IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: : **2024/018423**

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED:

[redacted] 12/05/2025
SIGNATURE DATE

In the matter between:

TURNER MORRIS ONE (PTY) LTD Plaintiff

and

WILLEM HENDRIK STEYN Defendant

Coram: Sawma AJ
Heard: 24 April 2025
Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 10h00 on 12 May 2025.

JUDGMENT

Introduction

[1] In this matter the applicant, who describes itself as Turner Morris One (Pty) Ltd, applies for the provisional, alternatively, final sequestration of the respondent, Mr Willem Hendrick Steyn. The application is opposed by the respondent principally on the basis that the debt relied upon by the applicant is disputed.

[2] In the founding papers the applicant asserts that it concluded an oral agreement of loan with the respondent on the 3rd March 2023 in terms of which the applicant would loan to the respondent the sum R1 120 000.00 to be utilised for the development of property and that on the same day the respondent signed an acknowledgement of debt acknowledging liability for that amount.

[3] The applicant relies upon Section 8 (g) of the Insolvency Act[1] for the order that it seeks, alleging that the respondent gave written notice of his inability to discharge this debt to the applicant.

Citation Issues

[4] From the outset something needs to be said concerning the citation of the applicant, the citation of the respondent and the reference to his marital status. In so far as the citation of the applicant is concerned, in both the notice of motion and the founding affidavit the identity in the captions describe the applicant as "Turner Morris One (Pty) Ltd (Registration number 2022/349116/07)". It is common cause between the parties that the entity bearing that registration number is the entity Turner Morris (Pty) Ltd. The entity Turner Morris One (Pty) Ltd bears registration number 2016/176260/07. In the founding papers the citation of the applicant occurs *sans* any reference to its registration number. It is identified merely by way of reference to its name "Turner Morris One (Pty) Ltd".

[5] The applicant, however, explains in its reply that the reference to the registration number of Turner Morris (Pty) Ltd (as opposed to Turner Morris One (Pty) Ltd) was in error. In as much as the acknowledgement of debt and written demand both identified the creditor at issue as "Turner Morris One (Pty) Ltd", for the

[1] Act 24 of 1936

purpose of this judgement I will assume in favour of the applicant that it is in fact Turner Morris One (Pty) Ltd that was intended to be the applicant in these proceedings and that it is in fact that entity that is before Court.

[6] As to the respondent's citation, it is common cause that his given identity number is incorrect. This was conceded by the applicant in reply. In as much as the respondent has in fact been brought before Court, nothing further need be said on this score.

[7] It is trite that an applicant is required to make out his/her or its case in the founding affidavit. Section 9 (3) (a) (ii) read with (9) (3) (c) of the Insolvency Act[2] requires the applicant to *inter alia* set out the marital status of the respondent and if he is married the full names and date of birth of his spouse, and if an identity number has been assigned to the spouse, the identity number of such spouse. If the applicant is unable to provide these details the applicant is required to explain why. The particulars required include, if the respondent is married, whether he is married in or out of community of property[3]. As observed by Leveson J[4]

> "...the question, then, is whether Courts can overcome that problem. In my opinion, if the provision is peremptory, it is the business of the applicant to lay all relevant facts before the Court. A situation ought not to be allowed to develop where a Court might, for want of averments, grant an order against a joint estate where only one spouse has been cited. If the statute enjoins that the order must be made against both spouses, that, and nothing else, is what must be done. On that basis it will become the duty of the applicant to inform the Court fully...".

[8] Whilst it is common cause between the parties that the respondent is married, as already observed, the founding papers shed no light on the marital regimen. It is, of course, notionally open to a Court to consider, if a proper case for winding up has been made out, issuing a provisional order coupled with an appropriate order requiring the marital regimen of the respondent to be confirmed prior to the return day. I accordingly turn to consider whether a case has been made for an

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[2] Act 24 of 1936

[3] By virtue of the provisions of Section 17 (4) (b) read with Section 11 of the Matrimonial Property Act 88 of 1984

[4] Detkor (Pty) Ltd v Pienaar 1991 (3) SA 409 W at 410 H-I

order of sequestration. That issue must in turn be adjudicated in light of the dispute concerning the existence of the debt itself.

Is the Debt Disputed On Bona Fide Reasonable Grounds

[9] The test to be applied in determining the central issue in this matter is trite, and it is whether the claim has been disputed on *bona fide* reasonable grounds.[5] Whilst *bona fides* relate to the respondent's subjective state of mind, reasonableness speaks to whether, objectively, the facts alleged by the respondent in law constitute a defense[6].

