

SOUTH AFRICA / JUDGMENT

Astra Constantine Inc v Jones and Another (25801/2024) [2025] ZAWCHC 238 (3 June 2025)

[2025] ZAWCHC 238

COURT

Western Cape High Court, Cape Town

BEFORE

Sipunzi

CASE / FILE NUMBER

25801/2024

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FLYNOTES:

INSOLVENCY – Sequestration – Advantage
to creditors –
Suspicious
transactions – Property donation and selective payments to
preferred creditors – Realised proceeds
of about R9 million
remaining unaccounted for – Suggested potential recoverable
assets or impeachable dispositions
– Actions do not align
with those of a debtor who is factually insolvent –
Liquidated claim established –
Equitable material benefit
for entire body of creditors required – Provisional
sequestration granted – Insolvency Act 24 of 1936, ss 9(1)
and 10.
IN
THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION,
CAPE TOWN
Case No: 25801/2024
In

the matter between: ASTRA
 CONSTANTINE INC
 Applicant
 and
 ALAN GEORGE
 JONES
 First Respondent
 MAREE
 JONES
 Second Respondent

JUDGMENT

SIPUNZI AJ

Introduction

[1] This is an application for the provisional sequestration of the estate of the first respondent. The applicant seeks an order in the following terms:

1. ‘That the ordinary rules of the above Honourable Court pertaining to forms, notice and service be condoned and that this matter be disposed of as one of urgency in accordance with Uniform Rule 6(12);

1.25cm; margin-bottom: 0cm; line-height: 150%”>
2. That the estate of the first respondent be placed under a provisional order of sequestration under the authority of the Master of the High Court.
3. That the rule nisi be issued, calling on the first respondent and all interested parties to appear and show cause, if any, before this Honourable Court, on a date to be determined by this Honourable Court, as to why an order should not be granted in the following terms:
 - 3.1 That the estate of the first respondent be placed under final order of sequestration; and
 - 3.2 That the attorney and client costs of this application be costs in the administration of the insolvent estate of the first respondent;
4. That service of the order is effected as follows:
 - 4.1 By the Sheriff on the first and second respondent personally;
 - 4.2 By the sheriff on the South African Revenue Services, Cape Town;
 - 4.3 By the Sheriff upon the employees of the first respondent (if any) and any trade unions that represent the employees;
 - 4.4 By one publication in each of “the Cape Times” and “Die Burger” Newspapers; and

4.5 By sending a copy of this order to all known creditors of the first respondent, with claims exceeding R20, 000.00 by prepaid registered mail.

5. Such further and / or alternative relief as the above Honourable Court may deem fit in the circumstances.'

[2] This application first served before this Court on 14 January 2025, and an order by agreement was obtained. The order disposed of the prayer in paragraph 1 in the notice of motion, and the application was postponed for hearing to the semi-urgent roll. The directives issued regarding the future conduct of the matter. The costs stood over for later determination.

[3] Both respondents opposed the application, arguing that the applicant's claim was invalid in law and that there will be no advantage to creditors should the estate of the first respondent be provisionally sequestrated.

Condonation

[4] At the commencement of the oral submissions, the respondents sought to have the late filing of their answering affidavits condoned. The applicant did not oppose the application in either instance. Having considered the submissions, the applications for the late filing of the answering affidavits was accordingly condoned. It followed that the admission of the replying affidavit of the applicant had to be admitted.

The parties

[5] The applicant is Astra Constantine Incorporated, a private company with a share capital, duly registered and incorporated in terms of the statutes of the Republic of South Africa with registration number: 2013/141928/21.

Its registered address and principal place of business is located at 11 Remhoogte Road, Heldervue, Somerset West, in the province of the Western Cape.

[6] The first respondent is Allan George Jones, an adult male and admitted attorney of the High Court of South Africa, with identity number 6[...]. He practices under the name and style of Allan G Jones Attorneys and continues to operate his business from his residence at 1[...] P[...], Still Bay West.

