



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

- | | |
|----|---------------------------------|
| 1. | REPORTABLE: No |
| 2. | OF INTEREST TO OTHER JUDGES: No |
| 3. | REVISED: |

DATE: 31 August 2026

SIGNATURE OF ACTING JUDGE:

Case no: 2024-129396

In the matter between:

MIC KHULISANI VENTURES (PTY) LTD

Applicant

and

LIVESTOCK WEALTH (PTY) LTD

Respondent

**JUDGMENT
(LEAVE TO APPEAL)**

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 31 August 2026.

PRETORIUS AJ:

Introduction

[1] This judgment concerns an application brought by the respondent (*Livestock*) in terms of section 17(1)(a)(i) of the Superior Courts Act, 10 of 2013 for leave to appeal against the order and judgment handed down on 8 May 2026 in the liquidation application under case number 2024-129396. The liquidation application was heard together with Mr Ntuthuko Shezi (*Mr Shezi*)’s application to place Livestock under business rescue (case number 2025-222413).

[2] Livestock’s application for leave to appeal is confined to the liquidation judgment and order. It does not challenge the business rescue order. Livestock contends principally that MIC’s entitlement to accelerate the convertible loan was bona fide disputed on reasonable grounds and that the Court impermissibly resolved the antecedent contractual dispute.

[3] The decisive issue is not whether Livestock raised a dispute. Rather, it is whether the papers disclosed a genuine, sufficiently particularised and objectively reasonable dispute and whether the Court went beyond permissible scrutiny of that dispute by finally resolving contested primary facts. In other words, the extent to which the Court was required to interrogate the substance of the dispute raised to determine whether the dispute was raised on bona fide and reasonable grounds, particularly considering the *Badenhorst*¹ rule.

[4] The central questions are:

- (4.1) whether MIC’s 24 June 2024 notice validly accelerated the loan;
- (4.2) whether the Court relied on a default that MIC had neither invoked nor pleaded;
- (4.3) whether Livestock raised a genuine and objectively reasonable dispute concerning the debt;
- (4.4) whether the finding concerning investor liabilities was material to the order; and
- (4.5) whether the liquidation application should have been refused, stayed or referred for

¹ *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 347 (T).

determination elsewhere.

[5] The principal dispute concerns paragraph 5.4 of the acceleration notice dated 24 June 2024. Livestock contends it supplied only factual support for an insolvency related default under clause 12.5 of the loan agreement and did not invoke a separate reporting default under clauses 10.3 and 12.2. MIC contends paragraph 5.4 identified the substance of the continuing reporting default. The issues predominantly pertain to the construction of the common cause documents, including the acceleration notice and the loan agreement, which the Court considered to determine whether the dispute was bone fide raised on reasonable grounds.

The leave threshold

[6] Section 17(1)(a) requires the Court to be satisfied that the appeal *would* have a reasonable prospect of success or that another compelling reason exists. A mere arguable possibility of a different outcome is insufficient. The enquiry is whether there is a realistic, not remote, prospect that an appeal court will reach a different result.²

[7] Livestock relies on reasonable prospects of success. No separate compelling reason under section 17(1)(a)(ii), such as conflicting authority or a question of wider public importance, has been established.

Material facts

[8] The contractual relationship between the parties is common cause. MIC was a minority shareholder and advanced R3 million under an instrument styled “convertible loan agreement” (*the loan agreement*). The capital attracted interest and, absent earlier acceleration, was to be repaid or converted at maturity in accordance with clauses 6 and 7.

[9] Clause 10.3 of the loan agreement imposed recurring financial reporting obligations on Livestock. The existence and content of those obligations, MIC’s requests for the information and Livestock’s undertaking on 21 February 2024 to provide financial information within 30

² *MEC for Health, Eastern Cape v Mkhitha* 2016 JDR 2214 (SCA) para 16-17; *City of Johannesburg Metropolitan Municipality v Specitrim (Pty) Ltd* 2022 JDR 3708 (GJ) para 7; *Black Bond Surfacing (Pty) Ltd v Dynapac SA (Pty) Ltd* 2022 JDR 3707 (GJ) para 5; *Dlodlo v Minister of Justice and Constitutional Development* 2023 JDR 0126 (GJ) para 5.

days yet failed to do so were not seriously disputed.

