REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NUMBER: 6504/2018

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO THE JUDGES: ~~YES~~/NO
(3) REVISED.

DATE 12/12/19 SIGNATURE

In the matter between:

GEORGE CORNELIA NORMAN	**INTERVENING APPLICANT**
In re:	
MARLIZE CORNELIA NORMAN	**FIRST APPLICANT**
WM NORMAN ELEKTRIES CC	**SECOND APPLICANT**

AND

TRUSTEES FROM TIME TO TIME OF THE WM TRUST IT 3648/94	**FIRST RESPONDENT**
GEORGE PATRICK NORMAN N.O	**SECOND RESPONDENT**
ETTIENEE PHILLIPUS SCHEEPERS N.O	**THIRD RESPONDENT**
STEPHANUS JOHANNES MARTINUS DE BEER N.O	**FOURTH RESPONDENT**

JUDGEMENT

KGANYAGO J

[1] The first applicant in the main application is the daughter in law of George Patrick Norman who is the intervening party and also the second respondent in the main application (to be referred to as intervening party). During 2017 the first applicant launched an application under case number 6949/2017 for the sequestration of the intervening party. She successfully sequestrated the intervening party.

[2] According to the applicants after the intervening party was sequestrated, the trustees of his insolvent estate discovered during the enquiries that the intervening party had hidden assets and interest in several trust including WM Trust. On the 9th May 2018 the applicants together with the intervening party and the several trust and individuals involved in the alleged hiding of the assets reached a settlement agreement. In terms of the settlement agreement the debtors agreed to pay R1.6 Million in cash and free of any deductions by the 31st July 2018. It was also part of the terms of the settlement agreement that the sequestration of the intervening party will be rescinded and set aside.

[3] On the 26th June 2018 the intervening party obtained an order on unopposed basis rescinding and setting aside the final sequestration order against him that was granted on the 30th April 2018. In an attempt to raise funds, the debtors tried to sell the farm, but were unable to do so as there was a successful land claim on that farm. That resulted in the debtors being unable to comply with the terms of the settlement agreement.

[4] In turn the applicants Marlize Cornelia Norman and WM Elektries CC instituted the present application against the respondents who are Trustees from Time to Time of the WM Trust IT, George Patrick Norman N.O, and Stephanus Johannes Martinus De Beer N.O seeking an order that WM Trust be sequestrated. The second to the fourth respondents have being cited in their capacities as trustees from time to time of WM Trust.

[5] The application was served at the offices of the attorneys of the intervening party. On the 7th February 2019 the first respondent WM Trust was provisionally sequestrated with a rule nisi being issued. The respondents are opposing that application. The respondents' answering affidavit have been deposed by the intervening party. The applicants in their replying affidavit have raised three points *in limine*. The first point *in limine* is that the intervening party has no *locus standi* as he is an unrehabilitated insolvent and therefore prohibited to hold office as per the provisions of WM Trust deed. They further submitted that as he is not a trustee he could not have been properly authorised to oppose the application on behalf of WM Trust. The second point *in limine* is that of authority to act. With regard to the second point *in limine* the applicants have submitted that the attorneys purporting to represent the second respondent in this application could not have been properly authorised to do so. The third point *in limine* is that of estoppel. With regard to this point *in limine*, the applicants are submitting that the second respondent is precluded from denying the truth of his authority in the settlement agreement that he had signed by virtue of the doctrine of estoppel.

[6] The intervening party has brought an application to intervene and be admitted as the fifth respondent in his personal capacity as he alleges that he is having

direct and substantial interest in the application. He has conceded that currently his estate has been sequestrated. He is alleging that when he entered into the agreement of the deed of trust that created WM Trust, he did so in his personal capacity. He further stated that the third respondent had immigrated to Australia whilst the fourth respondent to his knowledge is deceased.

[7] The applicants are opposing the intervention application. The grounds of their opposition is that the intervening party remains an unrehabilitated insolvent, and on that basis alone he is prohibited from pursuing the relief he is seeking. According to the applicants, the intervening party has no right to enforce, vary or revoke the terms of the trust, and therefore has no legal standing in relation to the affairs of the trust. The applicants submit that the intervening party has no interest in the outcome of the main application in his personal capacity.

[8] The return date of the rule nisi was on the 30th April 2019. On the return date the rule nisi was extended to the 18th June 2019 and on that date it was ordered that if payment is not received by the return date, then a final order will be granted. It was further ordered that the service on the other trustees may be effected on the second respondent (intervening party). On the 18th June 2019 the rule nisi was extended to the 23rd October 2019 and on that date the intervention application was argued. The rule nisi was extended to the 17th February 2020.

[9] On 14th October 2019, the applicants have launched an application for leave to file a supplementary affidavit. By consent between the parties leave to file the applicants' supplementary affidavit was granted.

[10] In the supplementary affidavit, the applicants are stating that the settlement agreement that was signed on the 9th May 2018 was made an order of court

on the 31st January 2019. The intervening party has brought an application for the rescission of that order which was dismissed by Muller J on the 19th September 2019. The basis for dismissing the intervening party's application was that he was an unrehabilitated insolvent, and therefore, did not have the requisite *locus standi* to pursue the relief he was seeking. The applicants are therefore submitting that since the intervening party is an unrehabilitated insolvent, does not have the requisites *locus standi* to oppose the main application and to launch the application for intervention. The applicants further state that when they launch their application, they were under the impression that all trustees cited where trustees of WM Trust at the time.

