**IN THE HIGH COURT OF SOUTH AFRICA**
**(WESTERN CAPE DIVISION, CAPE TOWN)**

**JUDGMENT**

**Not Reportable**
Case no: 2024-146798

In the matter between:

**GERRITSEN TRADING CC** **APPLICANT**
**t/a GERRITSEN DRILLING SA**
(Registration Number: 2008/032582/23)

and

**BLYDSKAP HOLDINGS (PTY) LTD** **RESPONDENT**
(Registration Number: 2019/423758/07)
Registered Address: 1[…] R[…] Avenue, Kenilworth, Cape Town, Western Cape

**Neutral citation:**

**Coram:** **COOKE AJ**

**Heard**: 13 August 2025

**Delivered**: 27 August 2025

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**ORDER**

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[1] The respondent is placed under provisional liquidation, and its assets are placed in the hands of the Master of the High Court.

[2] A rule *nisi* is issued calling upon the respondent and all interested parties to show cause on **7 OCTOBER 2025** why, if any, the following order should not be made:

(a) a final liquidation order be granted; and

(b) the costs of this application be costs in the liquidation, including costs of counsel on Scale B.

[3] A copy of the provisional order shall be served in the following manner:

(a) by the sheriff on the respondent at 1[…] R[…] Avenue, Kenilworth, Cape Town, Western Cape;

(b) by the sheriff on the employees of the respondent at Klipfontein Farm, B[…] R[…] Road, Velddrif, Western Cape;

(c) by the sheriff on the registered trade union(s) of the employees of the respondent at Klipfontein Farm, B[…] R[…] Road, Velddrif, Western Cape;

(d) on the South African Revenue Service situated in Cape Town;

(e) on the Master of the High Court situated in Cape Town; and

(f) by publication in *The Cape Times* and *Die Burger* newspapers.

[4] The application for condonation of the late delivery of the answering affidavit and heads of argument by the respondent is granted, with the costs of the application to be paid by the respondent, including costs of counsel on Scale B.

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**JUDGMENT**

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[1] Over the last ten years, the use of WhatsApp has become ubiquitous. It is now an essential social tool for many people. As appears from this matter, WhatsApp is also increasingly being used in business dealings. As an unfiltered contemporaneous record, WhatsApp communications can also be of assistance to a court of law. In some instances, they will serve as the best evidence in relation to a disputed issue - a reliable guide to what was really in the minds of the parties. This is such a case.[1]

[2] This is an application for the provisional liquidation of the respondent ('Blydskap'). The application has its provenance in an agreement concluded between the parties in terms of which the applicant ('Gerritsen Drilling') was to drill boreholes for Blydskap. The terms of the agreement are disputed. It is, however, common cause that in February 2024, Gerritsen Drilling drilled

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[1] For a recent liquidation application where WhatsApp messages were relied upon, see *Pillay v Lopdale Energy (Pty) Ltd* [2025] ZAGPJHC 681 (15 July 2025).

three boreholes on a farm owned by Blydskap located in the Sandveld region near Velddrif. The first two boreholes were successful and Blydskap was satisfied with the work. In relation to the third borehole, however, the drilling penetrated a confined aquifer where the pressure was high enough to cause water to rise unaided to the surface (the technical term for this is ‘artesian’). Gerritsen Drilling stopped drilling on 1 March 2024 and to date, it has performed no further work on the farm.

[3] Gerritsen Drilling rendered several invoices for the work done. Sporadic payments were made by Blydskap, but the charges remained largely unpaid. On 12 December 2024 this liquidation application was launched. At the time, Gerritsen Drilling claimed that it was owed R514 023.80 by Blydskap. It is not disputed, however, that since the application was launched, the sum of R108 118.51 was paid by Blydskap.

[4] It was agreed by the parties that Blydskap would deliver its answering affidavit by 31 March 2025. This was confirmed in a timetable contained in a court order dated 8 April 2025. The answering affidavit, however, was only delivered late on the afternoon of Friday, 8 August 2025, just a few days before the matter was due to be heard on Wednesday, 13 August 2025. The day before the hearing, Blydskap served a condonation application. A replying affidavit was also delivered on that day. On the day of the hearing, Blydskap provided the court with the condonation application and heads of argument stretching to 45 pages.

[5] At the hearing, counsel for Gerritsen Drilling informed the court that his client did not oppose the granting of condonation in relation to the late delivery of the answering affidavit and heads of argument. He confirmed also that it did not require further time to supplement the replying affidavit.

