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

CASE NO.: 2025-132163

(1) REPORTABLE: NO

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED: NO

DATE: 18 August 2026

SIGNATURE:

In the matter between:

SONNHEIM AFTREE OORD PROPRIETARY LIMITED

APPLICANT

and

HLCB PROPERTIES PROPRIETARY LIMITED

RESPONDENT

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

JUDGMENT

VAN DER SCHYFF J

Introduction

[1] This is the return day of a provisional winding-up order granted by Labuschagne J on 3 June 2026. The applicant seeks confirmation of that order. The respondent opposes confirmation and has, since the grant of the provisional order, filed a supplementary answering affidavit directed principally at its financial position.

[2] The application arises from a written agreement of sale concluded between the parties during January 2023, in terms of which the respondent agreed to purchase the applicant's immovable property, Stand 1[...] Arcadia, Pretoria (also known as 2[...] H[...] Street, Arcadia), for R 28 000 000. The respondent was required to pay a deposit of 10 per cent of the purchase price, being R 2 800 000, on or before 31 January 2023. It never did so.

[3] Notwithstanding the non-payment of the deposit, the respondent took occupation of the property during March 2023 and remained in occupation until 29 September 2023, a period of some seven months. Clause 6.2 of the agreement fixed occupational rent at 1 per cent of the purchase price, being R 280 000 per month, payable monthly in advance. Save for a payment of R 80 000 made on 9 March 2023, no occupational rent was paid. The applicant cancelled the agreement on 14 June 2023.

[4] A demand in terms of section 345(1)(a) of the Companies Act 61 of 1973 (the "Companies Act") was transmitted electronically and thereafter served by the sheriff at the respondent's registered office. The amount demanded was not paid, secured or compounded within the three-week period prescribed. The applicant claims R 1 960 000, being occupational rent.

[5] Two issues arise on the return day. The first is whether the respondent has established that the applicant's claim is disputed on bona fide and reasonable grounds.

The second is whether the supplementary answering affidavit establishes the respondent's asserted solvency.

The relevant legal principles

[6] Section 344(f), read with section 345 of the Companies Act,¹ permits the winding-up of a company which is unable to pay its debts. In terms of section 345(1)(a), a company is deemed unable to pay its debts where a creditor to whom an amount exceeding R 100 is due has served the prescribed demand at the company's registered office and the company has for three weeks thereafter neglected to pay, secure or compound the debt to the creditor's reasonable satisfaction.

[7] Insolvency in this context may be factual or commercial. Factual insolvency concerns the relationship between the value of the company's assets and its liabilities. Commercial insolvency concerns the company's ability to meet its liabilities as they fall due in the ordinary course of business. A company may own assets exceeding its liabilities and nevertheless be commercially insolvent.²

[8] The applicant bears the onus of establishing the statutory ground for winding-up. Once that basis has been established, a respondent which nevertheless asserts that it is solvent must place sufficient evidence before the Court to substantiate that assertion. Such evidence needs to be adduced in rebuttal.³ The facts bearing upon solvency lie peculiarly within the company's knowledge.

[9] Winding-up proceedings may not be used to enforce payment of a debt which is *bona fide* disputed on reasonable grounds. The respondent need not establish that its defence will ultimately succeed, but must show that the indebtedness is genuinely

¹ Act 61 of 1973.

² *Boschpoort Ondernemings (Pty) Ltd v Absa Bank Ltd* 2014 (2) SA 518 (SCA) at paras 17 and 21–22.

³ *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at paras 976E–J.

disputed on grounds which are objectively reasonable.⁴ Bald allegations lacking particularity will not suffice.

[10] Once an unpaid creditor has established an enforceable debt and the statutory ground for winding-up, the Court retains a discretion whether to grant a final order. That discretion is narrow. In *Afgri Operations Ltd v Hamba Fleet (Pty) Ltd*,⁵ the Supreme Court of Appeal reiterated that an unpaid creditor is ordinarily entitled *ex debito justitiae* to a winding-up order and that refusal is confined to special or unusual circumstances.

The occupational-rent debt

[11] The respondent's defence to the debt rests upon two related propositions. First, that the applicant was not the owner of the property and lacked authority to sell it; and second, that the suspensive conditions in clause 5.1 were never fulfilled, with the consequence that clause 5.2 rendered the agreement of no force or effect.

