HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

(1) REPORTABLE: Electronic reporting only.
(2) OF INTEREST TO OTHER JUDGES: No.
(3) REVISED.

20-11-2020 P.A. Meyer
Date Judge P.A. Meyer

Case N0: 43508/2019

In the matter between:

ANOOSHKUMAR ROOPLAL N.O. Applicant

and

FIRMANOX PROPRIETARY LIMITED Respondent

***Case Summary*: Liquidation – Company – Application for final winding-up order on the grounds that it is unable to pay its debts within the meaning of s 344*(f)* read with s 345(1)*(a)* of the Companies Act 61 of 1973 and with item 9 of Schedule 5 of the Companies Act 71 of 2008 - Whether applicant in his representative capacity as liquidator of a company in liquidation is a creditor of the company and whether the claim is disputed on reasonable grounds.**

JUDGMENT

MEYER J

[1] The applicant, Mr Anooshkumar Rooplal N.O., is the liquidator of VBS Mutual Bank (in liquidation) (VBS). In that official capacity, Mr Rooplal (the liquidator) seeks the winding up of the respondent company, Firmanox (Pty) Limited (Firmanox), on the grounds that it is unable to pay its debts within the

meaning of s 344*(f)* read with s 345(1)*(a)* of the Companies Act 61 of 1973 (the 1973 Companies Act) and with item 9 of Schedule 5 of the Companies Act 71 of 2008 (the 2008 Companies Act). The liquidator alleges that Firmanox is deemed to be and is factually unable to pay its debts. He alleges that the company benefitted from a fraudulent scheme perpetrated upon VBS.

[2] According to the liquidator, the debt owed by Firmanox to VBS arose from an overdraft facility and six vehicle finance agreements. Firmanox's total indebtedness under the overdraft facility and vehicle finance agreements, according to him, is the amount of R24,137,317.04. It is alleged by the liquidator that the debt owed by Firmanox to VBS forms part of a larger fraudulent scheme perpetrated on VBS which resulted in a loss to it of an amount in excess of R1 billion, which scheme led to its ultimate liquidation.

[3] The case made out by the liquidator in his founding papers is that on 15 April 2016, Firmanox had available to it an overdraft facility at VBS. In May 2016, Firmanox purchased six vehicles (a Jeep Cherokee, Ford Ranger, Mercedes Benz, Land Rover Discovery, Peugeot Tonnes and a Mercedes Benz Viano) using vehicle finance provided by VBS in terms of six written vehicle finance agreements that were concluded on 27 May 2016. It is undisputed that in respect of each of the six vehicle finance agreements Firmanox has paid only eight of the monthly instalments. The last payment made in terms of all the vehicle finance agreements was on 28 February 2017. The amounts outstanding in respect of each vehicle finance agreement, including interest, are R1,061,224.27 for the Jeep Cherokee, R493,835.71 for the Ford Ranger, R886 234.55 for the Mercedes Benz, R905,672.22 for the Land Rover Discovery, R651,645.58 for the Peugeot Tonnes and R796,439.52 for the Mercedes Benz Viano.

[4] As at March 2017, Firmanox's account with VBS was overdrawn in a substantial amount of millions of Rands. On 29 March 2017, VBS's then chairperson, Mr Tshifhiwa Matodzi, according to the evidence presented by the liquidator, generated a list (referred to as the Eagle Canyon list) of overdrawn bank accounts at VBS which were to be 'cleared', or removed from VBS's balance sheet before the financial year end on 31 March 2017. Firmanox's

bank account appeared on this list. On 29 March 2017, a fictitious credit, or false entry, was created in Firmanox's overdrawn bank account with VBS in the amount of R15,500,000 to clear the overdrawn account. It is undisputed that there was no actual deposit of R15,500,000 made into Firmanox's bank account. Instead, according to the liquidator, it was made to appear as if a deposit had been made, whereas in reality Firmanox remained indebted to VBS in the amount to which its account was overdrawn. The amount owed by Firmanox to VBS in respect of its overdrawn bank account had been calculated by reversing the fictitious entry and recalculating the account balance and interest from time to time. Once that was done the amount arrived at as owing by Firmanox to VBS in respect of its overdrawn account is the amount of R19,342,265.19.