[6] Having regard to the nature of the application, I consider that it is especially important that all the relevant information be placed before this court. Gerritsen Drilling will not be prejudiced as it delivered a reply and does not seek further time to supplement the reply. Liquidation applications are also inherently urgent, and Gerritsen Drilling could be prejudiced if there is a delay in the determination of the application. I therefore accept that it is in the interests of justice that the affidavit be admitted, and I am willing to condone the late delivery of the affidavit and the heads of argument. Counsel for Blydskap accepted that his client must pay the costs of the application for condonation.

[7] I turn now to consider the merits of the liquidation application. In my view, the matter may be assessed conveniently under four headings:

(a) Does Gerritsen Drilling have standing to bring the application? More particularly, is Gerritsen Drilling a 'creditor' as contemplated by s 346(1)(*b*) of the Companies Act 61 of 1973 ('the Act')?

(b) Is Gerritsen Drilling's claim disputed on bona fide (genuine) and reasonable grounds (the so-called Badenhorst rule)? If so, the application would be an abuse of process.

(c) Has it been proved to the satisfaction of the court that Blydskap is unable to pay its debts, as contemplated by s 345(1)(*c*) of the Act?

(d) Even if the requirements for a liquidation are established, should the court nonetheless exercise its discretion against granting a liquidation order?

[8] Before turning to these four questions, I address a preliminary objection raised by Blydskap in terms of which the authority to institute the proceedings

was challenged. This objection may be addressed briefly. The deponent to the founding affidavit (Mr Coetsee) alleged that he was duly authorised to institute the application. This allegation was admitted in the answering affidavit. In any event, the remedy of a respondent who wishes to challenge the authority of a person allegedly acting on behalf of a purported applicant is provided for in uniform rule 7(1).[2] Blydskap did not avail itself of this procedure.

**Standing**

[9] It is well-established that in an opposed application for provisional liquidation, the applicant must establish its entitlement to an order on a prima facie basis. This means that the applicant must show that the balance of probabilities on the affidavits is in its favour. This would include the existence of the applicant's claim where such is disputed.[3]

[10] It is common cause that Gerritsen Drilling drilled three boreholes for Blydskap and rendered invoices in relation to this work. Blydskap contends, however, that the invoices were only issued for 'administrative purposes'. Although the invoices are marked 'pro forma', it appears from the remarks on the invoices that a final tax invoice would be issued after payment was received. It may have been that the invoices were marked 'pro forma' for tax reasons. Perhaps Gerritsen Drilling was concerned that there may be a delay in payment and did not wish to incur a liability to pay VAT or income tax prior to receiving payment. But, in any event, it would have been apparent to Blydskap that it was required to pay the amounts set out in the invoices, notwithstanding the 'pro forma' label. Indeed, the evidence shows that various payments corresponding to the figures in the invoices were made to

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[2] *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624I–625A.
[3] *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A) at 975J-979F; *Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and Another* 2015 (4) SA 449 (WCC) (*Orestisolve*) para 7.

Gerritsen Drilling, and by the time the application was heard, most of the charges in relation to the first borehole, and some in relation to the second borehole, had been paid. The part payments made by Blydskap, and the messages described below, give the lie to the contention that the pro forma invoices were only issued for administrative purposes.

[11] The WhatsApp messages exchanged between Mr Rabie, Blydskap's sole director, and Mr Gerritsen, who is described as the sole director of Gerritsen Drilling, reveal that Mr Rabie accepted that his company was liable to Gerritsen Drilling:

a. On 29 April 2024, Mr Gerritsen enquired of Mr Rabie whether payment would be made the following day (ie by the end of the month), to which Mr Rabie responded 'Ons maak so' (we will do so).

b. Then on 6 August 2024, Mr Gerritsen enquired how the financial matters were looking in relation to a payment, to which Mr Rabie responded 'Gaan julle die maand betaal' (we are going to pay this month).

c. On 1 October 2024, a different creditor (Mr Reinke) asked Mr Rabie when his outstanding account would be paid. In response, Mr Rabie said 'Die maand. Volle bedrag. Twee betalings soos fondse loskom. Vir regverdigheid gaan ek vir Pierre[4] voortrek derhalwe twee betalings.' (This month. Full payment. Two payments as funds become available. For fairness, I will prefer Pierre therefore two payments.)

