

SOUTH AFRICA / JUDGMENT

Amber Falcon Debt Collectors (Pty) Ltd v Lodewyk Vos (63764/2013) [2014] ZAGPPHC 94 (14 January 2014) [2014] ZAGPPHC 94

COURT

North Gauteng High Court, Pretoria

BEFORE

TM Makgoka

CASE / FILE NUMBER

63764/2013

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IN THE HIGH COURT
OF SOUTH AFRICA
(NORTH GAUTENG,
PRETORIA)
CASE
NO: 63764/2013

DATE:

14 JANUARY 2014

In the matter

between:

AMBER FALCON DEBT
COLLECTORS (PTY) LTD.....Applicant
And
DIEDERIK JOHANNES
LODEWYK VOS.....Respondent
IDENTITY NUMBER
6.....

JUDGMENT

MAKGOKA, J:

- [1] The applicant seeks compulsory sequestration of the respondent's estate on the ground that the latter has committed an act of insolvency in terms of s 8(e) of the Insolvency Act, 24 of 1936 (the Act). The alternative ground is that the respondent is in fact insolvent. The respondent does not oppose the application.
- [2] According to the sheriff's return of service the application was served on the respondent's wife, to whom he is married out of community of property. This being an application that affects the status of the respondent, it has to be served personally on the respondent. See clause 15.14(1) of the Practice Manual of the North Gauteng High Court, Revised edition (2012). This is a procedural defect, which, under normal circumstances, could be cured by postponement of the matter for personal service to be effected. However, in the light of the conclusion I reach on the substantive issues of the application, this is not an option.
- [3] The core business of the applicant is to collect outstanding book debts. The applicant alleges that the respondent owes it R45 000 in terms of a written acknowledgement of debt. The claim is said to have been ceded to the applicant by a firm of attorneys prior to the acknowledgment of debt being signed by the respondent.
- [4] In turn, the origin of the attorneys' claim is said to have arisen from their rendering of services to the respondent during August 2010, for the winding up of the respondent's close corporation, for which the respondent had allegedly agreed to pay R45 000 in respect of fees and disbursements.
- [5] The respondent signed an acknowledgement of debt on 20 March 2013 in terms of which he undertook to pay off the amount in monthly instalments of R7 500. It is alleged that the respondent has failed to make any payments in terms of the acknowledgment of debt, which entitles the applicant to demand the whole amount.
- [6] The thrust of the application is contained in paragraphs 18 and 19 of the founding affidavit, which read:

'18 I respectfully submit that the respondent, by signing the acknowledgement of debt, committed an act of insolvency in terms of the provisions of

sections 8(e) of the Insolvency Act in that he made an arrangement with a creditor for releasing him from his debts.

19 Apart from having committed an act of insolvency, I also submit that it is clear from the above circumstances that the respondent is insolvent and ought to be sequestrated. Best proof of solvency is payment and payment is not forthcoming'.

- [7] I deal with the two grounds, in turn, starting with the alleged act of insolvency. Section 8(e) of the Act provides that a debtor commits an act in insolvency if he makes or offers to make any arrangement with any of his creditors or releasing him wholly or partially from his debts. The respondent has committed none of the mischiefs sought to be addressed in s 8(e). He has neither made nor offered to make, an arrangement to be released from his debt. On the contrary, by signing an acknowledgment, he has committed himself to pay the alleged debt of R45 000 in full, albeit in instalments. It is therefore quite clear that the applicant's reliance on s 8(e) is misplaced.
- [8] Turning now to factual insolvency, it is not sufficient for the applicant to simply state that the respondent is insolvent without stating the reasons therefor (*Corner Shop (Pty) Ltd v Moodley* 1950 (4) SA 55 (T)). In other words, a bare allegation of insolvency is insufficient: insolvency should be properly proved to the satisfaction of the court with the aid of reliable information (*Uys v Du Plessis*) (*Ferreira Intervening*) 2001 (3) SA 250(C). In the present application, there is not even an attempt to state the reasons.
- [9] In the circumstances the application has to fail, on both grounds.

In the result the following order is made:

The application for the compulsory sequestration of the respondent's estate is refused.

TM MAKGOKA

JUDGE OF THE HIGH COURT

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Prepared on 11 October 2026 · Esheria