


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: 2022/35033

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
19/09/2023	
DATE	SIGNATURE

In the matter between:

CVI SHACKLETON (PTY) LTD

Applicant

And

IQRAMUDIM JAFFER

Respondent

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail, uploading to Case lines and release to SAFLII. The date and time for hand down is deemed to be 10h00 on 19 September 2023.

Key words: Insolvency – Inability to pay debt – Provisional sequestration.

JUDGMENT

MUDAU, J:

[1] This is an application for the sequestration of the respondent's estate in terms of the provisions of the Insolvency Act¹ (the Act). The applicant is CVI Shackleton (Pty) Ltd (CVI), a company duly registered and incorporated according to the company laws of the Republic of South Africa. The respondent is an adult male with a given address at Grysvalk Walk, Pretoria, Gauteng Province.

[2] In terms of section 8 of the Act, a debtor commits an act of insolvency:

"(e) if he makes or offers to make any arrangement with any of his creditors for releasing him wholly or partially from his debts;

...

(g) if he gives notice in writing to any one of his creditors that he is unable to pay any of his debts."

Background facts

[3] On 5 October 2018, the respondent entered into a loan agreement with Direct Axis, a business unit of FirstRand Bank Limited, on behalf of Wesbank, a division of FirstRand Bank Limited. In time, the respondent breached the terms of the loan agreement with Direct Axis which rendered the full outstanding balance of the said loan immediately due and payable. With effect from 1 August 2021, Direct Axis, the cedent entered into an agreement with CVI in terms of which it ceded, inter alia, the right, title, and interest in and to said claim against the respondent to CVI.

[4] On 17 June 2022, the respondent wrote a letter to the applicant in which he acknowledged his full liability to CVI and made an offer of settlement. On CVI's version, the respondent is indebted to it, taking account of the capital and interest in the sum of R 211 250.72 as of 13 October 2022, with further interest on that amount continuing to accrue. The respondent informed CVI that he does not have monies wherewith to satisfy CVI's claim. Following negotiations between the respondent and CVI, the respondent offered to make a payment of R 1 000

¹ 24 of 1936.

by 1 August 2022, and would thereafter make monthly payments of R 2 500 from 30 August 2022 onwards.

- [5] The respondent thereafter made two payments of R 1 000 each, on 1 and 31 August 2022, respectively. No further payments had been received by CVI. CVI contends that by arranging with his creditor for releasing him wholly or partially from his debt, the respondent thus committed an act of insolvency as defined in section 8(e) of the Act. CVI contends that by indicating that he was unable to make payment to CVI of a discounted lumpsum in settlement of the debt, the respondent also committed an act of insolvency in terms of section 8(g) of the Act. Prior to the launch of CVI's action under case number 2022/28056, a copy of a notice in terms of section 129(1) of the National Credit Act² was sent by registered mail to the respondent, marked "E" and is part of annexure "VB3" to CVI's founding affidavit.
- [6] The deponent to CVI's founding affidavit alleges that a WinDeed search was conducted, which revealed that the respondent is the owner of a 50% share in an immovable property described as Erf 136, Cefisdal Ext 4, City of Tshwane Metropolitan Municipality. The property is 1000 square metres in extent and is registered in the Pretoria Deeds Office. The property was purchased on 22 April 2015 for the sum of R 1 750 000 and was bonded to Absa Bank Loans Guarantee Co. (RF) (Pty) Ltd in the amount of R 1 575 000, which is the only endorsement against the title deed of the property. A WinDeed Automated Valuation Report was obtained on the property with a reported "high" confidence level stating the value of the property to be R 2 100 000.
- [7] A WinDeed Company and Intellectual Property Commission ("CIPC") Director report was obtained to establish whether the respondent is a member of any close corporation or a director of any company. The CIPC report revealed that the respondent is an active businessperson and is a director of a company named Wazanga Autobody (Pty) Ltd and is also a member of a close corporation named Khumba Trading CC. The respondent avers that the sequestration will be to the advantage of the respondent's creditors. Section 10 of the Act requires

² 34 of 2005.

that the application must contain evidence of facts upon which the court is able to form the opinion that *prima facie*, the elements of the cause of action for sequestration have been proved.

- [8] In opposing this application, the respondent firstly disputes that he lives within the jurisdiction of this Court. Evidently, the respondent on this version is unaware that the Gauteng Division, Johannesburg has concurrent jurisdiction with the main seat, Pretoria over the entire Gauteng, in terms of Government Notice No. 30 of 15 January 2016.³ In argument before this Court, this point was not seriously persisted with by counsel on behalf of the respondent.
- [9] The respondent denies that he is in arrears with his arrangement to liquidate his debt with Direct Axis, which rendered the full outstanding balance of that loan due, owing and payable. He however has failed to attach any proof of payments he has evidently made in payment of the instalments due to the applicant. This is not a real defence but only a bare denial that he owes the money. Accordingly, this bold and unsubstantiated denial of any indebtedness is insufficient to raise a real, genuine and *bona fide* dispute of fact. I am of the view that no reliance can be placed on the respondent's bold denials.⁴
- [10] The respondent says that his offer to settle was made on a "without prejudice" basis, thus suggesting that that the settlement discussions were privileged and cannot be disclosed by CVI. In this regard, he is misguided. Documents that are otherwise privileged because they were used in settlement discussions may be used in applications for sequestration.⁵ *Prim facie* I am satisfied that the respondent have thus committed acts of insolvency as alleged. The uncontested factual position is that the respondent has not paid amounts of his indebtedness and remains indebted to the applicant. Clearly, he is unable to pay his debts as and when they fall due. It seems to me that the indebtedness is not resisted on reasonable grounds. I am satisfied that the necessary precautions for the

³ Determination of Areas under the Jurisdiction of Divisions of the High Court of South Africa, GG 39601, 15 January 2016.

⁴ See in this regard *Room Hire Co (Pty) Ltd v Joppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 (T) at 1165.

⁵ *Lynn & Main Inc. v Naidoo* 2006 (1) SA 59 (N).

provisional liquidation of the respondent have been met. The insolvency is not seriously challenged.

: *Order*

[11] In the circumstances, the following order is made -

- a. The estate of the respondent is placed under provisional sequestration in the hands of the Master of this honourable Court.
- b. The respondent and any other party who wishes to avoid this order being made final, are called upon to advance the reasons, if any, why the Court should not grant a final sequestration order in respect of the respondent's estate on 22 January 2024.
- c. A copy of the *Rule Nisi* be published in a local newspaper (The Star or Citizen).
- d. A copy of the *Rule Nisi* be served on the Commissioner of the South African Revenue Services.
- e. The costs of this application are costs in the sequestration of the respondent.


V T P MUDAU
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant:

Adv. R Stevenson

Instructed by: Lynn & Main Inc.

For the Respondent: Adv. W Venter

Instructed by: Marina van AS Attorneys

Date of Hearing: 14 August 2023

Date of Judgment: 19 September 2023