

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 044466/26

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

Date

Signature

In the matter between:

**NXTGEN STUDENT LIVING (PTY) LTD
(Registration No. 2007/106640/07)**

Applicant

AND

**TEEJAY PROPERTIES (PTY) LTD
(Registration No. 2014/181398/07)**

Respondent

JUDGMENT

**THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY/ELECTRONICALLY
AND SHALL BE CIRCULATED TO THE PARTIES BY WAY OF E- MAIL/
UPLOADING ON CASELINES AND/OR COURT ONLINE. ITS DATE OF HAND
DOWN SHALL BE DEEMED TO BE SEPTEMBER 1, 2026**

Introduction

1. The Applicant launched an application for liquidation of the Respondent in terms of the notice of motion and founding affidavit attached thereto. The application is opposed by the Respondent.
2. The matter proceeded with the Applicant arguing its case, thereafter the Respondent argued its case. During the Respondent's submission, an attempt was made to rely on the bank statements which were not attached in the answering affidavit. The Applicant objected to this and raised a point of procedural irregularity.
3. In reply to the objection, the Respondent submitted that it was invoking the provisions of Rule 28. This was also objected to by the Applicant stating that the provisions of Rule 28 are not applicable to motion proceedings. The Court afforded the Respondent an opportunity to reply to the objection and it was invited by the Court to address how will this be effected. After a short adjournment the Respondent submitted that it no longer invokes Rule 28 but instead, it was moving an application for postponement from the bar as there was no substantive application filed before the proceedings.
4. The Respondent submitted that its attorneys and Counsel had just been instructed two days before the Court proceedings. The Respondent in discharging its duty to assist the Court intends to submit bank statements which will prove that the debt claimed by the Applicant is not due and payable. It

intended to file a supplementary affidavit to substantiate the submission that the debt is not due and payable.

5. The Respondent argued that the Court is requested to exercise its discretion, considering that the order sought is fatal to the Respondent. The Court was requested to consider what is in the public interest.
6. In objecting to the postponement application, the Applicant argued that evidence cannot be provided from the bar and that the proceedings are halfway to finality. It was argued that the postponement application was not made timeously. The Court was referred to the decision of *Kameerdrift Voere (Pty) Ltd v Bulex Group (Pty) Ltd*¹ where the Court stated that:

“... For, the position of our law is that a withdrawal from a matter by a legal practitioner or termination of a legal practitioner’s mandate does not create a right or entitlement to a postponement to the party ultimately without a legal practitioner... A seeker of a postponement is after an indulgence from the court. To access postponement, an applicant ought to proffer good and strong reasons. This is attained by the applicant fully and satisfactorily explaining the circumstances giving rise to the application for postponement. Further, postponement ought to be sought timeously, being the moment the applicant gains knowledge of the circumstances capable of justifying an application for postponement. However, the court retains its capacious discretion to grant postponement where this is justified by fundamental fairness and justice (rendered appropriate by the facts in a matter) where postponement was not sought timeously”.

7. The Respondent was legally represented immediately after having been served with the papers initiating this matter. It maintained the same legal representatives until August 19, 2026, when the mandate of its erstwhile attorneys was terminated, this being two days before this matter was scheduled for hearing. The current attorneys of record for the Respondent were appointed on August 19, 2026. There is no doubt in my mind that the

¹ *Kameerdrift Voere (Pty) Ltd v Bulex Group (Pty) Ltd* (2024/099196) [2025] ZAGPPHC 1272 (4 December 2025).

Respondent had the benefit of legal representation from the commencement of the matter up to the date of hearing.

