



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

CASE NO: 2025-074701

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

10/9/2026
DATE

[REDACTED]
SIGNATURE

In the matter between:

GARY DONOVAN WALLACE N.O.

First Plaintiff

MOTIMELE MABATHO SHIRLEY N.O.

Second Plaintiff

and

RENEWONLINE (PTY) LTD

Defendant

JUDGMENT

Summary: Application for summary judgment - section 341(2) of the Companies Act 61 of 1973 - whether payments made after the commencement of the winding-up constituted dispositions of the company's property - true donee - agent or conduit defence - validation discretion confined - effect of *Blue Label Distribution (Pty) Ltd v St Clair Cooper N.O. and Others* [2026] ZASCA 61 - summary judgment granted in (Claim B), with leave to defend (Claim A).

DE BEER AJ

Introduction

- [1] This is an opposed application for summary judgment instituted by the plaintiffs, the joint liquidators of Post Desk (Pty) Ltd (in liquidation), against the defendant, RenewOnline (Pty) Ltd, for repayment of two sums constituting void dispositions in terms of section 341(2) of the Companies Act, 61 of 1973 ("the Act"). In terms of Claim A, the plaintiffs seek repayment in the amount of R232 355.90, and Claim B in the amount of R127 235.60, together with interest and costs.
- [2] The matter was heard in the opposed motion Court and allocated for Monday, 27 July 2026. Counsel for the plaintiffs referred the Court to a recent decision of the Supreme Court of Appeal ("the SCA") in the *Blue Label* matter.¹ The heads of argument then before me referred only to the judgment of the court *a quo* in that matter.² During argument, mention was also made of an agreement concluded between the defendant and the company in liquidation.
- [3] At my request, the agreement was uploaded to ascertain whether it should be considered as part of the judgment. The court heard full argument. I issued a directive providing the parties an opportunity to supplement their then-existing heads of argument in light of the SCA judgment referred to above, and, if relevant, the agreement so produced. The directive indicated that, if the parties so choose, they should file such supplementary heads on or before 17 August 2026. Judgment was reserved.
- [4] [4] Both parties availed themselves of that opportunity and filed supplementary heads of argument. I am indebted to both legal representatives for their assistance to the Court.
- [5] The plaintiffs' case, as pleaded and as elaborated in the affidavit filed in support of the application, is that Post Desk made the payments in issue to RenewOnline after the commencement of its winding-up, as determined retrospectively in terms of section 348 of the Act, and that such payments are accordingly void unless the Court otherwise orders.

¹ *Blue Label Distribution (Pty) Ltd v St Clair Cooper N.O. and Others* (1105/2024) [2026] ZASCA 61 (29 April 2026) ("*Blue Label*").

² *Cooper N.O. and Others v Blue Label Distribution (Pty) Ltd* 2024 JDR 2878 (GJ).

[6] [6] RenewOnline resisted summary judgment on two grounds:

[6.1.] It contended that the payments were never dispositions of Post Desk's own property, as Post Desk acted merely as its sub-agent, collecting statutory licence fees, delivery fees and administrative fees from registered vehicle owners for onward transmission to RenewOnline, which in turn paid the relevant licensing authorities and couriers.

[6.2.] In the alternative, it contended that even if the payments constitute dispositions, the Court should exercise its discretion under section 341(2), read with section 340(1), to validate them. In its supplementary heads, RenewOnline no longer advances any defence to Claim B. I will address that concession hereunder.

The factual matrix/common cause facts

[7] The following facts are either common cause or not genuinely disputed on the papers. Post Desk was placed under provisional winding-up on 25 March 2024 and finally wound up on 28 March 2025. In terms of section 348 of the Act, the winding-up is deemed to have commenced on 27 November 2023, the date on which the application for Post Desk's winding-up was presented to this Court under case number 2023-123698. The plaintiffs were appointed as joint provisional liquidators on 4 June 2024, with their powers extended in terms of section 386(5) of the Act on 21 June 2024 and took operational control of Post Desk's two retail outlets at Sinoville and Zambezi on 24 June 2024. Those outlets were closed on 30 July 2024.