[10] The debt relied upon by the applicant is said in the founding affidavit to be premised on an oral agreement of loan concluded between the applicant and the respondent on the 3rd March 2023 in terms of which the applicant was to loan the sum of R1 120 000.00 to be utilised for development of property. The applicant asserts that, on the same day (3 March 2023) the respondent signed an acknowledgement of debt, thereby acknowledging liability for this sum.

[11] The respondent does not dispute having signed the acknowledgement of debt but takes strident issue with the proposition that he has ever been indebted to the applicant or that he concluded a loan agreement with the applicant on the 3rd of March 2023. The respondent pertinently challenges the applicant to adduce evidence (in reply) demonstrating the advance of money under the alleged loan, a challenge to which the applicant did not rise.

[12] The respondent explains that during or about August of 2017 he and one Fritz Reilling ("Mr Reilling") were co-directors in certain entities and that, from time to time, the applicant's deponent one Mr Cooke, together with his wife, Mrs Cooke, advanced loans to such entities, or at least certain of them. The respondent avers that historically one of the loans advanced by Mr & Mrs Cooke was to an entity Villa Fantasia (Pty) Ltd ("Villa Fantasia"), the latter in turn represented by Mr Reilling. Mr Reilling, I should mention, has deposed an affidavit confirming the

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[5] See Exploitatie-en Beleggingsmaatschappij Argonauten 11 BV and Another V Honig 2012 (1) SA 247 (SCA) at 251 H -252 A [11], reaffirming the principle that the Badenhorst Rule adopted in the matter of Badenhorst V Northern Construction Enterprises Limited 1956 (2) SA 346 (T) at 347 and reaffirmed in Kalil v Decotex (pty) ltd and another (1) SA 943 (A) at 980 (B), is of equal application to both winding up and sequestration proceedings

[6] Gap V Gold Reach Trading 2016 (1) SA 261 (WCC) at 269 [26]

content of the answering affidavit in so far as it relates to him. In the answering affidavit the respondent provides details concerning the transaction and adduces emails and related documentation in corroboration thereof. That includes the details that follow.

[13] A business plan had been prepared concerning the development of low-cost housing and it was presented to Mr & Mrs Cooke at their business premises (at the time located in City Deep). Later the same day, subsequent to the presentation, Mrs Cooke communicated that the loan, which was to have no fixed term of repayment but would attract interest at the prime rate calculated monthly, would be advanced. The amount lent and advanced was the sum of R3 000 000,00 and it was to be used toward the purchase price of an immovable property known as Farm Vogelstruisfontein 231 IQ (lake lease extent Ext 5) situated in Florida, Roodepoort Gauteng. The R3 000 000,00 loan was paid by an entity Coastal Two Higher (Pty) Ltd to the trust account of attorneys V S and B who were the conveyancing attorneys appointed to attend to the registration of transfer of the property from the seller to Villa Fantasia. The loan was reduced by, inter alia, a payment in 2018 in the amount of R2 000 000,00. As of August 2021, there was a capital balance of R1 000 000,00 still outstanding.

[14] The respondent avers that, in respect of the R2 000 000,00 payment referenced above, in discussing the application for his sequestration with Mr Reilling, he was appraised of the fact that payment in reduction of the loan to Villa Fantasia in the sum of R2 000 000,00 had been made by QS Bureau Quantity Surveyors, a partnership between the respondent and Mr Reilling, this payment having been effected on the 10th July 2018 as evidenced by the email trail referred to below.

[15] Corroboration for this version was provided by way of an email with attachments, and which email was transmitted by Mr Cooke to the respondent on the 8th of August 2021. The email speaks to a then outstanding debt, the subject line of which records "Loan John and Brenda" (being the first names of Mr and Mrs Cooke) and addresses repayment. Attached to that email is an interest calculation and a check requisition form dated 10th July 2018, the amount being R2 000 000,00 and the motivation being recorded as "John Harcourt Cooke Loan", together with an Absa proof of payment dated 10 July 2018, reflecting that

payment was made in the sum of R2 000 000,00. Also attached is a string of communications between Mr Cooke on the one hand and Mr Reilling on the other (either directly or represented by one Amanda Botha) speaking to the outstanding loan, a compromise in full and final settlement between the parties and payment of a specified amount (R900 000.00) to achieve that end, all this between August and November of 2021. I mention that although the e-mail speaks to an amount owing by the respondent and Mr Reilling, the respondent's version concerning who made the loan and to whom, was not seriously challenged, an issue addressed in more detail below.