[12] The ownership contention was advanced before Labuschagne J and abandoned. The suspensive-conditions contention does not justify a different conclusion from that reached by Labuschagne J. Several features of the agreement and the parties' conduct point in the same direction.

[13] More importantly, Labuschagne J found that the parties gave effect to the occupation arrangement. I agree. The respondent took occupation pursuant to the agreement, and remained in occupation for seven months. Clause 6.2 expressly attached a monetary consideration of R 280 000 per month to that occupation. Their conduct is consistent with that arrangement having been implemented.⁶

[14] Clause 10.2 provides that where the purchaser has failed to make timeous payment and the agreement is cancelled by the seller, the purchaser must pay R 280

⁴ *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at paras 980C–G.

⁵ *Afgri Operations Ltd v Hamba Fleet (Pty) Ltd* 2022 (1) SA 91 (SCA) at para 12.

⁶ *Kooij v Middleground Trading 251 CC* (1249/18) [2020] ZASCA 45 (23 April 2020) at para 16.

000 per month from the date of default until it vacates the property, in lieu of occupational rent. The cancellation in June 2023 did not terminate liability, as the respondent remained in occupation until 29 September 2023.

[15] I am accordingly satisfied that the applicant has established the debt upon which it relies, and that the respondent has not demonstrated that the indebtedness is disputed on *bona fide* and reasonable grounds.

The respondent's financial position

[16] The respondent asserts that it is factually and commercially solvent. The supplementary answering affidavit, filed after the provisional order and directed principally at this issue, relies on annual financial statements, a separate statement of financial position, property information and bank statements. That material must be sufficiently reliable to substantiate the asserted solvency.

[17] The annual financial statements annexed as HB6⁷ present an immediate difficulty. The respondent before Court is HLCB Properties Proprietary Limited with registration number 2016/301793/07. HB6 identifies the company whose financial affairs are recorded therein as HLCB Properties (Pty) Ltd, with registration number 2012/013277/07, and records that the company was established in 2012. However, the CIPC certificate records that the respondent was registered on 14 July 2016.

[18] That discrepancy is material. A registration number identifies the juristic person whose financial position is reflected in it. In the absence of an adequate explanation, financial statements bearing the registration number of another company cannot be accepted as proof of the respondent's assets, liabilities, or solvency. The supplementary affidavit does not explain this discrepancy.

⁷ The same annexure is marked as HB6A and uploaded as HB6. It is herein referred to as HB6.

[19] The respondent also relies on a separate statement of financial position, HB6B, reflecting assets of approximately R 27 700 000, liabilities of approximately R 24 500 000, and thus net assets of approximately R 3.2 million. The principal liability is R 23 217 240 owed to the National Empowerment Fund. HB6B, however, is an extract from an unverifiable source.

[20] Even taken at face value, HB6B assists principally on factual solvency. A positive net asset position does not establish an ability to meet debts as they fall due.

[21] The property evidence stands on a different footing. The WinDeed report, HB7, identifies the respondent under its correct registration number as the registered owner of six properties in East London acquired in July 2024. The valuation reports HB8A to HB8F, prepared in June 2024 shortly before those acquisitions and for mortgage-lending purposes, attribute to those properties a collective market value of approximately R 26 000 000. That evidence provides substantial support for the respondent's contention that it owns a valuable immovable property portfolio, and I would not, on this material, find the respondent to be factually insolvent.

[22] Those valuations establish asset value, not liquidity. No forced-sale values were determined; the valuers were not supplied with current financial information of the guesthouse businesses and relied on market assumptions in estimating income-producing capacity; and the properties are mortgaged. There is no evidence of an available refinancing facility, of an ability to realise a property within the period required to meet current debts, or of other readily available liquidity derived from the portfolio.

[23] The bank statements provide the most direct evidence of the respondent's current liquidity. The FNB Gold Business Account closed in July 2026 with a credit balance of R 25 159,04. The Standard Bank account reflected an available balance of R 116 188,93 on 6 August 2026. The readily identifiable balances therefore amounted to approximately R 141 000, measured against the applicant's claim of R 1 960 000.

[24] More telling is the pattern of the accounts. The Standard Bank statement reflects a net outflow of approximately R 293 000 between 8 May and 6 August 2026. During that period, recurring debit orders, including a Ford Credit instalment and Discovery Invest debit orders, were returned unpaid for want of funds, and card transactions were declined for insufficient funds. The FNB account likewise shows substantial turnover but comparatively modest closing balances.