[4] 'Pierre' is a reference to Mr Gerritsen.

d. In early November 2024, Mr Gerritsen sent several WhatsApp messages to Mr Rabie recording that no payment had been made. Eventually, on 14 November, Mr Rabie advised that he had spoken to his accountant and '(s)y sal eers vandag of môre by betalings kom. Jammer daaroor.' (She will only get to payments today or tomorrow. Sorry about that.)

e. No payment was received, and further WhatsApp messages were exchanged between them culminating in a message from Mr Gerritsen to Mr Rabie on 28 November 2024 in which Mr Gerritsen asked if Mr Rabie could please arrange for payment of the outstanding amount by no later than 30 November 2024. Mr Rabie wrote back 'Korteliks daars voorsiening gemaak vir betaling. Ons het fakture uitgereik aan kliente en sodra hulle betaal diens ons jou rekening' (In short, provision has been made for payment. We have issued invoices to clients and as soon as they pay, your account will be serviced.)

f. In response, Mr Gerritsen advised Mr Rabie that 30 November 2024 was his cut off point.

[12] Needless to say, no payment was made by the end of November, and the application was duly issued a couple of weeks later.

[13] The WhatsApp messages are admitted. There is, however, no attempt by Blydskap to explain the messages. Nor is there any suggestion that they should be given a meaning other than their natural meaning. In my view, the messages should therefore be taken at face value.

[14] According to Mr Rabie, he informed Mr Gerritsen on 22 April 2024 that he would only pay the invoices once the defects relating to the third borehole

had been repaired, and once he had received the SANS reports.[5] Mr Gerritsen, on the other hand, alleges that Mr Rabie never asked him for these reports and his company is exercising a right of retention over such documents until payment is made.

[15] To place Mr Rabie's allegation in context, as shown above, on 29 April 2024, just a week after the alleged discussion, Mr Rabie indicated in a WhatsApp message that he would make payment by the end of the month. Not a word about the third borehole or the SANS reports. In addition, Blydskap continued to make payments to Gerritsen Drilling in relation to the first borehole on 10 May 2024 and 1 June 2024. Even after the liquidation application was brought, further payments were made on 21 December 2024 in respect of the first two boreholes. In so far as Mr Rabie's account is at odds with the contemporaneous record, as well as his conduct, I do not accept that his account is probable.

[16] Even if there were defects in relation to the third borehole, this does not explain why Blydskap did not pay the significant amounts owing in respect of the second borehole.

[17] Blydskap's counsel submitted that no demand for payment had been made and Blydskap was never placed in mora. This submission is difficult to square with the evidence of pro forma invoices, statements and requests for payment in the WhatsApp exchanges, all culminating in an email dated 29 November 2024 in which Mr Gerritsen pointed out that the debt had been owing since March 2024 and he asked Mr Rabie to arrange payment of the outstanding amount no later than 30 November 2024. Not to mention the fact that several of the invoices were paid by Blydskap.

[5] The reports concern South African National Standard 10299-2:2003 Part 2 – The Design, Construction, and Drilling of Boreholes. They are required for registering the boreholes with the Department of Water and Sanitation.

[18] It was also contended in the answering affidavit that the part payments had been made as an indulgence to Gerritsen Drilling to ease its supposed cash flow problems. This contention does not sit comfortably with the WhatsApp exchanges and, to my mind, is improbable.

[19] Having regard to the WhatsApp exchanges, read with the invoices, statements and other correspondence, I am satisfied that Gerritsen Drilling has established, on a prima facie basis, that it is a creditor of Blydskap and thus entitled to seek the liquidation of the company. It matters not, for the purposes of this application, precisely when the invoices were rendered. Nor does it make a difference if certain small amounts fall to be deducted from the amount owing. These do not detract from the essential fact that Blydskap owes money to Gerritsen Drilling.

[20] Blydskap's counsel, with some justification, criticised Gerritsen Drilling in so far as the founding affidavit was deposed to by one of its attorneys, and no confirmatory affidavit by Mr Gerritsen was delivered until over three months later. Even then, the confirmatory affidavit was of the type criticised in *Drift Supersand (Pty) Limited v Mogale City Local Municipality*,[6] and this affidavit failed to have regard to the fact that certain payments had been made since the founding affidavit was signed. The affidavit should not have confirmed the founding affidavit without qualification. To this criticism, I may add that Gerritsen Drilling should have addressed the issues with the third borehole in its founding papers.