[10] MIC alleged that Livestock did not comply and sought acceleration of the outstanding amount. Livestock disputed MIC's entitlement to accelerate but did not advance a positive and particularised factual case identifying what clause 10.3 information it supplied, when it supplied it, to whom it was sent or how delivery occurred. The issue is therefore both whether a real factual dispute about compliance was raised and whether the alleged failure was sufficiently identified in the acceleration notice.

[11] MIC's acceleration notice of 24 June 2024 declared the outstanding amount immediately due and payable. Paragraph 5.4 of the notice recorded, in substance, that Livestock had failed to adhere to accepted accounting standards, that doubts existed regarding the reliability of its financial information and that it had failed to rectify its financial reporting despite being afforded an opportunity to do so.

[12] A statutory demand followed and Livestock did not pay or secure the amount. Livestock denied that the contractual preconditions existed. It contended that paragraph 5.4 of the acceleration notice was only factual support for an insolvency related clause 12.5 default. Livestock disputed that overdue investor returns were debts owed by it, contending that it acted as intermediary between investors and farmers. The complete contracts governing those relationships were however not placed before the Court.

[13] In turn MIC contended it identified in the acceleration notice, in addition, the substance of a reporting default under clause 12.2 read with clause 10.3 of the loan agreement.

[14] Livestock contended that the convertible loan was in substance equity or a redeemable preference share investment. However, the terms of the loan agreement and the parties' conduct substantially weaken this contention. The suggestion at the leave hearing that MIC might have elected conversion at maturity and never become a creditor was speculative. MIC's election to bring and persist with liquidation proceedings was inconsistent with a conversion election.

[15] Livestock contended that the antecedent dispute had to be mediated or arbitrated. MIC maintained that the dispute resolution clause did not oust the liquidation jurisdiction and that

there was no genuine arbitrable dispute.

[16] Livestock contended that insolvency was not supported by contemporaneous liquidity material sufficient to meet MIC's case. However, the later financial material instead disclosed acute liquidity constraints and significant liabilities.

The leave hearing

[17] Livestock's leave argument sought to recast its original broad denial as a new, technical complaint that the acceleration notice did not identify clause 10.3 by number. The contemporaneous papers did dispute acceleration and so the issue is not entirely new. However, its precise formulation and centrality were substantially sharpened by new counsel at the leave hearing.

[18] Mr Mohammed, Livestock's counsel, relied on the *Badenhorst*³ rule as further considered in *Orestisolve*,⁴ *GAP*⁵ and *Trinity Asset Management*⁶ as support for the submission that the debt was bona fide disputed on reasonable grounds. Mr Mohammed argued that the Court exceeded the proper function of a liquidation court in that the Court was required to determine whether its defence was genuinely held and not unreasonable, rather than finally decide the underlying contractual and factual disputes. He argued that Livestock need not show that its trial defence will probably succeed but instead need only genuinely intend to contest the debt on grounds that are not unreasonable. He further argued that the Court may decide a "killer law point" on common cause facts, but not contested primary facts and the acceleration dispute should have been left to an enforcement court or arbitrator. The Court, so it was argued, impermissibly relied on the breach of the financial reporting obligation in clause 10.3 when MIC's acceleration notice only invoked an insolvency related default under clause 12.5. In essence, Mr Mohammed submitted that the liquidation application ought to have been dismissed by virtue of the *Badenhorst* Rule.

[19] Ms Mokale represented MIC in opposing the leave application. She argued that Livestock artificially narrowed the case advanced in the liquidation papers. Paragraph 5.4 of

³ *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 347 (T).

⁴ *Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and another* 2015 (4) SA 449 (WCC).

⁵ *Gap Merchant Recycling CC v Goal Reach Trading* 55 CC 2016 (1) SA 261 (WCC).

⁶ *Trinity Asset Management (Pty) Limited v Grindstone Investments 132 (Pty) Limited* 2018 (1) SA 94 (CC).

the acceleration notice expressly identified Livestock's defective financial reporting and failure to rectify it, while the founding affidavit specifically pleaded the clause 10.3 reporting obligations, the repeated demands for information and Livestock's continuing non-compliance. Accordingly, Ms Mokale argued, the judgment did not rely upon a new or unpleaded default. Livestock produced no management accounts, bank statements, financial reports or proof of delivery to support its denial and therefore failed to demonstrate a genuine and objectively reasonable dispute. Ms Mokale further argued that the investor issue is not dispositive. Even if another court differed on whether investors were direct creditors of Livestock, the judgment rested independently on MIC's own loan claim, the continuing reporting default, the unsatisfied statutory demand and compelling evidence of commercial insolvency. MIC relied additionally on Shezi's admissions in the business rescue application that the loan was or would become payable and that Livestock could not pay approximately R4.5 million. Ms Mokale accordingly submitted that the proposed appeal has no reasonable prospect of success and asked that leave be dismissed with costs.