[8] [8] Claim A comprises fifteen payments totalling R232 355.90, made from Post Desk's Standard Bank current account (no. 203061969) to RenewOnline between 27 November 2023 and 24 March 2024, that is, after the deemed commencement of the winding-up but before the grant of the provisional order.

[9] Claim B comprises thirteen payments totalling R127 235.60 made from the same account between 25 March 2024 and 24 June 2024 - that is, after the grant of the provisional order but before the liquidators assumed control. It is recorded in the affidavit in support of the application that the final payment, made on 24 June 2024, was not made by the liquidators or on their

instruction.³

- [10] The Standard Bank statements annexed to the founding affidavit show that the account from which the payments were made was an ordinary business current account in Post Desk's name, into which customer receipts, salary payments, supplier payments, bank charges, insurance premiums and the payments to RenewOnline were all processed indiscriminately. There is no evidence that Post Desk maintained any separate or ring-fenced account for customer receipts destined for RenewOnline.
- [11] RenewOnline's defence, as pleaded in its amended plea and elaborated in the affidavit resisting summary judgment, is that it operates as an appointed agent of various local and provincial licensing authorities, and that Post Desk acted as its sub-agent.⁴ On this version, registered vehicle owners paid Post Desk, upfront, a statutory licensing fee, a delivery fee and an administrative fee; Post Desk deposited those receipts with RenewOnline; and RenewOnline, in turn, applied for the licences, paid the licensing authorities, arranged courier delivery, and retained an administrative fee for its trouble. RenewOnline received and retained an administrative fee in respect of the transactions concluded through Post Desk.⁵
- [12] RenewOnline received each of the payments comprising Claim A and Claim B, and that each was made after the deemed commencement of the winding-up.⁶ The dispute concerns the legal character of those payments.

The Agent Agreement

- [13] At my request, the written Agent Agreement concluded between Post Desk and RenewOnline ("the agreement") was uploaded to CaseLines and forms part of the record.⁷ It is dated 11 August 2023, and was concluded between Post Desk, described as "the Agent", represented by Ms Anna-Marie Nel and Mr Johan Nel, and RenewOnline, described as "the Principal", represented by

³ Para 26 of the affidavit in support of the request for summary judgment, CaseLines p 027-8.

⁴ Paras 2.1 to 2.9 of the affidavit resisting summary judgment, CaseLines pp 011-3 to 011-4, read with para 6.3 of the amended plea.

⁵ Paras 2.8 and 3.6 of the affidavit resisting summary judgment, CaseLines pp 011-4 and 011-5.

⁶ Para 8.1 of the affidavit resisting summary judgment, CaseLines p 011-8, read with para 5.2 of the amended plea.

⁷ CaseLines section 011B, pocket 1, pp 011B-1 to 011B-6.

Mr Engels.

- [14] [14] Its material terms are, inter alia, as follows: RenewOnline is described as a motor vehicle licence renewal company that provides licence renewal services on behalf of customers (clause 1.1). It appoints agents to take orders and collect the monies payable by customers for the issue of licences (clause 1.5). The agent is responsible for collecting the funds due from its client before submitting a transaction (clause 2.4), and “is responsible for the payment of the debt incurred by vehicle licence renewals” (clause 4.4). RenewOnline provides the agent with a statement or invoice once a renewal has been successfully processed (clause 4.5); the agent must pay the amount shown on that invoice within 48 hours (clause 4.6); accounts must be settled in full before licence renewals are released and delivered (clause 4.8); and RenewOnline reserves the right to block the agent’s account if the agent fails to pay, and to inform the customer where a licence disc is not processed because of the agent’s non-payment (clauses 4.9 and 4.11). The agent is entitled to a commission of R125.00 for every licence issued (clause 3.3), and is liable to pay R110.00 to RenewOnline over and above the licence fee and the agent’s commission (clause 3.4). Where a renewal has been paid for, no refund may be made, and it remains “at the sole discretion of the Agent” whether to refund a customer (clause 2.12). The provision for a deposit to create credit on account (clause 3.5) is marked “N/A”.
- [15] The agreement contains no provision requiring Post Desk to hold customer monies in a separate or ring-fenced account pending remittance to RenewOnline, nor does it indicate that such funds were intended to remain the property of the customers, or that of RenewOnline, pending remittance. Clauses 1.2 and 1.3 record that RenewOnline *“is in no way affiliated to any provincial or local government department and does not in any way act as an agent for any such department”*, and that it *“does not receive any payment from any provincial or local government department”*. The contention that RenewOnline *“owns licenses and agreements enabling it to operate as agent for various local and provincial government departments”* and *“acts as an appointed agent for and on behalf of these local and provincial government*

