IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: 2026-077349

In the matter between:

SUPALIFT TRADING CC **APPLICANT**

and

STANLEY DONNER **RESPONDENT**

ORDER

The following order is granted:

1. The application is dismissed.
2. The applicant is directed to pay the costs of the application on scale B, such costs to include the costs of senior counsel where so employed.

JUDGMENT

Pitman J

[1] Supalift Trading CC is the applicant in this sequestration application against Stanley Donner, the respondent. The basis of the application rests upon a debt of R2,4 million allegedly due and payable to it by the respondent pursuant to loans

advanced to him. The material basis of the respondent's defence is that he, personally, did not borrow the money and does not owe it to the applicant. It was money borrowed by his company, Abspec Specialised Trading (Pty) Ltd ("Abspec"), of which he is the sole director. He therefore submits that he has a *bona fide* defence to the claim for the debt and that the sequestration application ought accordingly to be dismissed.

[2] The applicant's heads of argument were drafted by senior counsel. At the hearing, however, the applicant was represented by junior counsel, who submitted that if the application was unsuccessful any costs order should not include the costs of senior counsel, notwithstanding the fact that the respondent was represented, both in respect of the heads of argument and the appearance at the hearing, by senior counsel.

[3] Material common-cause facts, as appear from the affidavits, are the following:

a) The applicant's deponent (Anton Russell) and the respondent had been business acquaintances over the years.
b) In September 2024 R2 million was paid by the applicant into the bank account of Abspec.
c) In March 2025 a further R400 000 was paid by the applicant into the bank account of Abspec.

[4] For the applicant, Russell alleges that:

a) These payments were made because the respondent requested loans in his personal capacity in those amounts.
b) The respondent agreed to repay them personally.
c) During negotiations about the repayment, which had not been forthcoming, the respondent continued to acknowledge that he would make them when he could.
d) The third loan payment was made because the respondent claimed he needed medical attention and needed the money for that purpose.
e) The first two payments were paid into the Abspec account because that is where the respondent said they should be paid.

f) The third payment was made into the Abspec account because the respondent said it should be done that way so that his wife did not discover his medical issues.

g) During the negotiations regarding the repayment the respondent communicated, inter alia, by WhatsApp, recording that he was not avoiding his duty or obligation but awaiting certain funds. This, so Russell argues, indicates an acceptance that he was personally liable.

h) In November 2025 Russell instructed the applicant's attorney to prepare an acknowledgement of debt ("AOD") document recording the terms of the agreement/s. This document was put up as an annexure.

i) The respondent refused to sign it but, so alleges Russell, at no stage disputed his personal liability.

j) On 8 December 2025 the applicant's attorneys delivered to the respondent a letter of demand which was also put up as an annexure.

k) By indicating in writing that he could not pay the debt, the respondent had committed an act of insolvency.

l) There would be an advantage to creditors and accordingly the respondent should be sequestrated.

[5] Donner alleges in answer that:

a) All three loans were made by the applicant to Abspec and not to himself in his personal capacity.

b) In consequence they were all paid into the Abspec bank account.

c) As a result, the sequestration application constitutes an abuse of process.

d) The loans were affected because, as he explained to Russell at the time, Abspec required short-term working capital.

e) He never requested the loans for himself personally.

f) The money was not advanced to him personally.

g) All the money was in fact utilised in the business of Abspec.

h) The same applied to the additional R400 000. He denies the allegations that it was for himself personally for medical reasons.

i) He explains the WhatsApp messages on the basis that he had at no stage disputed Abspec's liability and, because he was its sole director and controlling mind, he referred to himself in the WhatsApp's.

j) The AOD correctly set out the initial principal debtor as Abspec and was intended, as he read it, to include him as a surety. That supported his allegation that the applicant considered Abspec to be the debtor.

k) He did not sign the AOD because it contained terms to which, as a surety, he was not prepared to agree and made other allegations that were incorrect.

l) He admitted receiving the letter of demand.