[5] On 10 March 2018, the applicant, Mr Rooplal, was appointed curator of VBS. A notice in terms of s 345 of the 1973 Companies Act calling on Firmanox to settle its indebtedness to VBS was served at Firmanox's registered address on 29 October 2018 (the statutory demand). On 13 November 2018, VBS was placed under liquidation. The statutory demand was replied to on 16 November 2018. Therein it was stated, *inter alia*, that VBS had no valid claim against Firmanox; two valid agreements had been concluded between VBS and Firmanox in April 2016, neither of which was an overdraft agreement and copies of which agreements had been provided to the curator; and that VBS had breached both agreements and was indebted to Firmanox in an as yet unquantified amount. In response to the letter, the liquidator asked Firmanox to provide him with copies of such agreements, but they were not forthcoming. Firmanox has for three weeks after the delivery of the statutory demand neglected to pay the amount, or to secure or compound for it to the satisfaction of the liquidator and creditors of VBS. The second meeting of creditors of VBS was held on 8 November 2019. Firmanox did not prove any claim against VBS.

[6] Firmanox contends that the liquidator has failed to satisfy the jurisdictional requirement of proving that VBS is a creditor of Firmanox and that Firmanox in any event has shown that the debt in respect of the overdrawn

account and the vehicle finance agreements is *bona fide* disputed on reasonable grounds.

[7] According to Firmanox it concluded a written memorandum of understanding with Nazareth Baptist Church Ebuhleni (commonly referred to as Shembe Ebuhleni (NBCE)) on 17 September 2014. NBCE is a religious organisation with a considerable membership following of over 6.7 million people that follow the teachings and philosophy of Prophet Isaiah Shembe. In terms of the memorandum of understanding, NBCE and Firmanox expressed their intention to ensure the launch of the 'Shembe Unyazi' TV channel for NBCE members. Prior to the conclusion of the memorandum of understanding Firmanox had already concluded two agreements, namely an 'authorisation agreement' between e.tv and itself, and a 'channel carriage agreement' between Platco Digital (Pty) Limited, e.tv and itself. These agreements had been concluded to secure the television channel Shembe Unyazi television channel 254 on what is referred to as an 'Open View HD Platform'.

[8] On 26 March 2015, a formal written agreement was concluded between NBCE and Firmanox (the NBCE agreement), wherein NBCE recorded its desire to launch a television channel on an Open View HD Platform. In terms of the NBCE agreement, Firmanox, which is engaged in the business of providing brand communication, advisory services and solutions, planning and buying media spots for advertising and related activities, was appointed as the exclusive media, communications, marketing, sales and broadcasting agent of NBCE. It granted Firmanox and its subsidiary company (as formed and identified by it and agreed to by the parties for the specific purpose of implementing the NBCE agreement) the exclusive rights to broadcast a 24 hour channel in South Africa and worldwide, which shall bear the name 'Shembe Unyazi TV'. Firmanox would source and generate funding to run the televison channel through marketing and sales activities, which included advertising, related product sponsorships, distribution and sales but ensuring that such met the religious principles of NBCE. Furthermore, it was acknowledged that there might be sponsors who might market products endorsed by NBCE directly to NBCE members or on Shembe Unyazi TV.

[9] Pursuant to the conclusion of the NBCE agreement, Firmanox approached numerous financial institutions with a view to partnering with them for the purpose of securing funding for the Shembe Unyazi television channel and a bank suitable for the NBCE members. In April 2016, it approached VBS and on 11 April 2016 a memorandum of understanding was concluded between VBS, Firmanox, Black Label Telecoms (Pty) Ltd (BLT), and Newco Pty) Ltd (the VBS/Firmanox agreement). The parties to this agreement undertook to collaborate with one another to implement the incorporation 'of a new company under the name "Shembe Unyazi Bank of South Africa" (SUBSA) or such other name as may be agreed upon between the parties and approved by CIPC' and that '[t] he business of SUBSA shall be the provision of financial services in different areas within the Republic of South Africa', which financial services are then listed (the proposed transaction).

[10] The parties agreed that the proposed transation would require the conclusion of various agreements, and as to the status of the memorandum of understanding, they agreed thus:

'2.1 The Parties wish to co-operate and collaborate with each other to implement the Proposed Transaction.

2.2 The Parties hereby enter into this MOU to set out the fundamental terms upon which they will negotiate the detailed final terms of the commercial relationship among them for the pursuit of the Proposed Transaction.

. . .