*licensing departments*⁸ cannot be confirmed under the agreement.

- [16] The plaintiffs refer to that discrepancy in their supplementary heads.⁹ They submit that the terms of the agreement establish that RenewOnline was never authorised to act as the licensing authority's agent, that the only contractual nexus was between Post Desk and RenewOnline, that the relationship so created was one of debtor and creditor, and that the agency or conduit defence is thereby dispelled.
- [17] Whichever way that discrepancy may ultimately be resolved, the Agent Agreement does not take the matter any further than the common cause facts already set out above. On the question whether the payments were dispositions of Post Desk's property, the conclusion I reach below rests on the undisputed character of the account out of which the payments were made and on the benefit which RenewOnline derived from receiving them; neither of those matters depends on the agreement. The agreement is silent as to everything on which the exercise of that discretion turns. The agreement confirms the commission-based character of the arrangement between the parties, and it is not consistent with the existence of any ring-fencing. Still, it does not alter the analysis that follows. I have, nonetheless, had regard to its contents as part of the reasoning in this judgment, as I indicated at the hearing that I would.

The judgment of the Supreme Court of Appeal in Blue Label

- [18] In *Blue Label*, the SCA dismissed an appeal against the judgment of the Gauteng Division, Johannesburg, on which the plaintiffs had relied in their original heads of argument. The facts were materially similar to those in the present matter: the liquidators of Cape Basic Products (Pty) Ltd ("CBP") sought to recover eight payments made by CBP to Blue Label, its distributor, after CBP's provisional liquidation. Blue Label resisted repayment on the basis that it was a mere collecting agent or conduit for third-party suppliers, and that CBP's estate had in any event not been diminished by the payments.

⁸ Paras 2.1 and 2.3 of the affidavit resisting summary judgment, CaseLines p 011-3; and see para 6.3.2 of the amended plea, CaseLines p 031-9.

⁹ Paras 31 to 38 of the plaintiffs' supplementary heads of argument.

[19] The propositions confirmed by the SCA bear directly on this application. They are the following:

[19.1.] A disposition made after the commencement of the winding-up is void *ex lege ab initio* nullity is the default position and validation the exception; and the recipient acquires no right to retain the funds but incurs an immediate restitutionary obligation upon receipt, irrespective of any counter-performance or subsequent events.¹⁰

[19.2.] Once a provisional winding-up order has been granted, all the property of the company is, in terms of section 361(1) of the Act, in the custody and under the control of the Master until a provisional liquidator has been appointed and assumed office; the company is incapable of giving effect to any prior contractual arrangement, such arrangements having been suspended by the order; and dispositions made after the grant of the provisional order cannot be validated by a court.¹¹ The validation discretion under the proviso to section 341(2) is therefore available only in respect of payments made after presentation of the winding-up application but before the grant of the provisional order - the so-called twilight zone - and it is exercised primarily by reference to the interests of the *concursum creditorum*.