Governing principles

[20] Before addressing the grounds raised in support of the application for leave to appeal, I deal with the liquidations court's *Badenhorst* role.

[21] The *Badenhorst* rule provides that winding-up proceedings should not be used to enforce a debt that a respondent company bona fide disputes on reasonable grounds. The requirements of bona fides and reasonable grounds are related but distinct. Bona fides concerns whether the respondent genuinely intends to contest the claim. Reasonable grounds require an objectively substantial and legally tenable foundation.

[22] A respondent is not required to prove that its defence will probably succeed at trial. It must, however, identify the facts supporting the defence with sufficient particularity to demonstrate that a real dispute exists. Bald, vague or internally contradictory allegations do not satisfy the rule.

[23] At the final order stage, MIC bore the ultimate burden of establishing its standing, a due debt and the statutory ground for liquidation. Where material facts were genuinely disputed, the ordinary *Plascon-Evans* rule applied. Livestock bore an evidential burden to articulate the bona fide and reasonable basis of its dispute, but not an ultimate burden to

disprove MIC's claim.

[24] Livestock's submissions are overbroad when they suggest that identifying any articulated dispute ends the liquidation enquiry. The Court must examine whether the stated grounds are genuine, particularised and objectively reasonable. Afterall, the liquidation court, although not a trial court, is not passive under the *Badenhorst* rule. In *Orestisolve* Rogers J clearly considered the nature and extent of the disputes raised in that matter in fine detail⁷ in order to determine whether the disputes are bona fide raised on reasonable grounds. In doing so, Rogers J identified the narrow dispute being the interpretation of the consultancy agreement.⁸

[25] The facts in *Orestisolve* are briefly as follows. Essa had agreed to assist NDFT in obtaining an overdraft or term loan. The consultancy agreement provided for a success fee on any credit facility granted as a result of Essa's services, becoming payable upon the issue of a facility letter, final approval or other written notification of approval. Absa subsequently issued a conditional facility letter, which NDFT accepted, but the facility was never taken up because NDFT's shareholder declined to provide the required security. Essa claimed commission, served a statutory demand and obtained a provisional winding-up order. NDFT disputed that the commission had been earned because the facility had not become unconditional or been implemented.

[26] On the return day, Rogers J considered that the proper construction of the agreement probably favoured Essa and that NDFT's contrary construction was not reasonable, although NDFT genuinely believed it. The provisional order was nevertheless discharged because NDFT was demonstrably commercially solvent, its largest creditor and sole shareholder opposed liquidation and the statutory non-payment arose from a genuine, although probably misguided, dispute rather than an inability to pay.⁹

[27] Rogers J held that, once the *Plascon-Evans* approach reveals no genuine factual dispute about the claim, there is limited room for a separate conclusion that the debt is nevertheless bona fide disputed on reasonable grounds. The court must therefore determine whether the

⁷ *Orestisolve* paras 23 to 64.

⁸ *Orestisolve* para 65.

⁹ *Orestisolve* paras 82 and 83.

alleged dispute is real and material before deciding whether it may resolve the issue on the papers.¹⁰

[28] There is an important distinction between a dispute about the primary facts giving rise to liability and a dispute about the legal effect of common cause facts, including contractual interpretation. Where resolution requires the investigation ordinarily associated with a trial, liquidation is inappropriate. Conversely, where the material facts are common cause and the dispute turns on a clear legal or interpretive point, the winding-up court may determine that point. The mere fact that parties disagree about contractual interpretation does not necessarily make liquidation an inappropriate procedure.¹¹

[29] That distinction proved decisive in *Orestisolve*. Although contractual interpretation may sometimes be a mixed question of fact and law, there were no material disputes about the surrounding circumstances. The only real issue was the proper interpretation of the consultancy agreement. Rogers J considered the language clear and found NDFT's construction unlikely to constitute a dispute on reasonable grounds. Rogers J treated bona fides and reasonable grounds as distinct requirements. *Bona fides* exist whether the company genuinely wishes to contest the claim and believes that it has a defence with reasonable prospects. *Reasonable grounds* concern whether the defence has an objectively substantial and legally tenable foundation.¹² A respondent may believe that its defence will definitely, or probably, succeed at trial. But genuine belief alone is insufficient. A sincerely held but objectively untenable defence does not satisfy *Badenhorst*.