[11] In an application for intervention, the test which must be applied is whether the applicant has a direct and substantial interest in the subject matter of the litigation. **In SARDA v Land Claims Commission**[1] Jafta J said:

"It is now settled law that an applicant for intervention must meet the direct and substantial interest test in order to succeed. What constitutes a direct and substantial interest is the legal interest in the subject –matter of the case which could be prejudicially affected by the order of the court. This means that the applicant must show that it has a right adversely affected or likely to be affected by the order sought. But the applicant does not have to satisfy the court at that stage of intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to the relief."

[12] In determining what constitute direct and substantial interest in **Gordon v Department of Health Kwazulu –Natal**[2] Mlambo JA as he was then said:

"...In the Amalgamated Engineering Union case (supra) it was found that the question of joinder should ...not depend on the nature of subject –matter ...but...on the manner in which, and the

[1] 2017(5) SA 1 (CC) at para 9
[2] **2008(6) Sa 522(SCA) at 529 D-F**

extent to which, the court's order may affect the interest of third parties. The court formulated the approach as, first, to consider whether the third party would have locus standi to claim relief concerning the same subject-matter, and then to examine whether the situation could arise in which, because the third party had not been joined, any order the court might make would not be res judicata against him, entitling him to approach the courts again concerning the same subject –matter and possibly obtain an order irreconcilable with the order made in the first instance. This has been found to mean that if the order or judgment sought cannot be sustained and carried into effect without necessarily prejudicing the interest of a party or parties not joined in the proceedings, then that party or parties have a legal interest in the matter and must be joined."

[13] The settlement agreement that was made an order of court on 31st January 2019 was signed on the 9th May 2018. At the time of signing of the settlement agreement, the intervening party was an unrehabilitated insolvent, having been finally sequestrated on the 30th April 2018. That agreement he had signed it in his personal capacity and on behalf of WM Trust, Solitaire Trust and the Company. After the agreement was signed, the intervening party brought a rescission application rescinding the order of the 30th April 2018, which was granted on unopposed basis.

[14] In the present sequestration application, the applicants are seeking to sequestrate WM Trust, and the trustees were cited in their official capacities. The provisional order granted on the 7th February 2019 is against WM Trust IT 3648/94. On the papers before me, there is no order that was filed which shows that after the intervening party had rescinded his sequestration order on the 26th June 2018 he was again provisionally or finally sequestrated for the second time. However, counsel for the intervening party in the case before Muller J and in the matter at hand has conceded that he is an unrehabilitated insolvent. The

court will therefore take it that the intervening party is an unrehabilitated insolvent.

[15] It is common cause the intervening party is the only remaining trustee of WM Trust since the third respondent has emigrated to Australia whilst the fourth respondent has passed away. The applicants when they signed the settlement agreement, they were aware that they are entering into an agreement with an unrehabilitated insolvent and that explains why he signed the agreement in his personal capacity. Now that he wants to exercise his rights in terms of the agreement, he is reminded that he is precluded to do so since he is an unrehabilitated insolvent.

[16] The question is whether an unrehabilitated insolvent can enter into a valid settlement agreement and when he wants to exercise his rights in terms of the agreement he is precluded to do so on the basis of being an unrehabilitated insolvent. If indeed he was unrehabilitated at the time of signing of the settlement agreement, does it not render the agreement void? That is not the issue I am called upon to determine. In terms of the order of the 30th April 2019, service on other trustees may be effected on the intervening party. That alone makes the intervening party an interested party to the matter at hand. What will be the purpose of serving the papers on him if he does not have an interest in the subject matter.

[17] The applicants in their supplementary affidavit have stated that the main application is essentially based on a settlement agreement entered into between the applicants and a number of other parties which include the intervening party and WM Trust. Since the intervening party has signed the

settlement agreement in his personal capacity and the main application is being based on it, and the order of the 30th April 2019 state that service on the other trustees may be effected on the intervening party, I am satisfied that the intervening party in his personal capacity has a direct and substantial interest in the subject matter and that he may be affected prejudicially by the judgment of the court in the main application.

[18] The intervening party has already served and filed an answering affidavit in his capacity as a trustee of the WM Trust. In my view, the answering affidavit already filed will stand also as his answering affidavit. However, should he wish to supplement his answering affidavit he should do so within 15 days of delivery of this judgment, and the applicants to serve and file their replying supplementary affidavit within 10 days of receipt of the intervening party's supplementary answering affidavit should they wish to do so.

[19] In the results I make the following order.

19.1 The intervening party is admitted as the fifth respondent in this application

19.2 The second respondent's answering affidavit to stand as the intervening party's answering affidavit.

19.3 Should the intervening party wish to supplement his papers he should do so within 15 days of delivery of this judgment, and the applicants should they wish to reply, they should do so within 10 days of receipt of the intervening party's supplementary answering affidavit.

19.4 The applicants to pay the intervening party's costs on party and party scale.

MF. KGANYAGO J

JUDGE OF HIGH COURT OF SOUTH AFRICA,

LIMPOPO DIVISION, POLOKWANE

APPEARANCE:

FOR THE APPLICANT	:	**ADV. P LOURENS**
INSTRUCTED BY	:	**ROESTOFF ATTORNEYS**
		PROFORUM BUILDING UNIT 2 ISMINI OFFICE
FOR THE RESPONDENTS	:	**ADV. GJ DIAMOND**
INSTRUCTED BY	:	**DIAMOND INC**
		2A PIERRE STREET BENDOR
DATE OF HEARING	:	**23RD OCTOBER 2019**
DATE OF JUDGEMENT	:	**12TH DECEMBER 2019**