[25] Repeated returned debit orders for ordinary recurring obligations are objective evidence that the respondent was experiencing difficulty in meeting liabilities as they fell due. Considered together with the modest balances, the declining cash position, the absence of demonstrated credit facilities and the unsatisfied statutory demand, the bank evidence does not establish commercial solvency.

[26] The evidence shows that the respondent continues to trade and owns substantial immovable assets. It does not demonstrate that those assets translate into liquid or readily realisable resources sufficient to meet current obligations.

[27] I am accordingly not satisfied that the supplementary answering affidavit establishes commercial solvency. HB6 is unreliable on its face, HB6B is unverified, the valuations establish asset value but not liquidity, and the bank statements show returned debits and declined transactions. The respondent has not substantiated its assertion that it is able to meet its debts as they fall due, and the deeming provision in s 345(1)(a) remains unanswered.

Lis pendens, the pending action and abuse of process

[28] The respondent contends that the application is an abuse of process and relies upon a pending action between the same parties under case number 2025-131647, in which the same underlying indebtedness is claimed.

[29] The applicant explains that the action was instituted to interrupt prescription, which liquidation proceedings do not do. That explanation does not establish an improper purpose. Nor is *lis pendens* made out: although the parties and underlying debt are the same, the relief differs materially. The action seeks judgment on the debt, the present proceedings seek the respondent's winding-up and the resulting *conkursus creditorum*.

[30] The respondent's abuse argument in this matter is founded principally upon the contention that liquidation is being used to enforce a debt *bona fide* disputed on reasonable grounds. Both this court and the court that granted the provisional winding-up order have found that the premise is not established. The respondent's inability to pay is further supported by its own supplementary financial evidence rather than merely inferred from its refusal to pay the applicant.

[31] The fact that a summary judgment application was enrolled in the action does not establish that the debt is *bona fide* disputed. No adjudication in that action is identified in the papers as having determined that the respondent has a triable defence.

Compliance with the provisional order

[32] Labuschagne J directed service and publication of the provisional order so that the respondent, SARS, trade unions and the general body of creditors would have an opportunity to participate on the return day.

[33] The filed affidavit and proofs of service and publication satisfy me that those directions were complied with. No creditor appeared on the return day either to oppose or support the winding-up. The concern which led Labuschagne J to withhold a final order at the outset has therefore been addressed.

Discretion

[34] The applicant has established an enforceable debt exceeding R 100. The statutory demand remains unsatisfied. The prescribed formalities have been complied with. The debt is not *bona fide* disputed on reasonable grounds, and the respondent has not established commercial solvency.

[35] In these circumstances the ordinary position identified in *Afgri Operations, supra*, applies. An unpaid creditor is ordinarily entitled to a winding-up order once the statutory ground has been established, and the Court's discretion to refuse such relief is a very narrow one, exercised only in special or unusual circumstances. No such circumstances have been established.

Costs

[36] The applicant seeks attorney-and-client costs. I am not persuaded that a punitive order is warranted. The ordinary order that the costs of the application form part of the costs of the winding-up is appropriate, including the costs of counsel on Scale B.

Conclusion

[37] I agree with the conclusion reached by Labuschagne J that the parties gave effect to the occupation arrangement. The respondent took occupation, made an initial payment of R 80 000, remained in occupation for several months and did not pay the monthly consideration stipulated in clause 6.2. Clause 10.2 further confirms that cancellation did not terminate liability for the period of continued occupation.

[38] The supplementary answering affidavit does not establish a basis for a different outcome on the return day. The property evidence supports substantial net assets and militates against factual insolvency, but the respondent has not demonstrated commercial solvency. Its own banking evidence shows difficulty in meeting recurring obligations as they fell due.

[39] The applicant has established the requirements for a final winding-up order.

ORDER

In the result, the following order is granted:

1. The provisional winding-up order granted on 3 June 2026 is confirmed, and the respondent is placed under final winding-up in the hands of the Master of the High Court, Pretoria.
2. The costs of the application, including the costs of counsel on Scale B, shall be costs in the liquidation.

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

For the applicant: Adv. Adrian Vorster
Instructed by: Potgieter Louw Attorneys Inc.

For the respondent: B Mathebula
Instructed by: B Mathebula Incorporated

Date of the hearing: 11 August 2026
Date of judgment: 18 August 2026