[30] Applying that test, Rogers J could not reject NDFT's subjective genuineness under *Plascon-Evans*. But he considered that NDFT would probably fail the objective component because the contractual language clearly favoured Essa.¹³ In other words, NDFT was probably sincere but wrong on grounds that were not objectively reasonable.

[31] Importantly Rogers J's discharge of the provisional order was not a result of the application of *Badenhorst*. Rogers J expressly indicated the opposite - if the existence of the claim and *Badenhorst* were the only issues, he was not satisfied that he would have refused

¹⁰ *Orestisolve* paras 8 to 11 and 65.

¹¹ *Orestisolve* paras 12 and 65.

¹² *Orestisolve* paras 13 and 67.

¹³ *Orestisolve* para 65.

final liquidation.¹⁴ The order was discharged because NDFT was commercially solvent and had placed concrete financial material before the Court. Its principal shareholder creditor supported continued operation, there was no history of unpaid creditors and NDFT had sufficient resources to satisfy Essa's claim if it were eventually established. The Court therefore exercised its residual discretion against liquidation.

[32] *Orestisolve* supports the dismissal of the leave application in the present matter. The central issue is substantially one of construction. As in *Orestisolve*, the decisive point is substantially the legal effect of common cause documents, being the loan agreement including the reporting obligations in clause 10.3, clauses 12.2, 12.5 and 12.7, MIC's earlier demands, Livestock's undertaking to provide information and the 24 June 2024 acceleration notice.

[33] The parties disagree about whether paragraph 5.4 sufficiently invoked the reporting failure as a continuing default. That is predominantly a question of interpreting the written notice in its contractual and documentary context. *Orestisolve* is authority for the proposition that *Badenhorst* does not prevent the liquidation court from determining a clear legal or interpretive issue on common cause facts. Paragraph 5.4 of the notice recorded that Livestock had failed to adhere to accepted accounting standards and had failed, despite an opportunity, to rectify its financial reporting. MIC's founding affidavit also expressly pleaded the clause 10.3 obligations, the December 2023 demand, Livestock's undertaking and its continuing failure to provide the information. The judgment treated the reporting breach as part of MIC's pleaded case rather than as a new default invented by the Court.

[34] Livestock did not allege, with supporting dates or documents, that it had delivered the required material. It did not annex the reports, correspondence transmitting them or proof of delivery. A respondent genuinely disputing non-compliance could readily have produced the compliance documents.

[35] That reasoning is consistent with, rather than contrary to, *Orestisolve*. Rogers J did not require passive acceptance of a denial. Although he applied *Plascon-Evans* to NDFT's "vague" factual version, he did so because the version was nevertheless plausible and consistent with the objective fact that the facility had not been implemented. Livestock's position is different. It failed to supply a competing positive version, such as when, how and

¹⁴ *Orestisolve* para 66.

by whom compliance occurred, supported by documents naturally within its possession. A statement that compliance is disputed without support may properly be regarded as failing to raise a real dispute under *Plascon-Evans*.

[36] Livestock relied heavily at the hearing on paragraph 67 of *Orestisolve*. It did not have to believe its defence would probably succeed and needed only genuinely to intend contesting the claim. That reliance is incomplete. *Orestisolve* confirms that there is a second and distinct requirement that the grounds must be objectively reasonable.

[37] Thus, even assuming that Livestock genuinely wished to contest acceleration, the Court could still conclude that its grounds were unreasonable because the reporting obligation was clear, the demands and undertaking were documented, no primary proof of compliance was produced, no arbitration was initiated despite repeated reliance on the arbitration clause and the loan agreement clearly contemplated repayment unless conversion was elected. That is closely analogous to Rogers J's conclusion that NDFT might genuinely believe its construction but would probably fail *Badenhorst* because the contract was clear.

[38] The most material factual distinction between *Orestisolve* and the present matter is commercial solvency. NDFT placed audited financial statements, management accounts and an accountant's evidence before the Court. It had no history of default to other creditors, had cash and realisable assets and could pay Essa if the claim were eventually established. The winding-up order was discharged mainly for that reason, not because NDFT satisfied *Badenhorst*. Livestock's position is materially different for the reasons mentioned. Even if it genuinely but mistakenly disputed MIC's claim, there is no comparable evidence that it was able and willing to pay the debt once established.