[19.3.] “Disposition” bears the wide meaning assigned to it by section 2 of the Insolvency Act and it is “of little, if any, significance to what extent the payments diminished CBP’s asset base, or to what extent its diminished asset base was replenished”.¹²

[19.4.] The enquiry into who the true donee is turns on the contractual nexus between the parties, whether there was privity between the donor and any third-party supplier, and whether the recipient in fact benefited from the payment as opposed to acting as a genuine conduit.¹³

¹⁰ *Blue Label* supra at paras 19 to 22; and see *Eravin Construction CC v Bekker N.O. and Others* [2016] ZASCA 30; 2016 (6) SA 589 (SCA) at para 21.

¹¹ *Blue Label* supra at paras 4 and 30.

¹² *Blue Label* supra at paras 16 to 18 and 23.

¹³ *Blue Label* supra at paras 25 to 27.

[19.5.] Reliance on *Van Wyk Van Heerden Attorneys v Gore N.O. and Another* 2023 (1) SA 80 (SCA) is misplaced in this context; section 26(1)(b) of the Insolvency Act cannot be equated to section 341(2) of the Act, and a commercial account does not accord with an attorney's trust account.¹⁴

The supplementary submissions

- [20] The plaintiffs submit that *Blue Label* is dispositive. Claim B is unassailable, since the payments were made after the provisional order and can never be validated. Claim A, although falling within the twilight zone, remains void by default, and RenewOnline has neither brought a counter-application for validation nor disclosed facts which would permit the discretion to be exercised in its favour. The agreement destroys the conduit defence.¹⁵
- [21] The defendant addressed the SCA judgment candidly. It accepts that, in the light of paragraphs 3 to 5 and 30 of *Blue Label*, this Court has no discretion to validate the Claim B payments, and it does not persist with any defence to Claim B, without prejudice to its right to prove a concurrent claim for that amount in Post Desk's insolvent estate.¹⁶ In respect of Claim A, it submits that the payments fall squarely within the twilight zone and so remain capable of validation; that whether validation would serve the *concursum creditorum* is an inherently factual enquiry; that whether the funds were ring-fenced, and whether Post Desk exercised any right of disposal over them for its own account, are likewise disputed questions of fact; and that *Blue Label* itself, having been decided only upon a full evidentiary record developed on motion, demonstrates that these are not enquiries suited to summary determination.¹⁷
- [22] I accept the test which the defendant contends.¹⁸ Summary judgment is no longer the extraordinary remedy once described to be, but it remains a remedy to be granted only where the plaintiff's claim is unanswerable, and the defendant has failed to disclose a bona fide defence with reasonable

¹⁴ *Blue Label* supra at paras 28 and 29.

¹⁵ Paras 10 to 15 and 33 to 41 of the plaintiffs' supplementary heads of argument.

¹⁶ Paras 6 to 8 and 21.1 of the defendant's supplementary heads of argument.

¹⁷ Paras 9 to 20 of the defendant's supplementary heads of argument.

¹⁸ *Maharaj v Barclays National Bank Ltd* 1976 (1) SA 418 (A) at 426A-E; *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) at para 32.

prospects of success. The question is not whether the defendant will succeed at trial. Applying that test, I am satisfied that the two enquiries which arise in this matter must be answered differently: the first is capable of resolution on the common cause facts; the second is not.

Whether the payments constituted dispositions of Post Desk's property

- [23] Section 341(2) of the Act renders void “every disposition of its property” made by a company being wound up and unable to pay its debts, after the commencement of the winding-up, “unless the Court otherwise orders”. “Disposition” bears the wide meaning assigned to it in section 2 of the Insolvency Act, namely any transfer or abandonment of rights to property, including a payment.
- [24] This Court recently had occasion to consider the argument advanced by RenewOnline. In *Blue Label*, the SCA dismissed an appeal against a finding that payments made by an insolvent retailer to its distributor, out of funds deposited by the retailer’s customers, constituted void dispositions of the retailer’s own property, notwithstanding the distributor’s contention that it acted merely as an intermediary or conduit for onward payment to suppliers.¹⁹
- [25] The enquiry is who the true disponent is, and that depends on whether the funds, once received, formed part of the paying company’s own property - which in turn depends on whether they were ring-fenced for a specific purpose, or were instead deposited into a general account and commingled with the company’s other funds. Where funds are paid into a general account without being ring-fenced, they become the property of the recipient company by virtue of the principle of *commixtio*, and any subsequent payment out of that account is a disposition of that company’s own property, regardless of the commercial arrangement which may have motivated the payment.²⁰
- [26] A party who receives such a disposition cannot escape liability by characterising itself as a mere conduit or intermediary unless it derived no benefit whatsoever from the payment. Where the recipient earns a fee or

