenant. It is not disputed that the rental that the respondent owed to TSA was included in the subject-matter of the cession. It was stated in *Picardi Hotels Ltd v Thekwini Properties (Pty) Ltd* 2009 (1) SA 493 (SCA) at para [3] that “[i]t is settled law that unless otherwise agreed, a cession in securitatem debiti results in the cedent being deprived of the right to recover the ceded debt, retaining only the bare dominium or a 'reversionary interest' therein.” Only the applicant, as cessionary, may enforce the debt, and it is only when payment is made by a debtor to the cedent, *in ignorance of the cession*, that the debt is deemed to be discharged (own emphasis).

[11] This means that TSA has no locus standi to enforce the debt, whether under the acknowledgment of debt or otherwise, and that the respondent is not released from its obligations to pay the applicant by virtue of conclusion of the acknowledgement, or payment to TSA in terms thereof. The applicant advised the respondent of its cession as far back as 13 December 2024, well before the

respondent concluded the purported settlement agreement with TSA on 31 May 2025.

[12] It is not necessary that the second AOD be declared invalid; as explained in the preceding paragraph, as a matter of law, the second AOD has no legal effect or consequence.


[13] The respondent has cited cases in support of its argument that TSA has a direct and substantial interest in these proceedings. However, both *ABSA Bank Limited v Naudé N.O.* (20264/2014) ZASCA 97 (1 June 2015) and *JCS v JJS* (82452/2015) [2021] ZAGPPHC 647 (16 September 2021), on which the respondent relies, address prejudice to the interests of the party that has not been joined. The respondent does not identify any such prejudice on the part of TSA; rather, it relies on its own prejudice. That is not the test.

[14] The respondent does not dispute the debt. There has been compliance with the formal requirements of section 346A.

[15] That being the case, this court has a narrow discretion. As was confirmed in *Sammel and Others v President Brand Gold Mining Co Ltd* 1969 (3) SA 629 (A) 662, an unpaid creditor is as a matter of right entitled to a winding-up order against a respondent who has not demonstrated any defence.

[16] In the premises, the following order is made:

- (1) The respondent is placed under final winding up.
- (2) The costs of the application, including the costs of counsel on scale C, shall be costs in the winding-up of the respondent.


HR FOURIE AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

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