[39] The *GAP*¹⁵ decision referred to by Mr Mohammed similarly does not support Livestock's application for leave. In that matter GAP supplied waste plastic material to Goal Reach for recycling. Goal Reach had experienced recurring cashflow difficulties and failed to pay GAP. Following an unsatisfied statutory demand, GAP applied for Goal Reach's provisional liquidation. Goal Reach disputed the debt on several grounds, including that the credit application had been blank when signed and had not been accepted, that GAP was not

¹⁵ *Gap Merchant Recycling CC v Goal Reach Trading* 55 CC 2016 (1) SA 261 (WCC).

registered as a credit provider, that the unpaid invoices related to contaminated or unusable material and that Goal Reach had a damages counterclaim because GAP failed to supply a minimum quantity of usable material. Rogers J rejected each defence as unparticularised, inconsistent with the contemporaneous record or legally untenable.¹⁶ He also found Goal Reach *prima facie* commercially insolvent.¹⁷

[40] The qualification in *GAP* is that the respondent must still state the factual basis of the defence with adequate particularity. The reduced evidentiary burden does not permit a respondent merely to say, “the debt is disputed” or “the creditor breached the contract”. Where the relevant facts fall within the deponent’s personal knowledge, the respondent is expected to identify them sufficiently to show that a real defence exists. A needlessly bald, vague or sketchy account may fail both requirements. It may be objectively incapable of supporting a defence and may also indicate that the asserted dispute is not genuinely held.

[41] *GAP* does not support the proposition that a liquidation court must stop its enquiry once the respondent identifies an ostensible issue. The court must examine the pleaded facts, their particularity, their consistency with contemporaneous documents and whether, if proved, they would constitute a defence.

[42] It was not seriously disputed that clause 10.3 imposed specific recurring reporting obligations, that MIC repeatedly demanded compliance, that Livestock undertook on 21 February 2024 to provide information and that the information was not supplied. The absence of a positive factual account is more than a failure to prove the defence. It is a failure to formulate the defence with the particularity required to show that a real dispute exists. If Livestock disputed non-compliance, the natural answer was to identify and produce its compliance.

[43] Livestock’s broad proposition, that a liquidation court may identify but may not delve into the dispute, is inconsistent with the method adopted in *GAP*. Rogers J examined the documentary record, required clarification of an ambiguous factual allegation, tested the defences against the contract, considered the absence of expected particulars, compared the affidavit with contemporaneous correspondence and rejected defences that collapsed under

¹⁶ *GAP* paras 26, 43 to 52.

¹⁷ *GAP* paras 53 to 54.

scrutiny. Accordingly, scrutiny does not become an impermissible trial merely because it reveals that no real dispute exists. *GAP* supports in my view that *Badenhorst* requires more than a denial and that the court must determine whether the dispute is genuine and objectively reasonable.

[44] The narrowly refined argument during the leave application argument, being that paragraph 5.4 of the acceleration notice was merely factual support for a clause 12.5 default and could not invoke a clause 10.3 or 12.2 default, was not formulated with the same precision in the answering papers. A materially reconstructed defence emerging principally at the leave stage should be treated cautiously. An application for leave cannot ordinarily create a reasonable prospect of success by reformulating the case after judgment.

[45] As mentioned, the interpretation of the loan agreement and the acceleration notice is largely a legal question on common cause documents. Paragraph 5.4 of the notice referred to inaccurate financial reporting and failure to rectify it. MIC's expressly pleaded clause 10.3 and continuing non-compliance in the founding affidavit. I could therefore conclude that the substance of the reporting default was invoked even if the notice did not label it by precise clause number.

[46] In *Trinity Asset Management*¹⁸ Cameron J rejected the proposition that *Badenhorst* barred consideration of the prescription issue merely because the parties disputed it. The relevant facts were common cause and the issue was the legal effect of the loan agreement and the Prescription Act.

[47] At the Livestock hearing, Mr Mohammed described *Trinity* as permitting only a “*killer law point*” on common cause facts. That expression usefully conveys a decisive, self-contained point of law, but it should not be treated as a rigid verbal test. The actual question is whether the dispute can be determined fairly and conclusively without resolving material factual conflicts. I do not understand *Trinity* to say that every contractual disagreement must be referred to action or arbitration. Contractual interpretation may be decided in liquidation proceedings where the agreement, the relevant notices or communications are common cause, the surrounding facts necessary for interpretation are not genuinely disputed and the court need

¹⁸ *Trinity Asset Management (Pty) Limited v Grindstone Investments 132 (Pty) Limited* 2018 (1) SA 94 (CC).

not select between competing versions of primary fact.