[7] The second respondent is Maree Jones, an adult female with identity number: 6[...], residing at [...] A[...] Street, Monte Vista, Western Cape. The second respondent was married to the first respondent out of community of property. The applicant seeks no relief against the second respondent, she is cited as the former spouse of the first respondent

in compliance with the Consolidated Practice Note 30(1).

Summary of facts

- [8] On 22 November 2023, the Court granted a judgment in favour of the applicant and against the first respondent. The order was issued under case number 2408/23 for a total amount of R920 500.00 with an interest rate of 7.25% per annum a tempore morae, calculated from 29 June 2022, as well as costs. On 21 November 2024, this Court dismissed an application by the first respondent to have this judgement rescinded, under case number 2408/23. The applicant was also awarded a cost order on an attorney and client scale. These judgments increased the debt to a sum of R1 108 837. 63 and first respondent has yet to make payments.
- [9] The first respondent was the previous owner of an immovable property at Erf 2[...], Parow, Cape Town. On 1 December 2023, the first respondent sold this property to another third party for an amount of R12 000 000. 00 (Twelve Million Rand). The transfer of the aforementioned property was effected on 14 June 2024. Due to the existence of a mortgage bond on the property, an amount of R3 000 000. 00 (Three Million Rand) was settled with Investec Bank prior to transfer of ownership to the purchaser. This transaction resulted in the first respondent having a surplus of R9 000 000.00 (Nine Million Rand).
- [10] The first respondent was also the registered owner of the immovable property located at Erf 3[...], Goodwood. On 3 August 2023, the first respondent contributed fifty (50) percent of his value of this immovable property to the second respondent. This donation was made without any value to the first respondent. The first respondent has other existing debts with various other creditors that remained unpaid, including approximately R3 000 000.00 owed to SARS. There is also a Court judgment, taken by consent under case number 16381/22, requiring the payment of R161 238.46 to Pieter Andreas Olivier. Additionally, there is another judgment in favour of Cronos Capital (Pty) Ltd under case number 15237/23 for a sum of R608 778.00.[1] The first respondent also faced an ongoing claim from Carli Brummer, under case number 21914/24, for the sum of R2 447 136.00.
- [11] On 16 October 2024, the first respondent provided a sworn statement in which he declared, that there was no immovable property registered in his name, neither within the country or abroad.[2] On 4 November 2024, the Sheriff of this Court for Riversdale sought to serve the writ of execution and demanded payment of the amount of R920 500.00, along with interest and costs, on the first respondent personally. The first respondent informed the Sheriff that he had no money, property or disposable assets with which he would satisfy the writ or any portion thereof. Following a diligent search and enquiry, the Sheriff discovered no disposable property to satisfy the writ. Upon receipt of an affidavit from the first respondent that he had no immovable property registered to his name either within or outside the Republic, the Sheriff filed a nulla bona return.

Issues

[12] The above factual overview prompts a multi-layered inquiry. First and foremost, the court must determine whether the applicant has demonstrated that it has locus standi to prosecute this application in terms of section 9(1) of the Insolvency Act 24 of 1936 (the “Act”). Second, the question arises as to whether the first respondent engaged in an act of insolvency. Finally, it is important to consider whether granting a provisional sequestration of the first respondent would provide any advantage to the creditors.

Applicable legal principles

[13] This application is based on the provisions of section 9(1) of the Insolvency Act 24 of 1936 (the “Act”),

which provides that,

“(1) A creditor (or his agent) who has a liquidated claim for not less than R100.00, or two or more creditors who in the aggregate have liquidated claims for not less than R200.00 against the debtor who has committed an act of insolvency, or is insolvent, may petition the court for the sequestration of the estate of the debtor.”

[14] The specific relief sought by the applicant is provided for in section 10 of the Act, it reads:

“if the court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that prima facie-

- (a) the petitioning creditor has established against the debtor a claim such as is mentioned in sub section 1 of section 9; and
- (b) the debtor has committed an act of insolvency or is insolvent; and
- (c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated, it may make an order sequestrating the estate of the debtor provisionally.”

[15] In terms of section 8(b) of the Act:

“a debtor commits an act of insolvency if a court has given judgment against him and he fails upon demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return of service made by that officer that he has not found sufficient disposable property to satisfy the judgment.”

