



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MIDDELBURG**

CASE NO: 1300/2025

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED **YES/NO**

SIGNATURE

15/09/2026

DATE

In the matter between:

FEDERALE STENE (PTY) LTD

APPLICANT

And

BASCRETE READY MIX (PTY) LTD

RESPONDENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for hand down is deemed to be 15 September 2026.

JUDGMENT

Phahlamohlaka J

Introduction

[1] This is an application for a final order for the winding-up of the respondent, alternatively the provisional winding up of the respondent, on the basis that the respondent is unable to pay its debts.

[2] The respondent opposes the application, disputing both the existence of the debt and the due date of the alleged debt.

Background

[3] The applicant and the respondent are both private companies involved in construction and mining projects. They are part of larger corporate groups (the Lutzkie Group and the Basonani Group, respectively).

[4] It is common cause between the parties that the applicant delivered topsoil to the respondent for use in a project that was later cancelled.

[5] The applicant alleges a verbal agreement for the sale of topsoil on account, with payment due 30 days after invoice. The respondent disputes this, claiming a verbal consignment stock arrangement where payment would only become due as and when the topsoil was sold to third parties, with payment within 60 days of each sale.

[6] The respondent contended that this arrangement was confirmed in correspondence and by conduct. The respondent claims to have made payments in accordance with it.

[7] In May 2024, the applicant demanded payment of R3,297,366.68, later increasing it to R3,928,794.40, for topsoil delivered and transport costs. The respondent replied, reaffirming the consignment arrangement and denying that the full amount was due, offering to return unsold topsoil if the applicant

was dissatisfied. Sporadic payments were made, the respondent contending this was in line with sales to third parties.

[8] The applicant issued a statutory demand under section 345(1) of the Companies Act, 61 of 1973, alleging the respondent's inability to pay its debts. The respondent continued to dispute the debt and contending that no amount was presently due under the consignment arrangement.

Evaluation

[9] The respondent raises non-compliance with section 346(4A), specifically regarding service on employees and trade unions, and the adequacy of the service affidavit. The respondent relies on the judgment of the Northwest Division of *Barnard N.O and Another v Dikopane Project Management CC*¹ emphasizing strict compliance and the need for affidavits from the actual persons effecting service.

[10] The court has a discretion to condone non-compliance in exceptional circumstances, especially when granting a provisional winding-up order.² However, in these proceedings it is my considered view that the respondent's challenge is not frivolous, and it raises a real procedural issue.

[11] The applicant alleges a verbal agreement for the sale of topsoil on account, with payment due 30 days after invoice. The applicant relies on invoices, statements, and a demand for payment, asserting that the respondent is in arrears and that the arrangement was a standard sale with deferred payment.

[12] The respondent disputes this, claiming a verbal consignment stock arrangement. According to the respondent payment would only become due as and when the topsoil was sold to third parties, with payment within 60 days of each sale. This is supported by contemporaneous correspondence and conduct, including emails and letters confirming the arrangement and the applicant's acknowledgment of the payment mechanism.

[13] In my view, the respondent's version is detailed, consistent, and supported by documentary evidence. The applicant's attempt to characterize the arrangement as a mere indulgence is not clearly supported by the facts. The dispute is not a mere afterthought but has been consistently maintained.

¹ [2024] ZANWHC 87

² *EB Steam Company (Pty) Ltd v Eskom Holdings Soc Ltd* (979/2012) [2013] ZASCA 167 at para 25

[14] The respondent denies insolvency, citing a net profit of R6,596,521 and fixed assets of R940,000 for 2024/2025. The respondent argues that net profits and fixed assets demonstrate solvency and that no debt is presently due.

[15] The applicant contends that net profits and fixed assets alone do not demonstrate solvency, and that the respondent has not disclosed its current liabilities or provided objective evidence of solvency.

[16] In my view, the respondent's evidence of solvency is sufficient to raise a real dispute, especially given the nature of the underlying debt and the ongoing business operations.

[17] It is trite law, as established in *Badenhorst v Northern Construction Enterprises (Pty) Ltd*³, that winding-up proceedings are not to be used as a means to enforce payment of a debt which is *bona fide* disputed on reasonable grounds. Where such a dispute exists, the application must be dismissed. This principle is commonly referred to as the "*Badenhorst rule*".

[18] The *Badenhorst rule* was reaffirmed by the Supreme Court of Appeal in *Exploitatie-en Beleggingsmaatschappij Argonauten II BV v Honig*⁴ where the court stated the following:

"This is a convenient stage to raise the issue of the respondent's alleged indebtedness to the appellants. Sequestration proceedings are designed to bring about a *concursum creditorem* to ensure an equal distribution between creditors and are inappropriate to resolve a dispute as to the existence or otherwise of a debt. Consequently, where there is a genuine and *bona fide* dispute as to whether a respondent in sequestration proceedings is indebted to the applicant (as in this case), the court should as a general rule dismiss the application. This is the so-called '*Badenhorst rule*'. Named after the decision in *Badenhorst v*

³ 1956 (2) SA 346 (T)

⁴ [2012] 2 All SA 22 (SCA) at para [11]

Northern Construction Enterprise Ltd, this principle was reaffirmed by the court in *Khalil v Decotex (Pty) Ltd & Another*⁵ and applies equally in both winding up and sequestration proceedings. It is a rule of long standing and good sense and it is not likely to be departed from in circumstances such as the present. On this basis alone, the appellants may well face grave difficulty in obtaining a sequestration order against the respondent, as their counsel correctly conceded.”

[19] The respondent has provided a detailed and consistent version that the parties concluded a verbal consignment stock agreement, in terms of which payment would only become due as and when the topsoil was sold to third parties.

[20] Further, the respondent has made payments in accordance with this arrangement and has invited the applicant to collect the topsoil if dissatisfied with the terms.

[21] In my view, the dispute as to the existence and due date of the debt is genuine, long-standing, and not raised as an afterthought.

[22] In terms of the *Plascon Evans*⁶ rule, in motion proceedings the court generally accepts the version of the respondent when a genuine dispute of facts arises. The court will only reject the respondent’s version if it is farfetched, clearly untenable, or obviously false on the papers. I cannot find the respondent’s version in this case to be either farfetched, clearly untenable or false.

[23] In my view, the winding-up application is being used as a debt collection tool in circumstances where the debt is genuinely disputed.

⁵ 1988(1) SA 943 (A) at 980B

⁶ *Plascon-Evans Paints (TVL)Ltd v Van Riebeck Paints (Pty) Ltd* [1984] ZASCA 51; [1984] 2 ALL SA 366(A)

Conclusion

[24] In light of the above, and applying the Badenhorst rule, the application for the winding-up of the respondent falls to be dismissed. The existence of a *bona fide* dispute on reasonable grounds as to the debt, and the fact that the debt has not become due, militates against the granting of a winding-up order.

Order

[25] In the result I make the following order:

25.1. The application for the winding-up of the respondent is dismissed.

25.2. The applicant is ordered to pay the costs of this application, including costs of counsel to be taxed on scale B.


K F PHAHLAMOHLAKA
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MIDDELBURG (LOCAL SEAT)

Appearances

For the Applicant: Adv J Smit
Instructed by: Gothe Attorneys
Email: konrad@gotheattorneys.co.za

Respondent: Adv J Prinsloo
Instructed by: Kriek Wassenaar & Venter Inc.
Email: ljam@kriekprok.co.za

Date judgment reserved: 07 May 2026