[48] The central leave argument was what the common cause documents meant and whether paragraph 5.4 sufficiently identified the reporting default. That resembles the issue the authorities held could properly be decided, being a legal question arising from common cause written material. The dispute does not become factual merely because Livestock and MIC advance different constructions. I understand the authorities to allow the liquidation court to interpret the notice and agreement and determine whether the identified conduct satisfied the acceleration mechanism.

[49] Where Livestock did not advance a positive version stating when and how it complied, there was no genuine competing fact requiring trial. MIC's version was not chosen over a supported Livestock version. Instead, the agreement was applied to materially uncontested non-compliance.

Grounds

[50] Against the background of the discussion above, I briefly deal with the grounds upon which Livestock seeks leave to appeal.

Acceleration and the reporting default

[51] MIC had to establish that the loan was due. Because the contractual maturity date had not arrived when the liquidation application was instituted, MIC's standing depended on valid acceleration under clause 12.7. Clause 12.7 permits MIC, where an event of default is continuing, to declare the outstanding loan immediately due and payable by notice to Livestock. The clause does not prescribe that the notice must cite the numerical subclause relied upon. It requires a notice exercising the acceleration right in circumstances where a continuing event of default exists. The notice must nevertheless identify the factual default with sufficient clarity to inform Livestock why acceleration is invoked.

[52] Livestock says the relevant precondition was genuinely disputed from receipt of the notice and that the liquidation court was not entitled to decide the antecedent dispute. Livestock contends that the notice expressly invoked only clause 12.5 and that paragraph 5.4 was no more than evidence supporting an insolvency related default. That submission reads paragraph 5.4

too narrowly and in isolation from the preceding correspondence. Paragraph 5.4 identified Livestock's failure to rectify its financial reporting after being given an opportunity to do so. The December 2023 and February 2024 correspondence recorded the reporting obligations, MIC's demand and Livestock's undertaking. Read in that context, paragraph 5.4 identified the substance of the clause 10.3 breach and its continuing character. The decisive point is the factual default identified, not the omission of the number "10.3".

[53] Livestock argued that a creditor cannot retrospectively justify acceleration on a default not identified when the election was made. It is true that a founding affidavit could not retrospectively cure a notice that failed contractually to accelerate the debt. In this case, however, the founding affidavit confirms that the reporting obligation and continuing non-compliance identified in the correspondence and notice formed part of MIC's case from inception. The Court did not devise a new ground of default after the event. Livestock denied default but no proof of reporting compliance, solvency or payment was provided. The alleged dispute was neither factually particularised nor objectively reasonable.

[54] The decisive question is whether Livestock raised a genuine factual dispute or merely disputed the legal consequence of substantially common cause documents and omissions. The reporting obligations, repeated demands and absence of delivered reports appear substantially uncontested. Livestock did not respond with a positive factual account of compliance. It did not identify the reports allegedly delivered, the dates or means of delivery, or the persons to whom they were supplied. On the relevant authorities Livestock was not required to prove its defence as at trial or to attach every supporting document. However, the absence of both a particularised account and naturally available corroboration nevertheless meant that no genuine factual conflict about compliance was established. The Court was therefore not required to choose between two coherent versions of primary fact. It construed common cause documents and applied them to non-compliance that had not been met by a sufficiently particularised positive version. The construction and sufficiency of the written acceleration notice are predominantly legal issues on common cause documents and the Court was permitted to decide them.

[55] I am not satisfied that an appeal court would have a reasonable prospect of concluding that MIC failed validly to accelerate the loan or that the reporting default was an uninvoked and unpleaded basis of decision.

Investor liabilities

[56] Livestock’s contention that investors contracted with farmers rather than with Livestock and that Livestock was an intermediary and was not legally obliged to pay investor returns may raise a more fact sensitive issue. The complete operative contracts were not placed before the Court. It is unnecessary, for purposes of leave, to decide whether another court would differ from the finding concerning investor liability. The reporting default was an independent event of default which, for the reasons already given, sustained acceleration. The investor issue is therefore not dispositive of MIC’s due debt or standing.