¹⁹ *Blue Label* supra at paras 13 to 24.

²⁰ *Cooper* supra at paras 39 to 42; and see *De Villiers v Kaplan* 1960 (4) SA 476 (C) at 478-479 and *Herrigel N.O. v Bon Roads Construction (Pty) Ltd* 1980 (4) SA 669 (SWA) at 674.

commission which depends upon its having received and applied the funds, it has benefited from the payment and is the disponent, even if it ultimately pays most of the money over to a third party.²¹

[27] Applying that reasoning to the present facts, RenewOnline's conduit defence cannot succeed. Post Desk received the relevant customer monies into its ordinary business current account, where they were commingled with its general trading funds, salaries, supplier payments and bank charges. Based on the authority of *Blue Label*, those funds became Post Desk's own property upon receipt, and the subsequent payments to RenewOnline were, in each instance, dispositions of Post Desk's own property within the meaning of section 341(2).

[28] The defendant's answer, developed in its supplementary heads, is that whether the receiving accounts were undifferentiated general trading accounts is disputed, upon which no evidence has been placed before the Court, and which requires discovery of Post Desk's banking records.²² In this regard, the following:

[28.1.] The contention is not supported by any allegation of fact on affidavit. Uniform Rule 32(3)(b) requires a defendant to satisfy the Court by affidavit disclosing fully the nature and grounds of the defence and the material facts relied upon. Its affidavit does not allege that Post Desk held customer receipts in a separate or dedicated account, or that any ring-fencing arrangement existed. It asserts a legal conclusion - that the money "*belonged to*" the customers - without disclosing the facts from which that conclusion is said to follow. A bare assertion of a legal characterisation is not a disclosure of material facts.

[28.2.] Evidence has in fact been placed before the Court. The bank statements annexed to the affidavit in support of the application, in respect of the account from which the payments in issue were made, show an ordinary business current account through which Post Desk's trading activity was conducted.²³ The defendant admits receipt of the

²¹ *Cooper* supra at paras 42 and 44; *Blue Label* supra at paras 25 to 27 and 31.

²² Paras 14 to 17 of the defendant's supplementary heads of argument.

²³ Annexure "E" to the affidavit in support of the request for summary judgment.

payments and that they emanated from that account. No discovery on this aspect is necessitated, which is not already before Court.

[28.3.] The agreement contains no ring-fencing provision of any kind, and records that Post Desk was itself “*responsible for the payment of the debt incurred by vehicle licence renewals*”, was invoiced by RenewOnline for those renewals, was obliged to settle those invoices within 48 hours, failing which its account could be blocked, and enjoyed sole discretion whether or not to refund a customer.²⁴ Those are the incidents of a debtor-creditor relationship, not of a trust or of an agency in which the funds remain the property of another. The agreement does not take the matter further; but it certainly does not support the ring-fencing contention advanced.

[28.4.] The SCA held in *Blue Label* that it is of little significance to what extent the payments diminished the paying company’s asset base, or to what extent that base was replenished.²⁵ What cannot be disputed is that the payments were made by Post Desk, out of Post Desk’s account after the institution of liquidation proceedings and while it was being wound up.