8. From the reading of the papers, it appeared that both the Applicant and the Respondent were ready for the matter to proceed as neither of the parties indicated unpreparedness to proceed. Even when the new attorneys of record were appointed, there was no indication that the Respondent would not be ready to proceed with the matter. It is only in the middle of argument that a postponement application was made from the bar. As pointed out above, the Applicant had closed its case, and the Respondent was in the middle of its argument.
9. It is trite that the withdrawal of the attorneys and subsequent appointment of new attorneys does not create entitlement to a postponement. In the instant case, the Respondent terminated the mandate of its attorneys on the eve of the hearing and appointed new attorneys. The Respondent made an election to terminate mandate of its attorneys on the eve of the hearing, and it cannot turn around and seek a postponement for the reason occasioned by its own decision. In *Take and save Trading CC v Standard Bank of SA LTD*² the Court stated that:

“... One of the oldest tricks in the book is the practice of some of the legal practitioners, whenever the shoe pinches, to withdraw from the case (and more often than not to reappear at a later stage), or clients to terminate the mandate (more often than not at the suggestion of the practitioner), to force the court to grant a postponement because the party is then unrepresented. Judicial officers have a duty to the court system, their colleagues, the public and the parties to ensure that this abuse is curbed by, in suitable cases, refusing a postponement. Mere withdrawal by a practitioner or the mere termination of a mandate does not, contrary to popular belief, entitle a party to a postponement.”

² *Take and save Trading CC v Standard Bank of SA LTD* 2004 (4) SA 1 (SCA) at para 4.

10. The applicant for a postponement is required to show good cause, and it must be made timeously. The Respondent's postponement application was not made timeously and the reasons proffered did not demonstrate good cause for the Court to grant it postponement. In *Psychological Society of Southern Africa v Qwelane and Others*³ the Court stated that:

"Postponements are not merely there for the taking. They have to be properly motivated and substantiated. And when considering an application for a postponement a court has to exercise its discretion whether to grant the application. It is a discretion in the true or narrow sense – meaning that, so long as it is judicially exercised, another court cannot substitute its discretion simply because it disagrees. The decision to postpone is primarily one for the first instance court to make".

11. The Court has a duty to balance the interests of both parties, in the first instance, the Court must ensure that the doors of justice are not shut on the face of the applicant to a postponement whilst on the other hand it must consider the prejudice that may be suffered by the other party should the postponement be granted. The other consideration is whether the prejudice cannot be ameliorated by granting a costs order against the party seeking postponement.
12. After consideration of the postponement application in its totality, I was not satisfied that it will be in the interests of justice to grant the Respondent postponement. The application for postponement was not made timeously and there is no good cause shown for seeking postponement. A costs order will not minimise the prejudice that would be suffered by the Applicant should the postponement be granted. I have considered that the Applicant was no longer seeking an order for final winding up of the Respondent, this means that the Respondent will have an opportunity to address any other outstanding issues on the return date. It is for these reasons that I dismissed the application for postponement, and this was done *ex tempore*.

³ *Psychological Society of Southern Africa v Qwelane and Others* 2017 (8) BCLR 1039 (CC).

Background

13. The Applicant initiated proceedings for final winding-up of the Respondent. The Applicant previously traded as Solar Trading 332 (Pty) Ltd and changed its name from July 16, 2025, to its current name. It is averred that the Applicant entered into an agreement with the Respondent for the lease of rooms for students attending at an aviation school which is operated by a different entity controlled by the directors of the respondent. The Applicant averred that the Respondent fell into substantial arrears for the monthly rental payable to the Applicant. Subsequently, an acknowledgement of debt ("AOD") was entered into between the parties in terms whereof the Respondent admitted its indebtedness to the Applicant and agreed to repayment thereof by way of monthly instalments.
14. The Applicant averred that notwithstanding the conclusion of the AOD, the Respondent failed to honour its obligations and made no payments in terms of the AOD.
15. In its founding affidavit the Applicant set out background facts that forms the basis of its claim. The Applicant is the registered owner of the immovable property situated at 173 Zederberg Street, Arcadia, Pretoria. The property is utilised for the purposes of student accommodation and is predominantly occupied by students. The building in the property has approximately 212 beds, which are available for leasing to the students.
16. During or about January 2025, the Applicant and its agent Midcity was approached by the Respondent's director who expressed interest in renting 107 beds from the Applicant, which beds would be for aviation students that attend at a flight school at the Wonderboom Airport. The Applicant was advised by the Respondent that the flight school is conducted by an entity known as Flyfofa Airways (Pty) Ltd ("Flyfofa"). Mrs Jacobeth Manthokwa Fisha, a wife to one of the Respondent's directors, is the sole director of Flyfofa. The Applicant was advised that Flyfofa had applied for funding from

the National Skills Fund (“NSF”), which will provide funding for the students attending at the aviation school.