[57] The investor liability ground consequently does not afford a reasonable prospect that the winding-up order will be set aside.

The liquidation court exceeded its *Badenhorst* role

[58] Livestock’s submission that the Court had to stop once an antecedent dispute was identified states the rule too broadly. For the reasons mentioned, the Court had to determine whether the dispute was genuinely held and objectively reasonable. That necessarily permitted scrutiny of its particularity, documentary foundation, internal consistency and legal viability. Although such scrutiny does not permit the Court to try a genuine factual dispute, the reporting defence did not present two competing factual versions requiring trial. The principal issue was the legal effect of common cause documents coupled with the absence of a particularised positive allegation of compliance.

[59] The judgment’s reference to an “onus” on Livestock must be understood as an evidential burden under *Badenhorst*. The ultimate burden at final stage remained on MIC. Read in that way, the Court did not reverse the final order burden or decide the matter merely because MIC’s affidavits appeared more probable.

[60] This ground does not enjoy a reasonable prospect of success.

Locus standi, maturity and conversion

[61] Livestock’s characterisation of the loan agreement as equity or a redeemable preference share investment was a legal contention based on the common cause agreement. The

agreement described and regulated a loan, provided for repayment and conferred an election to convert.

[62] Livestock's construction is contradicted by the agreement's terms and its own acknowledgment that repayment was or would shortly become due. The newly emphasised suggestion that MIC might have elected conversion is speculative. MIC had expressly demanded payment, served a statutory demand and pursued liquidation. This constitutes conduct inconsistent with conversion. The Court was competent under *Trinity* to reject Livestock's construction.

[63] Standing had to exist when the liquidation proceedings were instituted. Although the later maturity date cannot retrospectively validate a defective acceleration, the conclusion on standing rests instead on the finding that MIC validly accelerated the loan before institution for the reasons mentioned.

[64] This ground would not have a reasonable prospect of success on appeal.

Arbitration or referral to oral evidence

[65] A dispute resolution clause does not oust the Court's winding-up jurisdiction. A stay or referral may be appropriate where a genuine dispute requires adjudication in arbitration proceedings. For the reasons given, Livestock did not establish such a dispute concerning the reporting default. Here no arbitration was pending and no defined referral to oral evidence on specified factual issues formed part of the relief pursued at the hearing. In any event, the decisive reporting issue did not disclose a genuine factual conflict requiring such referral.

[66] This ground would not have a reasonable prospect of success on appeal.

Conclusion

[67] The proposed appeal raises a legitimate and important distinction between scrutinising a disputed debt and trying it in liquidation proceedings. I am however not convinced that the Court crossed that line in a manner likely to change the result. The Court was entitled to test whether Livestock's dispute was genuine, sufficiently particularised and objectively reasonable. The relevant contractual provisions, demands, undertaking and acceleration notice

were common cause documents. Livestock did not advance a positive and particularised factual version of compliance. Paragraph 5.4 identified the substance of the continuing reporting failure, and MIC's founding papers pleaded that case.

[68] Although Livestock's construction of paragraph 5.4 of the acceleration notice is arguable in the ordinary sense, the application does not demonstrate a realistic prospect that an appellate court will set aside the winding-up order. The independent reporting default reasoning remains dispositive even if the investor liability finding were reconsidered.

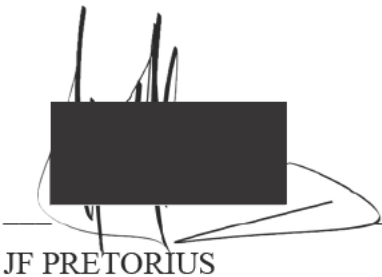
[69] The evidence of commercial insolvency was relevant once MIC's due debt and standing were established. It was not used to cure an absence of creditor standing. No other compelling reason exists for the appeal to be heard. Leave must accordingly be refused.

Costs

[70] The ordinary rule should apply being that the costs should follow the result on the ordinary party and party scale.

Order

1. The application for leave to appeal is dismissed.
2. The applicant for leave to appeal shall pay the costs of the application for leave to appeal.

A handwritten signature in black ink, appearing to be 'JF Pretorius', is written over a solid black rectangular redaction box. The signature is fluid and cursive.

JF PRETORIUS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING: 19 June 2026

DATE OF JUDGMENT: 31 August 2026

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APPLICATION FOR LEAVE TO APPEAL
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