3.1 This MOU sets out the fundamental terms of the Proposed Transaction and will form the basis on which the Parties will negotiate in good faith the Long Form Agreements, which will contain the full terms and conditions relating to the Proposed Transaction.

3.2 The provisions of this clause (sic) MOU will constitute binding obligations among the Parties with effect from the Signature Date until the complete suite of Long Term Agreements have been concluded by the Parties, after which this MOU shall cease to be of force and effect.'

The VBS/Firmanox agreement contains a breach clause entitling an aggrieved party to cancel it or to claim specific performance of the defaulting party's breach of any binding provision of it, subject to compliance with the formalities stipulated in that clause.

[11] It was agreed that 60% of the shareholding in SUBSA would be held by VBS, 10% by Firmanox, 10% by BLT, 20% by NEWCO, and that that 10% 'of the NEWCO shareholding will be warehoused for a future strategic partner to be identified by both parties'. In return for its shareholding, VBS 'shall allow SUBSA to operate under its banking licence, provide banking operational skills and know-how, and operating systems to SUBSA ("the first phase")', 'second certain staff members to SUBSA until such time that SUBSA [has] fully trained and [appointed] competent personnel to run its operations' and that the 'final phase . . . shall also include the establishment of a physical branch in Durban, Kwazulu-Natal'.

[12] Clause 4.2 of the VBS/Firmanox agreement reads as follows:

'The Parties acknowledge that the Proposed Transaction will be implemented in two stages, i.e. Stage I and Stage II. Stage I shall consist of the rolling out of the membership management system ("membership system") to register all the active members of the NBCE. During the enrolment phase, all members of the NBCE shall be issued with a membership card which card shall also be used as a bank card for transactional purposes. After successful implementation of the membership system, all members of NBCE, shall pay their monthly membership fee through the membership card. Stage II shall consist of the establishment of SUBSA.'

VBS agreed to be responsible for 'the enrolment of the membership sysyem across South Africa and for the payment of the implementation costs' in the amount of R5 million, 'and to contribute an amount of R666 000 to Firmanox as a sponsorship amount towards the Shembe Unyazi TV', which 'sponsorship shall be paid by the 25th monthly commencing from 25th April 2016'.

[13] On 18 April 2016, NEWCO, Sabicorp (Pty) Ltd (Sabicorp), BLT and Firmanox concluded a written memorandum of understanding (the Firmanox agreement). It is recorded therein that the parties to it 'seek to collaborate regarding establishing a partnership for the creation of both a telecommunications company to be registered as Shembe Unyazi Mobile and a trading componay known as Sabicorp ("the Project")', that '[p]ursuant to their discussions and upon mutual consent, the Parties will enter into a comprehensive and mutually acceptable commercial agreement(s), amongst others, shareholder's agreement, etc on terms and conditions to be later agreed

between the Parties' and that 'the purpose of the MOU is to record the terms and conditions of their agreement and to work together in the implementation of the Project'. It is further recorded that NBCE 'has outsourced its commercial rights in relation to communications, trading (of its commercial commodities and commercialization of its brand) and the financial functions which include the banking and insurance functions to Firmanox in terms of the agreement signed between NBCE and Firmanox', that 'Firmanox acting on behalf of NBCE has outsourced both its mobile communications rights to Black Label Telecoms which BLT intends to trade as Shembe Unyazi Mobile and its trading rights to Sabicorp' and that 'all the parties to this MOU intend to work together to implement the Project'.

[14] The Firmanox agreement records that the parties' respective shareholding in BLT shall be BLT 50%, NEWCO 30% and Firmanox 20%, and in Sabicorp it shall be BLT 30%, NEWCO 40% and Firmanox 30%. As far as funding is concerned, it *inter alia* provides as follows:

'6.1 Upon signature of this MOU, each Party undertakes to contribute its pro rata amount towards the R6,000,000 (six million rand) required to capitalize Firmanox (in order for Firmanox to be able to purchase all the necessary TV equipment required to run the Shembe Unyazi Television channel it intends to run on behalf of the Project) plus the R1,334,000 (one million three hundred and thirty four thousand) per month required for the monthly opex for Firmanox. All funding requirements and any future additional funding required for the project will be provided on a pro rata basis.

6.2 Firmanox requires an operational expense of R2,000,000 (two million rand) per month in order to stabilize its operations of which BLT and Sabicorp will contribute R1,334,000 (one million three hundred and thirty four thousand rand) and VBS Mutual Bank will contribute R666,000 (six hundred and sixty six thousand rand).