17. The lease agreement between the Applicant and the Respondent commenced on February 1, 2025. The monthly rental was initially set at R502 900.00 with subsequent annual increases as set out in the lease agreement. The Respondent was obliged to pay a deposit of R502 000.00. The Respondent was further obliged to pay the monthly rental in advance on the first day of every month.
18. The Applicant averred that the Respondent in breach of its obligations in terms of the lease agreement failed to make payment of the monthly rental and as of August 2025, it was indebted to the Applicant in the sum of R1 508 700.00. According to the Applicant this amount escalated to R2 011 600.00 as of September 12, 2025, due to the Respondent’s failure to effect any payment towards the rental amount.
19. The Respondent failed to make payments even after transmission of a letter of demand, instead, its director informed the Applicant that there was a dispute with the NSF pertaining to the payment for the lodging of the students at the aviation school and the Respondent and Flyfofa were in the process of resolving the dispute. The Applicant was further informed by the Respondent’s director that the NSF makes quarterly payments for the funding of students and that since the end of May 2025, the NSF has not made payment, and it was for this reason that the Respondent had not made payment for any further months.
20. The Applicant was further advised by the Respondent that as a result of the ongoing dispute with the NSF, its students have reduced and that it no longer required the 107 beds and requested that the beds be reduced to 72 beds to accommodate the remaining students. This request was agreed to by the Applicant, and this resulted in reduction of monthly rental from October 2025 being reduced to R338 400.00.

21. Upon being advised by the Applicant that it could not wait any longer for payment, the Respondent's director sent an email to the Applicant proposing payment arrangements, which culminated into the signature of the AOD between the parties.
22. The Respondent was obliged in terms of the AOD to make payment of the first instalment by no later than November 28, 2025. It is averred that the Respondent failed to make payment as agreed in terms of the AOD and notwithstanding demand from the Applicant, no payment came forth. On December 17, 2025, the Applicant sent another follow up to the Respondent for payment and communicated its election to cancel the lease agreement. The Respondent's students vacated the property on December 30, 2025.
23. In opposing the application, the Respondent submitted that there is no dispute that it owes the amount claimed by the Applicant. However, the Respondent argued that the liquidation application launched is an abuse of Court process to collect a debt. It was argued that before making a determination the Court must consider whether the debt is payable or not. The Applicant knew from the onset that they entered into an agreement with an entity that will depend on the NSF for funding.
24. The Respondent referred the Court to the decision of *University of Johannesburg v Auckland Park Theological Seminary and Another*⁴ and argued that the Court is compelled to consider the background of the contract. It was argued that the Respondent is in the business of student accommodation and even if there is no ambiguity, the Court must take the context into account. In *University of Johannesburg v Auckland Park Theological Seminary and Another*⁵ the Court stated that:

"The approach in *Endumeni* "updated" the previous position, which was that context could be resorted to if there was ambiguity or lack of clarity in the text. The Supreme Court of Appeal has explicitly pointed out in cases subsequent

⁴ *University of Johannesburg v Auckland Park Theological Seminary and Another* (CCT 70/20) [2021] ZACC 13; 2021 (8) BCLR 807 (CC) ; 2021 (6) SA 1 (CC) (11 June 2021).

⁵ See note 5 supra at para 66.

to *Endumeni* that context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous. A court interpreting a contract has to, from the onset, consider the contract's factual matrix, its purpose, the circumstances leading up to its conclusion, and the knowledge at the time of those who negotiated and produced the contract."

25. In *Norvatis SA (Pty) Ltd v Maphil Trading (Pty) Ltd*⁶, which was followed in *University of Johannesburg v Auckland Park Theological Seminary and Another* the Court stated that:

"... This court has consistently held, for many decades, that the interpretative process is one of ascertaining the intention of the parties – what they meant to achieve. And in doing that, the court must consider all the circumstances surrounding the contract to determine what their intention was in concluding it. ... A court must examine all the facts – the context – in order to determine what the parties intended. And it must do that whether or not the words of the contract are ambiguous or lack clarity. Words without context mean nothing."