[16] In so far as the signing of the acknowledgement of debt is concerned, the respondent alleges that he was contacted by Mr Cooke who asserted that an amount remained outstanding in respect of the loan to Villa Fantasia and that this occurred at a time that certain buildings in Jeppestown had been hijacked and he was, at the time, then looking to raise funds by liquidating assets so as to pay what Mr Cooke alleged to be owing in respect of the loan to Villa Fantasia. Against this background the respondent says that when the acknowledgement of debt was provisioned to him, Mr Cooke had explained that he required some form of acknowledgement relating to the outstanding sum lent and advanced to Villa Fantasia.

[17] It is in this context that I consider the respondents assertion that the application is premised on false and misleading facts, and that the acknowledgement of debt was presented pursuant to a misrepresentation. That is because the indebtedness (if it remained extant) was not an indebtedness to the applicant, did not arise from any loan in March 2023, and was not a loan made to the respondent. The respondent also asserts that he considers the conduct of Mr Cooke in his presentation of the acknowledgement of debt in the above circumstances to be fraudulent and thus not binding on him. The respondent also alleges that based on Mr Cooke's wrongful conduct he elected to and has in fact cancelled the acknowledgement of debt.

[18] Objectively speaking, the facts asserted by the respondent constitute a defense in law and sufficient particularity has been provided to preclude a finding that the version is not *bona fide.* It is not premised on bald allegation absent particularity.

[19] That alone would justify dismissing this application. What compels that outcome is that the applicant, in reply, does not deal with the substance of the allegations advanced, this purportedly because it seeks to avoid prolixity. As already stated, despite the challenge made inviting the applicant to adduce proof of the loan said to have been made on the 3rd of March 2023 and forming the substance of the recordal in the acknowledgement of debt, the applicant simply says it vehemently denies the content of the answering affidavit and the averments so made. As to the detailed version of the 2017 loan, the applicant (incorrectly in my view) adopts the stance in the replying affidavit that these allegations do not raise a *bona fide* dispute of fact. The allegations otherwise remain unaddressed.

Conclusion

[20] I accordingly find that there is genuine and *bona fide* dispute as to whether the respondent is indebted to the applicant. In the result the appropriate order is to dismiss the application.[7]

[21] That leaves the issue of costs to be dealt with. The joint practice note prepared by the parties drew to my attention that the applicant had filed its heads of argument, practice note and chronology on the 26th of October 2024 but, despite demands made on the respondent, it failed to reciprocate. The respondents' heads were due on or before the 12th November 2024. On the 13th of November 2024, a letter was sent to the respondent requesting that it deliver the requisite documents within a period of five days but to which no response was received. This resulted in the applicant bringing an application to compel the production thereof on the 13th February 2025.

[22] On the 18th of February 2025 and in response to the application to compel, the respondent's attorneys of record requested that the application be pended for ten days in anticipation of receiving the respondent's documentation and which request the applicant acceded to so as to avoid incurring further unnecessary costs.

[23] Despite the lapse of the ten days requested the respondent still failed to deliver its heads of argument and related documentation. That in turn left the applicant

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[7] Exploitatie-en Beleggingsmaatschappij Argonauten 11 BV and Another V Honig supra at 251 J [11]

with insufficient time to enroll the application to compel before the allocated date for the hearing of this matter. The joint practice note pertinently recorded the applicant's prejudice that arose from this conduct. When this matter was allocated, I caused the file content to be downloaded from caselines in order to prepare for the hearing. At that time there were still no heads of argument filed on behalf of the respondent.

[24] The respondent's persistent failure to timeously comply with its obligation cannot go unchecked. The revised Consolidated Practice Directive 1 of 2024, currently applicable to this division, contains repeated references to a party's lack of co-operation attracting punitive cost orders by the Court[8]. Practice Directive 25.14 applies specifically to the enrollment of opposed motions and provides in part that a delinquent party risks an award of a punitive costs order (and the legal practitioner an interdict against charging the client a fee) where the prescripts relating to opposed motions are not complied with through the delinquency of one party.

[25] With these facts in mind, it is appropriate in this matter that the outcome of this application does not carry with it the usual order for costs.

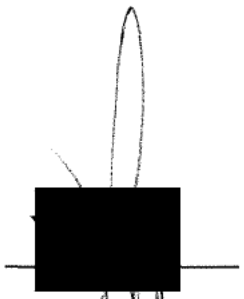
The Order

[26] In the result I make an order in the following terms;

1. The application for the sequestration of the respondent is dismissed;

2. Each party is to bear its own costs;

[8] see for example Practice Rule 19.2, 25.14, 25,19, 27.16, 29.16, just by way of example



AG SAVVMA AJ
JUDGE OF THE HIGH COURT
JOHANNESBURG

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For the Respondent:	Advocate CB Garvey
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