6.3 . . .

6.4 The Parties will approach VBS Mutual Bank to assist with both the R6,000,000 (six million rand) once off funding referred to in 6.1 above, as well as the monthly R2,000,000 (two million rand) funding required each month as OPEX for Firmanox for a period of 12 (twelve) months or any other period which may by agreed to by the Parties in writing and R3,500,000 (three million five hundred thousand rand) which is required by BLT for both OPEX and CAPEX for the three

month period (including costs for the launch). The aforesaid funds referred to in this paragraph are required immediately to commence with the project.'

[15] Firmanox denies the existence of an overdraft facility agreement and the six vehicle finance agreements. All payments made by VBS to it, says Firmanox, are explained by the agreements it relies on. In complying with those agreements, so says Firmanox, 'VBS made numerous payments into the Respondent's bank account until such time that it became in default'. A demand was sent to VBS to place it on terms in regard to its default. (The demand is not attached to the answering affidavit.)

[16] Firmanox denies that the amount of R19,342,265.19 was actually afforded to it by VBS as a business overdraft facility concluded on 15 April 2016. It contends that in terms of the VBS/Firmanox and Firmanox agreements, VBS was obliged to pay to it two monthly amounts of R666 000 plus once off amounts of R5 million, R6 million and R2 million. Thus, so Firmanox argues, from April 2016 to March 2017 VBS would have owed it an approximate total amount of R19 652 000.00. It states that VBS's staff and management may have created the fictitious credit of R15 500 000.00 in its VBS account on 29 March 2017, but it, however, played no role in the fictitious credit.

[17] Firmanox further denies that it is indebted to VBS in the sum of R4 795 051.80 in respect of the six vehicle finance agreements. According to Firmanox it had approached numerous financial institutions prior to the conclusion of the VBS/Firmanox and Firmanox agreements. At the time of negotiating with VBS, it was asked to stop forum shopping. VBS, as a sign of commitment and incentive to the deal, offered motor vehicles to Firmanox for furthering the Shembe Unyazi project. VBS informed Firmanox to go to a specific vehicle dealership in Fourways and to choose vehicles. Firmanox argues that the commercial benefit that the agreements offered to VBS is generally highly sought after as a lucrative deal. After Firmanox had taken delivery of the vhecles VBS informed it to sign documentation for internal VBS record purposes, which are now being regarded as instalment sale agreements. Thus, VBS fraudulently misrepresented the vehicle finance

agreements to it and Firmanox mistakenly signed them because of VBS's representation to it.

[18] The liquidator seeks a final order of liquidation and the issues are in summary whether VBS is a creditor of Firmanox and whether its claim is disputed on reasonable grounds. In *Orestisolve (Pty) Ltd T/A Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another* 2015 (4) SA 449 (WCC), Rogers J said the following:

'[7] In an opposed application for provisional liquidation the applicant must establish its entitlement to an order on a prima facie basis, meaning that the applicant must show that the balance of probabilities on the affidavits is in its favour (*Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at 975J – 979F). This would include the existence of the applicant's claim where such is disputed. (I need not concern myself with the circumstances in which oral evidence will be permitted where the applicant cannot establish a prima facie case.)

[8] Even if the applicant establishes its claim on a prima facie basis, a court will ordinarily refuse the application if the claim is bona fide disputed on reasonable grounds. The rule that winding-up proceedings should not be resorted to as a means of enforcing payment of a debt, the existence of which is bona fide disputed on reasonable grounds, is part of the broader principle that the court's processes should not be abused. In the context of liquidation proceedings the rule is generally known as the *Badenhorst* rule, from the leading eponymous case on the subject, *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 347H – 348C, and is generally now treated as an independent rule, not dependent on proof of actual abuse of process (Blackman et al *Commentary on the Companies Act* vol 3 at 14 – 82 to 14 – 83). A distinction must thus be drawn between factual disputes relating to the respondent's liability to the applicant and disputes relating to the other requirements for liquidation. At the provisional stage the other requirements must be satisfied on a balance of probabilities with reference to the affidavits. In relation to the applicant's claim, however, the court must consider not only where the balance of probabilities lies on the papers but also whether the claim is bona fide disputed on reasonable grounds. A court may reach this conclusion even though on a balance of probabilities (based on the papers) the applicant's claim has been made out (*Payslip Investment Holdings CC v Y2K Tec Ltd* 2001 (4) SA 781 (C) at 783G – I). However, where the applicant at the provisional stage shows that the debt prima facie exists, the onus is on the company to show that it is bona fide disputed on reasonable grounds (*Hülse-*

Reutter and Another v HEG Consulting Enterprises (Pty) Ltd (Lane and Fey NNO Intervening) 1998 (2) SA 208 (C) at 218D – 219C).