[21] Nonetheless, in my view, Gerritsen Drilling's claim is established on common cause facts, particularly the documentary record. On an overall view of the affidavits, and notwithstanding the hearsay in the founding affidavit, I am satisfied that Gerritsen Drilling has established on a balance of probabilities that it is a creditor of Blydskap and thus has standing to bring this application.

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[6] [2017] 4 All SA 624 (SCA) para 31.

**The defences raised by Blydskap**

[22] The second question is linked to the first. Except here, Blydskap bears the onus of proving that it has a genuine and reasonable defence.[7] 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.[8]

[23] The defences raised by Blydskap may be summarised as follows:

(a) Payment of the debt was withheld by Blydskap due to Gerritsen Drilling's failure to properly perform specialist drilling services and tests in respect of the three boreholes. Blydskap admits that there is an unpaid balance of R379 271.29 but asserts that this amount is not due and payable[9] because Gerritsen Drilling failed to properly perform and Blydskap elected to withhold performance until the defects have been addressed. According to Blydskap, the non-payment of the debt therefore results from a contractual dispute, not insolvency.

(b) Gerritsen Drilling never deducted the amounts for costs of transfer, transport, establishment and setup regarding certain invoices, and did not deduct certain costs in respect of the water production testing for the second borehole.

(c) The defects with the drilling services resulted in Blydskap suffering damages and as a result, it has a counterclaim against Gerritsen Drilling which it intends prosecuting. The damages are provisionally calculated at R1 050 000.

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[7] *Afgri Operations Ltd v Hamba Fleet (Pty) Ltd* 2022 (1) SA 91 (SCA) (*Afgri*) para 6.
[8] *Orestisolve* para 8.
[9] In other places in the answering affidavit, it is alleged that the amount is 'payable, but not due'.

[24] In support of its defences, Blydskap relies upon the terms of an oral agreement supposedly concluded on 23 November 2023 on a telephone call between Mr Gerritsen and Mr Rabie. On Blydskap's telling of the agreement, there are no less than fifteen terms of the agreement set out over three pages of the answering affidavit. In my view, it is fanciful to suggest that these parties concluded a detailed and complex agreement over the telephone. Not only this, but the specific terms relied upon by Blydskap were not mentioned in the various WhatsApp exchanges. I am therefore not satisfied that the terms of the agreement are as alleged by Blydskap.

[25] The answering affidavit is, in certain respects, contradictory. For instance, Mr Rabie alleges in one part of the affidavit that payment would be due and payable after the SANS reports for each borehole were received. But later in the affidavit, he alleges that he told Mr Gerritsen that the agreement was that he would only pay once the whole project was completed. The inconsistencies in the affidavit are an indication that the defence is not genuine and reasonable.

[26] In relation to the withholding defence, Blydskap called in aid the principle of reciprocity (*exceptio non adimpleti contractus*).[10] It argued that it is entitled to withhold payment until Gerritsen Drilling has complied with its obligations, and in particular has provided SANS reports to Blydskap. To succeed with this argument, Blydskap would have to show that Gerritsen Drilling was obliged to provide the SANS reports before or at the same time as payment is made.[11] There is, however, no mention of the SANS reports in the WhatsApp exchanges. In addition, the invoices include notes stipulating that the drilling reports and the pump test reports will be issued after payment has been received. I understand the 'drilling report' to be a reference to the SANS report. It is clear from the invoices that Gerritsen Trading intended

[10] *Cradle City (Pty) Ltd v Lindley Farm 528 (Pty) Ltd* 2018 (3) SA 65 (SCA) paras 20-24.
[11] *Mörsner v Len* 1992 (3) SA 626 (A).

withholding the reports required by Blydskap as a means of ensuring and incentivising payment. On the affidavits to hand, I am not persuaded that the provision of SANS reports was reciprocal to the payment obligation.

[27] As regards the alleged failure to deduct amounts, in my view it does not help Blydskap if certain amounts fall to be deducted from the invoices. If a creditor establishes a case for liquidation, where a portion of the amount of the debt is disputed by the debtor, or the precise amount of the debt is uncertain, such a dispute will not constitute a defence. The whole of the debt must be disputed on genuine and reasonable grounds.[12]

[28] In support of the counterclaim, Blydskap relied upon a report from Groundwater and Earth Science South Africa (Pty) Ltd ('GEOSS'). This report appears to have only been commissioned in April 2025, several months after the application was launched. In his answering affidavit, Mr Rabie alleged that GEOSS confirmed that Gerritsen Drilling made a mistake by drilling into an artesian water body. As I read the report, this is not necessarily correct. The criticisms levelled at Gerritsen Drilling concern inadequacies in the record-keeping. It is not clear to me how these administrative inadequacies caused the borehole to be artesian.