[6] Counsel for the applicant, relying on the heads of argument already prepared by silk, submitted that the alleged defence by the respondent, when analysed against the WhatsApp's, the AOD, the letter of demand, the say-so of Russell and the lack of any direct challenges by Donner to allegations of his personal liability, could not be accepted as a *bona fide* defence to the sequestration application.

[7] Counsel for the respondent argued to the contrary that the terms of the AOD Russell commanded, the fact that all monies were paid into the Abspec bank account, the fact that all monies were utilised for the business of Abspec, and the contents of the letter of demand in fact supported Donner's version to the extent, at least, that the version was *bona fide* and established a *bona fide* triable defence.

[8] I approach the assessment of the matter on the basis of the following principles.

[9] It has been settled since *Badenhorst v Northern Construction Enterprises (Pty) Ltd*[1] that winding-up proceedings may not be used to enforce payment of a debt whose existence is *bona fide* disputed on reasonable grounds. The liquidation procedure is not intended to be used to enforce payment of a debt or to determine whether a debt exists at all. This principle, known as the Badenhorst rule, has been confirmed by the Appellate Division in *Kalil v Decotex (Pty) Ltd*[2] and is now treated as a self-standing rule, independent of proof of actual abuse of the court process.

[10] The applicant is required to establish a *prima facie* case that the debt in fact exists. Once it has done so the onus shifts to the respondent to show that the

[1] *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 347H–348C
[2] *Kalil v Decotex (Pty) Ltd* 1988 (1) SA 943 (A) at 980C–D

indebtedness is *bona fide* and reasonably disputed. Of application to both the establishment that the debt in fact exists and, if it does, the defence raised against it, the respondent need not prove that it is not indebted to the applicant. He need only show that the indebtedness is disputed on *bona fide* and reasonable grounds. *Bona fides* concern the respondent's subjective state of mind, while reasonableness is assessed objectively: whether the facts the respondent advances, if proved, would constitute a defence in law. The threshold is low. The respondent need not prove his defence on the probabilities. If the defence is not unreasonable and an absence of *bona fides* cannot readily be inferred from the papers, the sequestration application must fail, even if it otherwise appears that the respondent is unable to pay his debts.

[11] I have considered the other decisions referred to by both counsel. On the material issues of this matter, it is not necessary that I deal with any of them specifically.

[12] Whilst being mindful of the fact that I am not required to determine the dispute for purposes of this application, a number of facts are materially relevant, in my view, to a determination of the *bona fides,* and possible sustainability, of Donner's alleged defence.

[13] Russell says he instructed his attorneys to draft an AOD "recording the terms of our agreement". The AOD drafted by his attorneys on his instructions incorporates a written suretyship agreement for signature by Donner. Those documents describe the "debtor" as Abspec.

[14] The letter of demand states, inter alia, "… our client advanced three separate tranches to you and/or Abspec…"

[15] A reading of these two documents can only lead to a conclusion that the applicant was of the view that the money had been lent to Abspec, being the "debtor", or, at best for the applicant, that the applicant was not sure to whom it had lent the money.

[16] In my view there is nothing inherently improbable about Donner's explanation about why the WhatsApp messages did not constitute an acknowledgement of personal liability. Again I emphasise that it is not my responsibility to determine that issue but simply to decide whether, in all the circumstances, such explanation is *bona fide* and based on reasonable grounds.

[17] As I have indicated, it is common cause that all payments were made into the bank account of Abspec. They were made by the applicant (a company) and not by Russell in his personal capacity which may have supported the "personal basis" argument regarding the transactions.

[18] In the result I am of the view that the facts in this application overwhelmingly support a conclusion that the respondent has established a *bona fide,* and based on reasonable grounds, triable defence to the claim by the applicant.

[19] As regards the issue of costs, both parties litigated, initially, utilising senior counsel. Senior counsel argued for the respondent. There is no reason, in my discretion, why that should not inform the costs order I make.

[20] I make the following orders:

1. The application is dismissed.
2. The applicant is directed to pay the costs of the application on scale B, such costs to include the costs of senior counsel where so employed.

PITMAN J

Case Information

Dates of hearing:	27 October 2026
Date of judgment:	30 October 2026
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