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“Corporate Death by Winding-Up”: Pretoria High Court Reaffirms the Badenhorst Principle

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A recent judgment handed down by Nyathi J in *Maralco Business Advisors CC t/a Maralco Plant Services v GMK Civils Proprietary Limited* **[1]**, serves as an important reminder that liquidation proceedings are not a debt-collection mechanism where the underlying indebtedness is genuinely disputed.

The matter concerned an application for the final winding-up of GMK Civils Proprietary Limited on the basis that the company was allegedly unable to pay its debts as contemplated in section 344(f), read with section 345(1)(c), of the Companies Act 61 of 1973. The applicant alleged that the respondent was indebted to it in the amount of R817 994.50 arising from a plant rental facility allegedly concluded on a thirty-day basis and supported by a certificate of balance.

The respondent opposed the application on several grounds. Central to its defence was that its sole director neither concluded nor authorised the alleged facility agreement relied upon by the applicant. The respondent further contended that, even on the applicant's own version, the alleged agreement was void for uncertainty because it failed to record an essential term, namely the rental rates or a mechanism by which such rental rates could be determined. On this basis, the respondent argued that the invoices relied upon by the applicant could not establish the indebtedness alleged.

The Court ultimately dismissed the winding-up application with costs, reaffirming the long-established principle set out in *Badenhorst v Northern Construction Enterprises Proprietary Limited* **[2]**, namely that liquidation proceedings should not be used to enforce payment of a debt that is bona fide disputed on reasonable grounds.

Importantly, Nyathi J did not merely accept a generic allegation of dispute. The Court carefully analysed the nature of the disputes raised and found that they constituted substantive contractual disputes incapable of proper determination in motion proceedings seeking liquidation relief.

The applicant relied heavily on a certificate of balance clause as prima facie proof of indebtedness. However, the Court drew an important distinction between proof of indebtedness and proof of liability itself. Nyathi J held that while a certificate of balance may constitute prima facie proof according to its terms, it cannot conclusively establish liability where the validity and enforceability of the underlying agreement are themselves credibly challenged.

In particularly strong language, the Court held that "a certificate cannot bootstrap validity". This is a significant statement for commercial litigants and insolvency practitioners alike. Certificate of balance clauses are routinely relied upon in commercial litigation and insolvency proceedings, particularly in matters involving facilities, running accounts, or credit agreements. The judgment makes it clear that the evidentiary value of a certificate remains dependent on the existence of a valid contractual foundation.

The Court further held that the respondent had raised a bona fide dispute on reasonable grounds regarding both authority and certainty of essential terms. In relation to authority, the respondent's sole director squarely denied signing or authorising the agreement. Although the applicant argued that the documents emanated from the respondent's offices, that services had been rendered and accepted, and that part-payments had been made from time to time, the Court held that these considerations did not permit the respondent's version to be rejected on the papers.

Nyathi J specifically referred to the principles set out in *Plascon-Evans Paints Ltd v Van Riebeeck Paints* [3] and held that the respondent's version could not be rejected as far-fetched or untenable.

The Court also rejected the applicant's reliance on section 20(7) of the Companies Act 71 of 2008, which permits a person dealing with a company in good faith to presume that the company has complied with all formal and procedural requirements. While the Court accepted that this may be a relevant consideration at the level of "commercial probability", it nevertheless found that the issue of authority remained genuinely disputed on the papers.

Equally significant was the Court's treatment of vagueness and certainty of contractual terms. The respondent argued that the alleged agreement failed to specify either a fixed rental amount or an ascertainable mechanism by which the rental could be determined. The Court found that this was not a contrived defence. Instead, it constituted "a substantive contractual contest unsuited to motion liquidation proceedings".

The judgment repeatedly emphasises the limited role of winding-up proceedings in the resolution of contractual disputes. Nyathi J noted that winding-up proceedings are not designed to resolve material disputes concerning the existence of indebtedness and reaffirmed that where a debt is bona fide disputed on reasonable grounds, the creditor's remedy lies in action proceedings.

Perhaps the most striking passage in the judgment appears in paragraph 19, where the Court stated that contested issues of authority, contract formation, and essential terms should be ventilated by way of action proceedings "with oral evidence and discovery, not the blunt instrument of corporate death by winding-up".

That phrase captures the policy rationale underpinning the Badenhorst principle. Liquidation proceedings carry severe commercial consequences and are not intended to operate as procedural leverage in ordinary commercial disputes.

Notably, however, the Court stopped short of criticising the applicant's conduct as abusive or vexatious. Nyathi J accepted that the applicant had relied on a documentary trail, invoices, and a certificate of balance, "often invoked in commerce". The Court accordingly refused to grant punitive costs and instead ordered costs on the ordinary party-and-party scale.

The judgment serves as a timely reminder that creditors considering liquidation proceedings must carefully assess the underlying contractual foundation of their claims before invoking the insolvency process. Disputes relating to authority, contract formation, certainty of essential terms, or enforceability may well render liquidation proceedings inappropriate, even where invoices have been rendered, services performed, and partial payments made.

For insolvency practitioners and commercial litigants alike, the judgment is a reaffirmation that the Badenhorst principle remains firmly embedded in South African insolvency law, and that the courts will continue to guard against the use of winding-up proceedings as a substitute for ordinary action proceedings.

[1] Maralco Business Advisors CC t/a Maralco Plant Services v GMK Civils (Pty) Ltd (2026) ZAGPPHC (20 April 2026).

[2] Badenhorst v Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T).

[3] Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A).



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