26. The parties entered into a lease agreement for student accommodation. The terms of the lease agreement are clear on how and when rental is payable by the Respondent. The issue of source of funds does not provide a context different from the purpose of the lease agreement. There is no doubt in my mind that the Respondent bound itself to pay monthly rental as it is due and payable in terms of the lease agreement. I do not see how the context purported to be imported by the Respondent will change the intention of the parties and the purpose of the agreement.
27. It was argued that the Applicant has acknowledged that the Respondent would rely on the NSF funding for them to be able to make payment of the rental amount. The condition of payment is based on the fees payable by the NSF and that the contract should be considered holistically. It was argued that

⁶ *Norvatis SA (Pty) Ltd v Maphil Trading (Pty) Ltd* [2015] ZASCA 111; 2016 (1) SA 518 (SCA) at para 27-28.

these were the implied terms of the contract which must be considered by the Court. It was averred that there is a link between the contract and the NSF. The Respondent also argued that this was a suspensive condition for the lease agreement. I do not find substance in the argument for suspensive condition. The lease agreement was operative subsequent to its signature by both parties; there was no suspension of the operation of the contract pending occurrence of an event.

28. The Respondent also argued that there is a dispute of facts as its version is that Respondent was pressured to sign the AOD. It was averred that the Applicant threatened to terminate the lease agreement and evict the students if the Respondent does not sign the AOD. This version was disputed by the Applicant who submitted that the Respondent's director initiated a negotiation meeting by sending an email and making payment proposal. Applicant argued that the payment terms in the AOD were in line with the payment terms proposed by the Respondent's director in the email. All the Applicant did in the meeting was to indicate that should there be no agreement, the contract will be terminated and consequently the students will be evicted. This in my view does not amount to a threat as the Applicant was restating the legal remedies at its disposal. I find the Respondent's version improbable, considering that the negotiation meeting was initiated by its director and that payment terms in the AOD are consistent with the proposal in the email.
29. In consideration of the Respondent's version, what boggles the mind is that the Respondent did nothing about the alleged threat until it filed an answering affidavit. It appears to me that the Respondent saw nothing wrong with the AOD until it was faced with these proceedings as it took no step whatsoever to set aside the AOD, this appears to be an afterthought. The facts of this matter do not in my view demonstrate inducement of the Respondent to sign the AOD. The Respondent's bona fides in disputing the AOD and indebtedness to the Applicant is questionable and is not based on reasonable grounds.

30. In *Barko Financial Services v National Credit Regulator*⁷ when dealing with the meaning of inducement in the context of signing of contracts, the Court stated that:

“...To “induce”, according to the Shorter Oxford English Dictionary (6ed), is to succeed in persuading or leading someone to do something. In presenting the suite of documents to the consumer, it is Barko’s employees who explain the advantages to the consumer of annexure “D5”. That exercise, no doubt, is intended to persuade the consumer that it is in their best interests to sign that agreement. The stress laid in the affidavits on the advantages of the ADEO system from the perspective of the consumer would undoubtedly have been at the forefront of the presentation to prospective customers and informing them that ADEOs were less expensive than other forms of payment would clearly be directed at inducing them to agree to use this system. In view of the benefits to Barko of that system it is inconceivable that it would adopt a neutral stance in regard to the use of an AEDO in preference to some other means of payment. The fact that a consumer may have been free to decline to conclude the agreement, is in my view, thus irrelevant to the question whether or not they were induced to do so”.