[29] In addition, even on Blydskap's account, the drilling of the third borehole was 'halted due to complications arising from the site's complex geological conditions'. It is not evident to me that the failure to anticipate these geological conditions constituted a contractual breach by Gerritsen Drilling.

[30] A week after the problem with the third borehole arose, Mr Rabie sent an email to Mr Gerritsen suggesting that they should look at drilling a fourth borehole and requesting a half-price discount. Furthermore, within a month of

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[12] *Electrolux South Africa (Pty) Ltd v Rentek Consulting (Pty) Ltd* 2023 (6) SA 452 (WCC) (*Electrolux*) para 26.

the problem arising, Mr Rabie sent his company's formal details to Mr Gerritsen for the purposes of generating an invoice. This contemporaneous communication indicates that, at that stage at least, Mr Rabie did not blame Mr Gerritsen for the problem with the third borehole.

[31] If Blydskap sincerely believe that it enjoyed a counterclaim, then it is inexplicable that Mr Rabie continued to indicate that the accounts would be paid throughout 2024 and indeed made payments. Furthermore, the counterclaim was not articulated until after the liquidation application had been brought and I infer that it was contrived as a means of opposing the liquidation application. This is a case where, like in *Afgri*, the inertia of Blydskap in pursuing its right of action alleged in the counterclaim generates a considerable sense of unease about the genuineness of its contestation.[13]

[32] In the circumstances, I do not consider that the defences and counterclaim raised by Blydskap are genuine and reasonable. It has not been shown that Blydskap sincerely wishes to contest the claim and believes it has reasonable prospects of success.[14] The application is accordingly not an abuse of the court's processes.

**Inability to Pay Debts**

[33] I come now to the third question, namely whether it has been satisfactorily proved that Blydskap is unable to pay its debts. Once again, the WhatsApp exchanges tell a story.

[34] Blydskap enlisted the assistance of Mr Reinke of Anton Reinke Irrigation (Pty) Ltd to assist with irrigation on the farm. Mr Reinke attended a meeting

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[13] *Afgri* para 18.

[14] See *Orestisolve* para 67. The absence of a genuine belief in the defence distinguishes this matter from cases such as *Hülse-Reutter and Another v HEG Consulting Enterprises (Pty) Ltd (Lane and Fey NNO Intervening)* 1998 (2) SA 208 (C). Compare *GAP Merchant Recycling CC v Goal Reach Trading 55 CC* 2016 (1) SA 261 (WCC) (*GAP*).

that was held on the farm on 22 April 2024 when the parties discussed the problems with the third borehole. As shown above, the WhatsApp record reveals that on 1 October 2024, Mr Reinke asked Mr Rabie when his outstanding account would be paid. In response, Mr Rabie said two payments would be made as funds become available. In similar vein, in November 2024, Mr Rabie indicated that he would only be able to pay Gerritsen Drilling's account after receiving payment from clients.

[35] It appears from these communications that, as of October / November 2024, Blydskap was unable to pay its debts as they fell due. This indicates that Blydskap was unable to meet the current demands upon it in the ordinary course of its business, and it was therefore in a state of commercial insolvency.[15]

[36] The WhatsApp exchanges also disclose that in July 2024, Blydskap was experiencing difficulties with SARS ('SARS nog hardegat' – SARS are still stubborn). This is consistent with Blydskap not being able to meet its financial obligations.

[37] There is no intimation that Blydskap's financial position has improved. It is instructive that Blydskap has not put up any evidence regarding its current financial position, save for a letter from its auditors confirming that Blydskap 'is solvent, and that the company's assets exceed its liabilities'. This is far from adequate proof of Blydskap's commercial solvency. Gerritsen Drilling's attorney contacted the author of this letter who advised that he had not considered whether Blydskap had the financial means to settle its debts as and when they become due.