Evaluation

Does the applicant have a liquidated claim?

[16] On 22 November 2023, this Court granted a judgement in favour of the applicant and against the first respondent, ordering the payment of R920 500.00, along with interest at the prescribed rate of 7.25% per annum, calculated from 29 June 2022, in addition to costs. It is further common cause that the same judgment was a subject of an application for rescission

at the instance of the first respondent. That application was, however, dismissed with punitive costs. The costs implications

on the rescission judgment resulted in the amount owed being R1 108 837.63. This amount remains unpaid in full,

and there is no pending litigation that seeks to challenge the aforementioned judgment.

[17] However, it was argued on behalf of the respondents that notwithstanding the judgment that was granted in

favour of the applicant for the sum claimed, the first respondent was still entitled to ventilate a defence against the said judgment,

including whether it was a liquidated claim or not.

[18] In *Pheko and Others v Ekurhuleni City*[3], the court addressed the obligations of litigants towards judicial authority. It held that:

‘as the foundational value of our Constitution, the rule of law requires that the dignity and authority of the courts be upheld, as the capacity of the courts to carry out their functions depended upon it. According to the Constitution, orders, and decisions issued by a court are binding on all individuals to whom they apply and no one, may interfere with the functioning of the courts in any manner. It follows that disobedience towards court orders or decisions risks rendering our courts impotent, and judicial authority a mere mockery.’

[19] According to Ms Cawood who represented the respondents, it should be sufficient for the first respondent to simply assert that there is a bona fide defence to the applicant’s claim, without offering any factual basis for it. However, she still contended that the first respondent ought to present the foundation of its allegations through an affidavit, ensuring sufficient detail is provided.

[20] According to the *Badenhorst Test*,[4] in instances where the indebtedness of the respondent has been established on a balance of probabilities, the onus falls on the respondent to show that the debt in question is contested on genuine or bona fide grounds. The first respondent fails to provide any substantial response to the assertion of the applicant that a liquidated claim exists and that it was not involved in any pending litigation. Therefore, the applicant’s claims remained unchallenged.

[21] Throughout the applicant’s efforts to enforce the debt, the first respondent has failed to provide any plausible explanation for his failure to satisfy the debt, nor has he demonstrated any attempts in favour of paying the debt. In the case of *Express model*

trading 289 CC v Dolphin Ridge Corporate[5], the court held that any application to postpone the granting of the liquidation judgment in the case of a company debtor could not be granted, in the absence of an adequate explanation for the delay in paying of the debt.

[22] Similarly, as it is the position in casu, the opposition proffered by the first respondent lacks in substance and legal rationale. The argument that it should still be open for the first respondent to pursue some challenge to this judgment is untenable, particularly in view of the elapsed time between the default judgment in November 2023, and the issuance of the rescission judgment in November 2024. ‘Court orders are binding on all individuals to whom they apply, regardless of whether they were issued correctly or incorrectly. Compliance is required unless they are formerly overturned.’ [6] It follows that, on the strength of the judgments issued in favour of the applicant regarding the same debt, a liquidated claim against the first respondent has been established on a balance of probabilities, and consequently, the first respondent is bound by its force and effect.

Did the first respondent commit an act of insolvency?

[23] On 4 November 2024, the first respondent met with the Sheriff of this Court for Riversdale with the writ of execution,

demanding payment of the amount of R920 500.00, along with interest and costs, from the first respondent personally. He

informed the Sheriff that he had no money, possessed no property, or disposable assets with which to satisfy the writ or any portion

thereof. The Sheriff also found no disposable property to satisfy the writ. Furthermore, in an affidavit dated 16 October

2024, the first respondent declared that there was no immovable property registered in his name and that he owned no immovable

property. It therefore became common cause that the first respondent committed an act of insolvency in terms of section 8(b) of the Act.

Any reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated?

[24] The first respondent claimed that he is factually insolvent, with no significant assets and liabilities. The affidavit of the first respondent dated 16 October 2024, along with his answering affidavit, highlights that there was no immovable property registered in the name of the first respondent. The respondents persisted that should the provisional sequestration be granted, there will be no advantage to creditors as there were no realisable assets at their disposal. On behalf of the respondents, it was submitted that the fact that the first respondent had made commitments to pay a portion of his debt, should not be taken to imply that there were any disposable assets from which other creditors would gain an unfair preferential advantage.