31. The Respondent argued that to avoid termination of the lease agreement and eviction of the students, who would find themselves in the streets and considering that some of them were coming from homes far from the Gauteng Province, it had no option but to sign the AOD to protect the interests and welfare of the students. The facts giving rise to the signature of the AOD are in contrast with this submission by the Respondent and I am not persuaded that there was indeed inducement by the Applicant to sign the AOD. I am unable to find that the Respondent was facing a threat which induced it to sign the AOD.
32. The Respondent further argued that intimidation or pressure renders the person pressured not to have consent to enter into an agreement. Reference

⁷ *Barko Financial Services v National Credit Regulator* [2014] 4 All SA 411 SCA at para 16.

was made to Visser and Another v Koetze⁸ where the Court followed the decision of Arend & Another v Astra Furnishers (Pty) Ltd⁹ which set out the elements necessary for setting aside a contract on the ground of duress as follows:

“It is clear that a contract may be vitiated by duress (*metus*), the *raison d’être* of the rule apparently being that intimidation or improper pressure renders the consent of the party subjected to duress no true consent ... Duress may take the form of inflicting physical violence upon the person of a contracting party or inducing in him a fear by means of threats. Where a person seeks to set aside a contract, or resist the enforcement of a contract, on the ground of duress based on fear, the following elements must be established:

- i. The fear must be a reasonable one.
 - ii. It must be caused by the threat of some considerable evil to the person concerned or his family.
 - iii. It must be the threat of an imminent or inevitable evil.
 - iv. The threat or intimidation must be unlawful or *contra bonos mores*.
 - v. The moral pressure used must have caused damage.
33. At the heart of the Respondent’s assertion of duress is that it was intimidated that the students will be evicted should the AOD not be signed. It did not dispute that the negotiations leading up to the signature of the AOD were initiated by its director including the fact that the payment arrangement set out in the AOD is based on the proposal made on its behalf through an email sent to the Applicant. I have already made a finding that this defence of duress is improbable considering the totality of facts in this matter. This in my view fails to meet the test set out in the authorities referred to herein.
34. The Respondent argued that it was a tacit and/or an implied term of the contract that payment due to the Applicant will only be due and payable upon receipt of the funds from NSF. A tacit term is ordinarily understood as a term of

⁸ Visser and Another v Koetze (519/2011) [2012] ZASCA 73 (25 May 2012) at para 13.

⁹ Arend & Another v Astra Furnishers (Pty) Ltd 1974 (1) SA 298 (C).

a contract that is not expressed in the contract, this is inferred from the express terms, the conduct of the parties and from admissible evidence of the circumstances surrounding the conclusion of a contract.¹⁰ The implied term of a contract on the other hand is a term of contract not explicitly agreed to by the parties but it forms part of the contract. The Applicant referred the Court to the decision of *SA Mutual Aid Society v Cape Town Chamber of Commerce*¹¹ where the Court stated that:

“A term is sought to be implied in an agreement for the very reason that the parties failed to agree expressly thereon. Where the parties have expressly agreed upon a term and given expression to that agreement in the written contract in unambiguous terms no reference can be had to surrounding circumstances in order to subvert the meaning to be derived from a consideration of the language of the agreement only.”

35. The Applicant in opposing the Respondent's submission argued that the express terms of the contract should be considered by the Court in determining the matter. It was argued that the lease agreement expressly provides that the Respondent is obliged to make payment of the monthly rental in advance on the first day of each month and that it was not the intention of the parties that rental payment will only be due and payable upon receipt of the funds by the Respondent from NSF. The Applicant argued that it is settled law that a party who signs a contract is bound by its terms. Applicant referred to the decision of *Burger v Central South African Railways*¹² where it was held that:

“It is a sound principle of law that a man, when he signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over his signature. There are, of course, grounds upon which he may repudiate a document to which he has put his hand. But no such grounds have been shown to exist in the present case. Considering the circumstances under which this note was signed. Neither fraud nor misrepresentation have been alleged; nothing was said by any railway official which misled the signatory; the

¹⁰ Hutchison et al, (2011), *The Law of Contract*, Oxford University Press: South Africa.

¹¹ *SA Mutual Aid Society v Cape Town Chamber of Commerce* 1962 (1) SA 598 (A).

¹² *Burger v Central South African Railways* 1903 TS 571.

language of the document was one which the consignor understood: no pressure of any kind was exercised ... For the Court to hold upon these facts that the appellant is legally justified in repudiating his signature would be a decision involving far-reaching consequences, and it would be a decision unsupported by any principle of our law.”