[9] The test for a final order of liquidation is different. The applicant must establish its case on a balance of probabilities. Where the facts are disputed, the court is not permitted to determine the balance of probabilities on the affidavits but must instead apply the *Plascon-Evans* rule (*Paarwater v South Sahara Investments (Pty) Ltd* [2005] 4 All SA 185 (SCA) para 4; *Golden Mile Financial Solutions CC v Amagen Development (Pty) Ltd* [2010] ZAWCHC 339 paras 8 – 10; *Budge and Others NNO v Midnight Storm Investments 256 (Pty) Ltd and Another* 2012 (2) SA 28 (GSJ) para 14).

[10] The difference in approach to factual disputes at the provisional and final stages appears to me to have implications for the *Badenhorst* rule. If there are genuine disputes of fact regarding the existence of the applicant's claim at the final stage, the applicant will fail on ordinary principles unless it can persuade the court to refer the matter to oral evidence. The court cannot, at the final stage, cast an onus on the respondent of proving that the debt is bona fide disputed on reasonable grounds merely because the balance of probabilities on the affidavits favours the applicant. At the final stage, therefore, the *Badenhorst* rule is likely to find its main field of operation where the applicant, faced with a genuine dispute of fact, seeks a referral to oral evidence. The court might refuse the referral on the basis that the debt is bona fide disputed on reasonable grounds and should thus not be determined in liquidation proceedings. (In the present case neither side requested a referral to oral evidence.)

[11] If, on the other hand, and with due regard to the application of the *Plascon-Evans* rule, the court is satisfied at the final stage that there is no genuine factual dispute regarding the existence of the applicant's claim, there seems to be limited scope for finding that the debt is nevertheless bona fide disputed on reasonable grounds. It is thus unsurprising to find that the reported judgments where the *Badenhorst* rule has been relevant to the outcome have been cases of applications for provisional liquidation rather than final liquidation.

[19] The long-established approach described in *Placon-Evans* requires the facts deposed to by Firmanox to be accepted, unless they constitute bald or uncreditworthy denials or are palpably implausible, far-fetched or so clearly untenable that they could safely be rejected on the papers. (*Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634D-635D. Also see *Media 24 Books (Pty) Ltd v Oxford University Press Southern Africa*

(Pty) Ltd 2017 (2) SA 1 (SCA) para 36.) That test is satisfied in this instance. VBS's claim against Firmanox has been established on the papers, which claim is for the reasons that follow not disputed on reasonable grounds.

[20] The agreements on which Firmanox relies do not explain the overdraft debt. The VBS/Firmanox agreement does not show any contractual obligation on VBS to pay anything other than to fund Stage I (the enrolment phase costs) of R5 million, and monthly payments of R666,000 commencing on 25 April 2016. VBS was not a party to the Firmanox agreement. There is no averment that Firmanox or any other party to that agreement indeed approached VBS (as contemplated in clause 6.4 thereof) to assist with the once-off payments of R6 million (referred to in clause 6.1 thereof), the monthly funding of R2 million required by Firmanox as oprational expenses for a period of 12 months or any other period, and the R3,5 million required by BLT for operational and capital expenditure for a three month period, and that any such funding agreement was ever concluded beteen VBS and the parties to the Firmanox agreeement.

[21] Moreover, Firmanox alleges that in complying with the agreements 'VBS made numerous payments into the Respondent's bank account until such time that it became in default'. Firmanox's bank account does not reflect any such payments made by VBS. The transactional activity on Firmanox's account cannot even be reconciled with the alleged contractual obligation for VBS to pay it R666,000 per month in terms of the VBS/Firmanox agreement. Furthermore, Firmanox does not explain why it stopped drawing from its account immediately after the fictitious credit entry was made. It did not file a claim against VBS, has never demanded payment from VBS, has never explained how much VBS is alleged to owe it or which clauses of which agreements it allegedly breached. The allegation that VBS owes it money was only raised after the liquidator had demanded repayment of the debt owed by Firmanox to VBS.