[29] RenewOnline cannot contend that it was a mere conduit. It is common cause that it received an administrative fee in respect of every transaction concluded through Post Desk, and the Agent Agreement fixes that fee at R110.00 per licence. On its own version, it exercised sole control over the funds once received – applying them, at its own election, to licensing authorities and couriers in the ordinary course of its business – and derived a direct commercial benefit from having done so. The recipient who says it benefited only from its commission advances an argument in sophistry: without the payment, there would be no commission and no benefit.²⁶ That is indistinguishable from the legal position confirmed in *Blue Label*, and the defence must fail for the same reasons.

[30] The suggestion, in paragraph 4.2 of the opposing affidavit, that the plaintiffs

²⁴ Clauses 2.12, 4.4, 4.5, 4.6, 4.8 and 4.9 of the Agent Agreement, CaseLines pp 011B-3 to 011B-5.

²⁵ *Blue Label* supra at para 23.

²⁶ *Cooper* supra at para 44.

accepted at a creditors' meeting that the funds were in fact paid over to the authorities and couriers does not assist the defendant.²⁷ Even taken at its highest, and assuming such an acceptance to have been made, what RenewOnline did with the funds after it received them is, on the authority of *Blue Label*, irrelevant to whether their receipt constituted a disposition of Post Desk's property.

- [31] It follows that the payments comprising both Claim A and Claim B constitute dispositions of Post Desk's property, made after the commencement of its winding-up, and are void unless validated by this Court.

Claim B: payments made after the provisional winding-up order

- [32] The payments comprising Claim B were made between 25 March 2024, the date of the provisional winding-up order, and 24 June 2024, the date on which the liquidators assumed operational control. It is now settled that the proviso to section 341(2), which confers on a court a discretion to validate an otherwise void disposition, is available only in respect of dispositions made in the twilight period between the presentation of the winding-up application and the grant of a provisional order. Once a provisional order has been granted, all the property of the company is, by operation of section 361(1) of the Act, deemed to be in the custody and under the control of the Master, and dispositions made thereafter cannot be validated by a court.²⁸

- [33] Having reconsidered its position in light of *Blue Label*, the defendant, in its supplementary heads, correctly accepts that this Court has no discretion to validate the Claim B payments. It does not persist with any defence to Claim B and does not oppose summary judgment in that respect. The concession is made without prejudice to its right to prove a concurrent claim for that amount in Post Desk's insolvent estate. That concession was proper. The defendant's primary defence that the payments were not dispositions of Post Desk's property would have failed in respect of Claim B.

- [34] The defendant's *bona fides*, the value it says it gave, and the absence of any

²⁷ Para 4.2 of the affidavit resisting summary judgment, CaseLines p 011-6.

²⁸ *Pride Milling Company (Pty) Ltd v Bekker N.O. and Another* [2021] ZASCA 127; 2022 (2) SA 410 (SCA) at para 18; *Blue Label* supra at paras 4 and 5.

intention to prefer a creditor are all, on the authorities, irrelevant to a disposition made after the grant of a provisional order. The general body of creditors of Post Desk suffered the loss of that amount from the insolvent estate the moment it was disposed of. RenewOnline received full payment, while Post Desk's other creditors must now prove their claims and share in a dividend under section 341(2). RenewOnline is entitled *ex lege* to prove a claim in the estate in the ordinary course.

[35] Summary judgment must accordingly be granted in respect of Claim B.

Claim A: payments made between institution and provisional winding-up

[36] The position in respect of Claim A is different. Those payments were made between 27 November 2023, the deemed date of commencement of the winding-up, and 24 March 2024, the day before the grant of the provisional order - that is, within the so-called twilight period recognised in *Pride Milling* and confirmed in *Blue Label*.²⁹ In respect of dispositions made during that period, a court retains a discretion under section 341(2) to “otherwise order”, that is, to validate the disposition.