36. It appeared during proceedings that there is no funding agreement between the Respondent and NSF. The funding agreement exists between the NSF and Flyfofa. The letter from NSF, dated July 18, 2025, which dealt with tranche payments was addressed to Flyfofa and not to the Respondents. The Court enquired on existence of a link between the Respondent and NSF and no contractual relationship could be established. There was also no indication of a contractual relationship between Respondent and Flyfofa which would create an obligation for the monies paid by NSF to be made over to the Respondent. The Court could then not find a legal standing for the monies paid by NSF to Flyfofa to be legally due to the Respondent. I am therefore unable to find a legal basis for NSF funds to be a precursor for rental amount to be due and payable by the Respondent.

Respondent's Commercial Solvency

37. In addressing the Respondent's commercial solvency, the applicant submitted that as a result of the Respondent's failure to pay its debts it should be deemed to be commercially insolvent. The Respondent's request to repay the substantial arrears by way of monthly instalments was submitted as a further clear indication that the Respondent is commercially insolvent and unable to pay its debts. The next issue raised was that the Respondent's reliance on the funding from NSF to pay the Applicant is a further indicator of the Respondent's commercial insolvency and it is a clear and unequivocal inability to pay its debts.
38. The Respondent argued that it has no other creditors other than the Applicant and that it owns an immovable property with a financial value of approximately

R6 Million. It was submitted that the foregoing property is not encumbered and can be used to raise funding to pay debts which stand as due. Reliance was also placed on the invoices issued by the Respondent to Flyfofa and not much was said about these invoices. The dates for these invoices range from April 2025 to August 2025. Other than the valuation report, no proof of ownership the immovable property was provided. I am not satisfied that the Respondent is indeed the owner of the immovable property.

39. In its reply the Applicant submitted that there is no explanation as to why the Respondent's claim against Flyfofa has never been paid. It was submitted that Flyfofa is not in a position to pay the debt and that it depends on external funding to pay its debt.
40. Considering the facts of this matter in totality I am satisfied that the Respondent is unable to pay its debts as contemplated in section 345(1)(c)¹³ of the Companies Act.

Legal Framework

41. Section 344 of the Companies Act¹⁴ sets out the circumstances in which a company may be wound-up by the Court. The Applicant relied on section 344(f) of the Companies Act as the basis for its application. Section 344(f) of the Companies Act¹⁵ provides that:

"A company may be wound-up by the Court if-

...

(f) the company is unable to pay its debts as described in section 345..."

42. Section 345 of the Companies Act¹⁶ provides that:

¹³ Section 345(1)(c) of the Companies Act No. 61 of 1973.

¹⁴ Section 344 of the Companies Act No. 61 of 1973.

¹⁵ Section 344(f) of the Companies Act No. 61 of 1973.

¹⁶ Section 345 of the Companies Act No. 61 of 1973.

“(1) A company or body corporate shall be deemed to be unable to pay its debts if –

(a) a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than one hundred then due-

(i) has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; or

(ii) in the case of any body corporate not incorporated under this Act, has served such demand by leaving it at its main office or delivering it to the secretary or some director, manager or principal officer of such body corporate or in such other manner as the Court may direct, and the company or body corporate has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) any process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned by the sheriff or the messenger with an endorsement that he has not found sufficient disposable property found did not upon sale satisfy such process; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) In determining for the purpose of subsection (1) whether the company is unable to pay its debts, the Court shall also take into account the contingent and prospective liabilities of the company”.

43. The Applicant referred to the decision of *ABSA Bank Limited v Rheboksloof (Pty) Ltd & Others*¹⁷ where the Court stated that:

“The concept of commercial insolvency as a ground for winding up is eminently practical and commercially sensible. The primary question a Court

¹⁷ *ABSA Bank Limited v Rheboksloof (Pty) Ltd & Others* 1993 (4) SA 436 (C) at page 440.

is called upon to answer in deciding whether or not a company carrying on business should be wound-up as commercially insolvent is whether or not it has liquid assets or readily realisable assets available to meet its liabilities as they fall due to be met in the ordinary course of business and thereafter to be in a position to carry on normal trading – in other words, can the company meet current demands on it and remain “buoyant”. It matters not that the company’s assets, fairly valued, far exceed its liabilities: once the Court finds that it cannot do this, it follows that it is entitled to, and should hold that the company is unable to pay its debts within the meaning of s 345(1)(c) as read with s 344(f) of the Companies Act 61 of 1973 and is liable to be wound up.”