[22] Firmanox does not deny the existence of the fraudulent scheme, only that it was not a beneficiary of or participant in the scheme. It also does not deny the credit entry of R15,500,000 in its account in March 2017. There is no explanation why its name appears on the Eagle Canyon list or what action it

took when the credit entry was made in its account with VBS. All that Firmanox says is that it 'doesn't understand why [its account had to be credited] in that the Respondent was not at all indebted to VBS'. A peculiar feature is that BLT and Sabicorp, which companies are counterparties to the Firmanox agreement, are also on the Eagle Canyon list. These two entities were also recipients of fictitious deposits in or credits to their VBS accounts.

[23] VBS, according to Firmanox, asked it to stop negotiating with other parties in regard to its business proposals and, as a show of commitment, donated or gifted the six vehicles in question to it. However, the VBS/Firmanox agreement on which Firmanox relies was signed by 11 April 2016. The vehicle finance agreements were signed on 27 May 2016, according to Firmanox 'days after the vehicles were chosen and in possession of [Firmanox]'. The inescapable inference in the absence of a plausible explanation by Firmanox, therefore, is that the VBS/Firmanox agreement was in existence when the motor vehicles were allegedly donated to Firmanox. There was accordingly no need for VBS to give away expensive motor vehicles to show any commitment or to prevent Firmanox from dealing with other financial institutions. The VBS/Firmanox agreement secured its rights.

[24] For example, clause 4.7 of the VBS/Firmanox agreement provides that '[i]n return for the aforesaid sponsorship amount, Firmanox hereby warrants that all the financial services of NBCE, including banking and insurance related services, shall be done by VBS.' Clause 5.2 provides that '[t]he Parties agree that, from the Signature Date until the expiry of this MOU or its termination in accordance with its terms and conditions, they shall not engage or negotiate with any other third parties regarding or in relation to the subject matter of the Proposed Transaction contemplated in terms of this MOU'. Clause 7.2 provides that '[t]he Parties hereby irrevocably agree not to conclude any separate agreements with any other party or parties, the conclusion of which would result in a change to the agreed structure in terms of this MOU unless agreed to in writing by the Parties. For the avoidance of doubt, the prohibition in this clause 7.2 also extends to any agreements that would result in a change in ownership and contracting and subcontracting relationships'. And clause

13.3 provides that '[t]he Parties hereby agree that in the event of Firmanox, during the existence of this MOU, concludes an agreement with a third party and such agreement is to the detriment or exclusion of VBS, Firmanox hereby undertake to place VBS in the position it would have been in had the Proposed Transaction been successfully concluded as envisaged in terms of this MOU'.

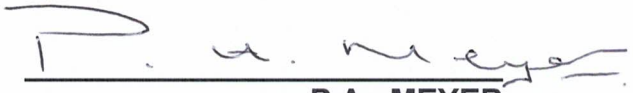
[25] Moreover, it is undisputed that eight instalments in respect of each vehicle finance agreement were paid by debit order from Firmanox's overdrawn account. Firmanox gave the authority for the motor vehicle instalments to be paid by means of debit orders against its overdrawn account. Firmanox does not explain why, if there were no real vehicle finance agreements concluded, it made payments of the instalments due in terms of those agreements from May 2016 until February 2017. It also does not explain why the regular monthly motor vehicle instalments stopped the month before the sizeable credit of R15,500,000 was made in its overdrawn account with VBS, which cleared the account's debit balance and which the liquidator alleges was fictitious.

[26] Applying the *Plascon Evans* approach to disputes of fact that have arisen on the papers when a final order is sought, I conclude, therefore, that it has been established that VBS is a creditor of Firmanox and that the defence raised by Firmanox in this application is not reasonable. It is patently far-fetched and implausible; beset with contradictions and difficulties.

[27] In the result the following order is made:

(a) The respondent company is hereby placed under final winding-up.

(b) The costs of this application shall be costs in the winding-up.



P.A. MEYER
JUDGE OF THE HIGH COURT

Judgment:	20 November 2020
Hearing:	19 October 2020
Applicant's Counsel:	Adv KD Iles
Instructed by:	Werksmans Attorneys, Sandton
Respondent's Counsel:	Adv D Mokale
Instructed by:	MC Lekota Inc., Northriding C/o Moroane Matemane Attorneys, Johannesburg