[37] That discretion should not be lightly exercised. It falls to be exercised having regard to the underlying purpose of section 341(2), which is to protect the interests of the *concursum creditorum* as a whole, and a court must guard against a result that would undermine that purpose by, in effect, preferring one creditor over the general body.³⁰ Relevant considerations include the bona fides of the recipient, whether value was given, whether the disposition was made in the ordinary course of business, and whether validating the disposition would benefit or prejudice the general body of creditors. The SCA noted in *Blue Label* that factors such as *bona fides*, honest intentions and prejudice to the defendant have largely been subsumed by the question whether the disposition would benefit the collective interest of the *concursum creditorum*.³¹ They are not, however, irrelevant.

[38] RenewOnline has pleaded, in its amended plea and in the affidavit resisting

²⁹ *Pride Milling* supra at paras 18 to 20; *Blue Label* supra at para 4.

³⁰ *Rosseau en Andere v Malan en 'n Ander* 1989 (2) SA 451 (C) at 459; *Pride Milling* supra at paras 25 and 31.

³¹ *Blue Label* supra at para 4 and fn 5 thereto.

summary judgment, that the Claim A payments were made for full value, in the ordinary course of an established arrangement, without any knowledge of the pending winding-up application, and without any intention to prefer itself over other creditors.³² In its supplementary heads it develops the contention that the funds were substantially applied in discharging the licence fees and delivery costs for which they were paid, for the benefit of identified customers, and that the payments preferred it over other creditors only as an incident of the ordinary and continued discharge of services pending the outcome of the winding-up application.³³ Those averments, if established, are capable of seeking relief that the Court exercise the section 341(2) discretion in RenewOnline's favour.

[39] The plaintiffs point out that RenewOnline has not brought a formal counter-application for validation, and rely on that omission as disposing of the point.³⁴ I do not consider that to be decisive at this stage. A request that the Court "otherwise order" under section 341(2) may properly be raised by way of defence in a plea, provided the material facts and grounds are disclosed with sufficient particularity to enable the Court to assess it.³⁵ RenewOnline has disclosed such facts and grounds in its amended plea,

[40] The exercise of the discretion cannot be undertaken on the papers before me. There is no evidence as to the likely dividend, if any, payable to Post Desk's concurrent creditors; as to the extent to which the general body of creditors would be prejudiced, or benefited, by validation; as to what was in truth done with the Claim A funds and what, if anything, Post Desk's estate received in return; or as to whether RenewOnline in truth had no knowledge, actual or constructive, of the pending winding-up application when the Claim A payments were received. Those are matters that should properly be resolved after the hearing of evidence. I am mindful of the caution expressed in *Rosseau* that the discretion to validate an otherwise void disposition ought not readily to be exercised.³⁶

[41] Leave to defend is limited to the exercise of discretion under Rule 32(3). The

³² Paras 6.2, 6.4, 6.5 and 6.7 of the amended plea, CaseLines pp 031-5 to 031-9.

³³ Paras 12 and 13 of the defendant's supplementary heads of argument.

³⁴ Para 38 of the plaintiffs' heads of argument dated 28 November 2025.

³⁵ *Herrigel N.O. v Bon Roads Construction (Pty) Ltd* 1980 (4) SA 669 (SWA) at 678.

³⁶ *Rosseau* supra at 459.

trial court will in due course decide to exercise its discretion under section 341(2), to validate the payments comprising Claim A.

- [42] In these circumstances, the Court finds that RenewOnline has disclosed a bona fide defence to Claim A, limited to the question whether the Court should exercise its discretion under the proviso to section 341(2), read with section 340(1), to validate the payments comprising that claim. Rule 32(3) and (5) permit summary judgment to be granted on part of a claim, with leave to defend on the balance, and that course is appropriate here. It also accords with the alternative submission advanced by the plaintiffs in paragraph 42 of their supplementary heads.

