

**LEGAL SUMMARY: NEXNOVO AFRICA (PTY) LTD v PRO-LOGISTICS FORWARDING (PTY) LTD**

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In this urgent application, the applicant seeks an order to prevent the respondent from proceeding with an application for its liquidation under Section 345 of the Companies Act, 71 of 2008, pending the final determination of a damages action the applicant has filed against the respondent.

The applicant provides telecommunications products, including lithium batteries, and is involved in importing goods, including such batteries. The respondent is a freight servicing company responsible for clearing and storing imported goods. The applicant and respondent entered into an agreement regarding the storage and clearance of lithium batteries imported from China by the applicant. The respondent was storing 3714 batteries at its warehouse; however, 792 batteries were stolen causing the applicant significant financial losses (R15,170,606). The applicant claims the respondent is liable for the theft due to its failure to exercise proper care, asserting the claim in contract and delict. The respondent, on the other hand, claims R13,503,916 from the applicant for unpaid freight services, a claim which the applicant acknowledges but contends it is countered by the larger damages claim.

In October 2023, the respondent issued a notice under Section 345 of the Companies Act, demanding payment of the outstanding debt within 10 days. The applicant and respondent attempted unsuccessful negotiations over the dispute, including the issue of insurance compensation. In July 2024, the respondent suggested arbitration, but this was rejected by the applicant. On 14 October 2024, the respondent's attorneys advised the applicant that liquidation proceedings would be initiated due to the lack of settlement.

The court found that the applicant acted with sufficient urgency once the respondent showed its intent to proceed with liquidation in October 2024. The applicant's delay in bringing the application was justified due to ongoing negotiations and the respondent's lack of immediate action.

If the applicant's damages claim exceeds the respondent's debt, it could constitute a bona fide defence against the liquidation application. The applicant provided plausible grounds for the quantum of its damages and contested the validity of the indemnity clause in the respondent's contract, which the respondent failed to produce a signed version of.

A creditor's attempt to rely on Section 345 to pursue liquidation in the face of a bona fide dispute about the debt can amount to an abuse of process. The applicant demonstrated that the respondent's claim might not be valid, thus making the liquidation application unjustified.

If the liquidation application proceeds, it could cause irreparable harm to the applicant, particularly given the potential impact on its credit facilities and future business prospects. The threat of liquidation could jeopardise the applicant's ability to continue trading, which the court deemed sufficient to meet the requirement for irreparable harm.

The balance of convenience favoured the applicant, as the harm caused by liquidation proceedings would far outweigh the respondent's right to pursue such proceedings, especially given that the applicant has a bona fide counterclaim exceeding the respondent's debt.

The matter is heard on an urgent basis. The court found granted an interim interdict to prevent the respondent from proceeding with the liquidation application.