44. Section 347 of the Companies Act¹⁸ sets out the powers of the Court in hearing a winding-up application and provides that:

“The Court may grant or dismiss any application under section 346, or adjourn the hearing thereof, conditionally, or make any interim order or any other order it may deem just, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets.

...”.

45. The Applicant indicated that it is only seeking an order for provisional winding-up of the Respondent. This means that the Court will consider the relief of provisional winding-up with a *rule nisi* should it reach a favourable decision to the Applicant. In essence, the doors will not be completely shut for the Respondent as it will have a second bite of the cherry by being afforded opportunity to ventilate issues on the return date. Considering the Applicant’s submission that it only seeks an order for provisional winding-up of the Respondent, the issue that was raised regarding dispute of facts is of no

¹⁸ Section 347 of the Companies Act

moment. The Respondent relied on the decision of NDPP v Zuma¹⁹ where the Court stated that:

“Motion proceedings, unless concerned with interim relief, are all about the resolution of legal issues based on common cause facts. Unless the circumstances are special, they cannot be used to resolve factual issues because they are not designed to determine probabilities. It is well established under the Plascon-Evans rule that where in motion proceedings disputes of fact arise on the affidavits, a final order can be granted only if the facts averred in the applicant’s (Mr Zuma’s) affidavits, which have been admitted by the respondent (the NDPP), together with the facts alleged by the latter, justify such order. It may be different if the respondent’s version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far fetched or so clearly untenable that the court is justified in rejecting them merely on papers.”

46. The facts contained in both parties’ affidavits do not present a difficulty for this Court to make a determination on papers. There is no dispute that the Respondent owes monthly rentals to the Applicant. What has been raised by the Respondent is that the debt is not due and payable and that the AOD was signed under duress. There is nothing more to be elucidated by referral of these proceedings to oral evidence. I have made a finding on these issues based on papers filed during the proceedings.

Just and equitable

47. The Court has to consider whether it will be just and equitable to place the Respondent under winding-up. The Applicant submitted that it is just and equitable for the Respondent to be wound-up as envisaged in section 344(h) of the Companies Act.

¹⁹ NDPP v Zuma 2009 (2) SA 277 (SCA) at para 26.

48. The Respondent is indebted to the Applicant, and I have found that the defence proffered by the Respondent that the debt is not due and payable is *not bona fide*. The Respondent made a proposal for payment of the debt through an email sent to the Applicant by its director. An AOD was signed between the parties incorporating the payment arrangement proposed in the email. I have already found the defence of duress for signing the AOD improbable. I have already made a finding on the solvency. It is therefore just and equitable for the Respondent to be placed under winding-up.
49. I am satisfied that the formal and procedural requirements for placing the Respondent on provisional liquidation or winding-up have been met.

Costs

50. The general rule is that the successful party is entitled to a costs order and that this should not be departed from unless there are good grounds for such a deviation. The Court still has a discretion on making an appropriate costs order, in this regard, costs shall be costs in the winding-up.

Order

51. In the circumstances, I make the following order:
1. Respondent be and is hereby placed under provisional winding-up.
 2. The Respondent and any other interested party is called upon to show cause why this Court should not order the final winding-up of the Respondent on November 2, 2026 at 10:00 or so soon thereafter as the matter may be heard.
 3. A copy of this order shall be forthwith served on the Respondent at its registered address and this order shall be published in the Government Gazette and in the Citizen Newspaper.

4. Costs of this application shall be costs in the winding-up of the Respondent.

M NTANGA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of Hearing: August 21, 2026

Date of Judgement: September 1, 2026

Appearances:

Applicant's Counsel: Adv R de Leeuw

Instructed by : Roodt & Co Attorneys Incorporated

Respondent's Counsel: Adv Seme

Instructed by : BR Rangata Attorneys