The insolvency of Post Desk

- [43] RenewOnline further contends that the plaintiffs have failed to prove that Post Desk was unable to pay its debts at the time the several payments were made, and that the letter from Post Desk's accountant is inadequate proof of this.³⁷ I do not consider this to raise a triable issue independent of those already identified. The provisional and final winding-up orders granted by this Court, on the basis (among others) of section 344(f) read with section 345(1)(a) and (c) of the Act, already establish that Post Desk was unable to pay its debts as at the date those orders were sought and granted. Renewonline has not sought to impeach or overturn those orders. The defendant records in its affidavit that the appointment of the liquidators and the liquidation order are noted and not disputed.³⁸ The papers do not suggest or raise a genuine dispute as to Post Desk's inability to pay its debts during the relevant period sufficient to resist summary judgment on either claim.

Costs

- [44] The plaintiffs have succeeded in obtaining summary judgment on Claim B, and in establishing, as a matter of law and on the common cause and undisputed facts, that the payments comprising both claims were dispositions of Post Desk's property. RenewOnline has, however, succeeded in resisting

³⁷ Paras 7.2 and 7.3 of the affidavit resisting summary judgment, CaseLines p 011-8; paras 25 and 26 of the defendant's heads of argument.

³⁸ Para 1.8 of the affidavit resisting summary judgment, CaseLines p 011-2.

summary judgment on Claim A, albeit on a narrow basis.

[45] In the affidavit resisting summary judgment, the defendant sought a punitive costs order, alternatively an order *de bonis propriis* against the plaintiffs' attorney, on the footing that the application was pursued vexatiously in the face of known facts.³⁹ I also refer to a judgment of this Court regarding the requirement to provide notice before *de bonis* costs would be considered, which notice requirement was not complied with.⁴⁰ There is no basis for such an order. The plaintiffs were substantially correct in their principal contention; they have succeeded on Claim B, and the manner in which the application was prosecuted and conducted was proper. That relief is refused.

[46] [46] The matter involves intricate issues and turns on the SCA authorities relied upon. In these circumstances, the High Court tariff scale of costs is appropriate, regardless of the quantum. Accordingly, the plaintiffs should be awarded the costs of the application insofar as they relate to Claim B on the High Court tariff, and the costs of the application insofar as they relate to Claim A should be costs in the cause of the action. In accordance with Uniform Rule 67A(3), I direct that the costs awarded to the plaintiffs be taxed on scale B.

Order

[47] The following order is granted:

1. Summary judgment is granted in favour of the plaintiffs against the defendant in respect of Claim B, in the amount of R127 235.60, together with interest thereon at the rate of 10.25% per annum from 3 April 2025 to date of final payment.
2. The defendant is granted leave to defend the action in respect of Claim A, on the question whether the payments comprising Claim A should be validated by this Court in terms of section 341(2), read with

³⁹ Para 10.7 of the affidavit resisting summary judgment, CaseLines p 011-10, read with the prayer at the foot of that page and with para 4.6 thereof at CaseLines p 011-6, where a punitive costs order alone is sought. No such relief is sought in the defendant's heads of argument: the prayer in para 34 of the original heads, persisted with in para 22 of the supplementary heads, is confined to dismissal of the application, leave to defend and costs.

⁴⁰ *Nethavhani v Nuwe SA Eiendomme en Verhuring CC and Others* [2023] ZAGPPHC 2150; 20709/2022 (23 May 2023).

section 340(1), of the Companies Act 61 of 1973.

3. To the extent that it may be necessary, the defendant is to deliver any further pleading required to place the validation issue in Claim A before the trial court, within 20 (twenty) days of the date of this order.
4. The plaintiffs' costs of the application, insofar as they relate to Claim B, are to be paid by the defendant, such costs to be taxed on the High Court tariff scale B.
5. The costs of the application, insofar as they relate to Claim A, are to be costs in the cause.



J DE BEER

Acting Judge of the High Court
Gauteng Division

Date of hearing: 27 July 2026

Supplementary heads filed: 17 August 2026

Judgment delivered: 10 September 2026

This judgment was handed down electronically, circulated to the parties' legal representatives, and released on CaseLines.

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For the defendant: Mr S Bester
Attorneys for the defendant: Steve Bester Attorneys