[38] Documentation relating to the purchase of the farm was annexed to the answering affidavit and the purchase price for two properties may be

[15] See *Rosenbach & Co (Pty) Ltd v Singh's Bazaars (Pty) Ltd* 1962 (4) 593 (D&CLD).

discerned from this documentation. But the extent to which the properties are encumbered by mortgages is not clear. Blydskap has not suggested that it has any realisable assets which could be used to pay its debts. As in *Electrolux*, Blydskap did not indicate anywhere in its answering affidavit that it has the assets, resources or sources of income to pay its debts as and when they fall due, or to pay the debt owing to Gerritsen Drilling.[16]

[39] Mr Rabie claimed that he had been requested by his attorneys to provide financial and management accounts, but he was waiting for financial reports from the auditors. Even if a financial report from the auditors was absent, Blydskap should have been able to furnish its attorneys with management accounts. I also would have expected Blydskap to provide an indication of its assets and liabilities and its income and expenses. No such information has been provided even though Blydskap took eight months to prepare its answering affidavit.

[40] In all the circumstances, I am satisfied that Gerritsen Drilling has shown that Blydskap is unable to pay its debts.

**Discretion**

[41] Generally speaking, an unpaid creditor has a right to a liquidation order against a company which has not discharged its debts. Once a creditor has satisfied the requirements for such an order, the court may not decline to grant the order on a whim. There must be a particular reason why the order is withheld.[17] The court exercises a narrow discretion when deciding a liquidation application and will not be easily swayed towards exercising its discretion in favour of a debtor which has not discharged its debts.[18]

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[16] *Electrolux* para 34; *GAP* para 53.
[17] *Orestisolve* para 18.
[18] *Electrolux* para 24.

[42] Blydskap relies upon the following factors in its heads of argument:

(a) It and several third parties would be prejudiced by a provisional liquidation order. According to Blydskap, it provides direct employment to ten employees, and their families are dependent on their income.

(b) If an order is granted, the action proceedings that Blydskap contemplates will come to an end and it will effectively be prevented from having its legitimate claim against Gerritsen Drilling determined.

(c) Blydskap is solvent and can pay its liabilities as and when they are due, owing and payable.

[43] It is instructive that Blydskap does not suggest that its financial position is likely to improve. Nor does it place any evidence before the court which shows that it will, in due course, be able to pay its debts. If I were to exercise my discretion in favour of Blydskap, it is likely that this will serve only to prolong the inevitable.

[44] The potential prejudice is not such as to warrant a refusal of the application. The employees will not necessarily lose their jobs if the company is placed in provisional liquidation, and interested parties, including the employees, may place evidence before the court on the return day should they wish to do so. Furthermore, the contemplated action proceedings will not necessarily be frustrated by a liquidation. If the liquidators consider that there is merit in the counterclaim, they could institute such a claim against Gerritsen Drilling. As to the solvency of Blydskap, this aspect has been addressed above. I am therefore not persuaded that the factors raised by Blydskap are sufficient to justify the exercise of my discretion in its favour.

[45] The existence of a counterclaim which, if established, would result in a discharge by set-off of an applicant's claim for a liquidation order is not, in itself, a reason for refusing to grant an order for the liquidation of the respondent but it may, however, be a factor to be taken into account in exercising the court's discretion as to whether to grant the order or not.[19] The discretion to refuse a liquidation order where it is common cause that the respondent has not paid an admitted debt is, notwithstanding a counterclaim, a narrow and not a broad one.[20] In my view, for the reasons set out above, Blydskap's counterclaim is not advanced sincerely. In addition, the merits of the counterclaim are not without difficulties. In the result, I do not consider that the alleged counterclaim presents a basis to exercise my discretion against the granting of the order.

**Conclusion**

[46] The admitted WhatsApp exchanges are decisive. They show that (a) Blydskap is indebted to Gerritsen Drilling, (b) it does not enjoy a genuine and reasonable defence, and (c) it is unable to pay its debts. There is no substantial reason to exercise a discretion against the granting of the order sought. It follows, to my mind, that Blydskap should be placed into provisional liquidation.

[47] In the circumstances, I am satisfied that the requirements for a provisional liquidation order have been satisfied, and I accordingly grant the order set out above.

**Cooke AJ:**

[19] *Afgri* para 7.
[20] Ibid para 13.

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**DJ COOKE**

**ACTING JUDGE OF THE HIGH COURT**

Appearances

| | |
|---|---|
| For applicant: | Stephan van der Meer |
| Representing: | Van der Meer and Partners Inc |
| For respondent: | Scott Pitcher |
| Instructed by: | Lamprecht Attorneys |