REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE Number: 2024/063820

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

14 May 2025

[redacted]

In the matters between:-

U-RENT (SA) (PTY) LIMITED Applicant

and

N M P TRADING PROJECTS (PTY) LIMITED Respondent

t/a N M P Holdings

JUDGMENT

JACOBS AJ

[1] This is an application for the winding-up of the respondent. The applicant relies on Section 345 of the Companies Act, 1973, in conjunction with Section 344(f) thereof, by alleging and presuming that the respondent is unable to pay its debts and should, therefore, be wound up.

[2] The respondent delivered an answering affidavit, to which the applicant replied on 17 October 2024. On 1 May 2025 (a week before the hearing), the respondent uploaded a further affidavit titled "Answering affidavit to the Applicant's replying Affidavit." This affidavit seems to constitute a further affidavit as contemplated by Rule 6(5)(e). I find no substantive application for leave to file the supplementary affidavit. No submissions were made in this context during the argument on behalf of the respondent. I will, as will become clear presently, take the contents of this affidavit into account.

[3] The applicant's statutory letter of demand seeks payment of R9,869,139.83, which is allegedly due under a Commercial Rental Agreement concluded on 19 January 2022. In response to this letter of demand, and in its answering affidavit, the respondent denies any alleged liability. Furthermore, the respondent claims that the applicant breached the Commercial Rental Agreement and states that it has paid any debt it might owe to the applicant.

[4] The letter of demand mentioned above was not the first statutory demand served by the applicant. The first Section 345 letter of demand was served on the respondents, as stated by the applicant in paragraph 19 of its founding affidavit, on 28 November 2023. In response thereto, the respondent acknowledged its indebness on 28 November 2023 and provided a written undertaking to pay the outstanding debt.

[5] The acknowledgment of debt (annexure D to the founding affidavit) records repayment terms. The respondent states in the following answer to paragraph 19 of the founding affidavit in paragraph 4.10 of its answering papers:

> *"4.10 Save to admit that an acknowledgement of debt was entered into between the Applicant and the Respondent and that the Applicant paid three monthly instalments of R650 000 and a further R100.000 to the Applicant, the remainder of the allegations contained in this paragraph are denied. In substantiation of its denial the Respondent wishes to state that the Applicant was at all material times aware that the motor vehicles rented to the Respondent was (sic) sub-contracted to Post Office and was informed that Post Office has decided to undergo business rescue and will not be paying the Respondent in terms of the contract between Post Office and the Respondent. The Respondent then proposed that a new payment arrangement be made in light of the new development. The proposal was that the Respondent pays R100 000 per month towards the Applicant and the Respondent then made a payment of R100 000 on the 10th of May 2024. The Applicant then refused this payment arrangement, this is evident from the letter supra marked annexure TT2."*[1]

[6] Against this background, the respondent alleges that a material and *bona fide* dispute of fact exists, which was known to the applicant, and that it should not have brought this application for liquidation, thereby indicating an alleged abuse of process that should fall do be dismissed with costs on a punitive scale.

[7] The existence of a dispute of fact in motion proceedings has been comprehensively set out in *Namutomi Boerdery (Pty) Ltd and Another v Afgri Poultry (Pty) Ltd trading as Daybreak Farms* (case number 2023-091417), an unreported judgment dated 7 March 2025, at paragraphs [8] – [11]. I do not repeat those principles here. It should also be noted that an interim order for liquidation is sought as an alternative in these proceedings, and a further challenge may arise when the final relief

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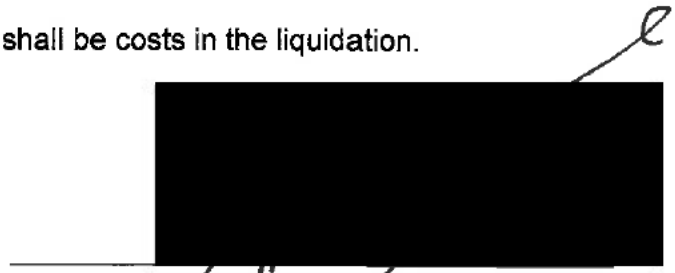
1 See CaseLines: 02-64

is considered. In my view, the dispute raised by the respondent is not *bona fide* and does not meet the requirements set forth in the judgments of our Supreme Court of Appeal and Constitutional Court mentioned in Namutomi (*supra*). Furthermore, I believe the challenge presented by the respondent is insufficient, as it does not specify with the required measure of particularity the payments, if any, made by the Post Office regarding the vehicle rental before, during, and since the deactivation of the vehicles through their immobilisation equipment. In my opinion, the evidence of the applicant is not disputed with the necessary veracity and accuracy that would establish a material *bona fide* dispute of fact, as contended by the respondent.

[8] It is in my view clear that the respondent can and did not make payment of its contractual payment obligations or its settlement obligations recorded, acknowledged and agreed to on 28 November 2023. The respondent blames the default of the Post Office (one of its debtors) to perform its obligations towards the respondent as the reason for its default. That evidence confirms the inability on the part of the respondent to pay its debts. The respondent alleges breach of contract by the applicant for its predicament. The alleged breach is the deactivation by the applicant of the rental vehicles with the use of its built-it immobilisation equipment of those vehicles the Post Office uses and for which the applicant does not receive payment from the respondent. The applicant relies on the lease agreement for its right to do so. I do not interpret the contractual arrangement between the applicant and respondent to be that the applicant is in law obliged to be content with it not receiving payment for its vehicles which it leases and is obliged to sit and watch how its vehicles are used and subjected to wear and tear resulting from daily use without any *quid pro quo*.

[9] Under the circumstances, a provisional order for liquidation should follow, and I make the following order:

1. The respondent is placed under provisional winding-up, returnable on 25 August 2025; and
2. The costs of this application shall be costs in the liquidation.



H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Heard on:	12 May 2025
For the applicant:	Adv M Patel
	Email: Muhammed.patel@rsabar.net
Instructed by:	Fullard Mayer Morrison
	Email: mayer@fullardmayer.co.za
For the respondent:	Mr CE Kgopane
	Email: kgapaneattorneys@gmail.com
Date of Judgment:	14 May 2025