[25] Conversely, the applicant insisted that there will be substantial advantage to the creditors if an investigation is permitted by means of a provisional sequestration order. The argument of the applicant emphasised that, to the extent that the first respondent made various transactions, which involved disposing of ownership or material value from immovable properties associated with him that sufficed to warrant an investigation into the circumstances that could result in substantial advantage to the creditors. The applicant also highlighted that SARS and Investec Bank, as creditors of the first

respondent, were unduly advantaged through the conduct of the first respondent. The applicant argued that the first respondent has demonstrated through his conduct towards some of his creditors that should he be provisionally sequestered it would be to the advantage of the wider group of creditors.

[26] The first respondent is also known to be indebted to other creditors. These include a judgment of the courts under case number 16381/22, wherein an order was agreed upon by consent of the parties for the payment of R161 238.46 to one Pieter Andreas Olivier. Another judgment taken in favour of Cronos Capital (Pty) Ltd, under case number 15237/23, for a sum of R608 778. The first respondent is also indebted to the South African Revenue Service for an amount in excess of R3 000 000.00.

[27] The correct approach in determining whether a sequestration may yield any advantage to creditors is well established. In *Meskin & Co v Friedman*,^[7] it was held that:

“The right to investigate is given, as it seems to me, not as an advantage in itself, but as a possible means of securing ultimate material benefit for the creditors in the form, for example, of the recovery of property disposed of by the insolvent or the disallowance of doubtful or collusive claims. In my opinion, the facts put before the Court must satisfy it that there is a reasonable prospect- not necessarily a likelihood, but a prospect which is not too remote- that some pecuniary benefit will result to creditors. It is not necessary to prove that the insolvent has any assets. Even if there is none at all, but there are reasons for thinking that as a result of the enquiry under the Act some may be revealed or recovered for the benefit of creditors, that is sufficient.”^[8]

[28] In the given circumstances the point of departure would be to consider whether there are realistic prospects that pecuniary benefit will result to creditors.^[9] Against the disposition that the first respondent was factually insolvent, regard must also be had to the timing of the donation of 50% value of immovable property, at no benefit to him. This donation was processed in August 2023, following litigation in pursuit of the claim by the applicant had already been issued. On 01 December 2023, a week after the default judgment of the 22 November 2023, the immovable property of the first respondent was sold to a third party for R12 000 000.00. From the mentioned transaction, the first respondent realised proceeds of about R9 000 000. 00, which remains unaccounted for. The payment of R3 000 000.00 to Investec Bank to settle the mortgage bond on the same immovable property may suggest that, despite the alleged factual insolvency, certain creditors are unfairly benefiting as their debts are being paid. On the eve of the hearing for this application on 15 May 2025, the first

respondent made an offer to reach a compromise in order to pay the R3 000 000.00 debt owed to SARS, one of the creditors.

- [29] The inquiry herein does not focus on the purpose or motivation behind the donation of partial ownership of his immovable property, without the disposal of the property itself, and the selective payment of certain creditors.[10] The focus here is on whether the transactions in question occurred more than two (2) years prior to the sequestration, and if granting provisional sequestration would benefit the creditors.[11] Much as SARS is accepted as a preferent creditor, the point remains that it is unlikely that the first respondent may be without any assets that, if properly investigated would induce some benefit to the creditors. Furthermore, the payment of R3 00 000.00 to Investec Bank, despite the first respondent having other creditors, serves as another indication of the need to investigate how Investec Bank was preferred over other creditors.
- [30] The actions of the first respondent, particularly in his interactions with certain creditors and the manner in which he has disposed of assets potentially linked to him, do not align with those of a debtor who is factually insolvent. The conduct of the first respondent towards some creditors also demonstrated that if a structured investigation is not permitted, some creditors may continue to unduly benefit at the expense of others. Therefore, the first respondent has demonstrated through his conduct towards some of his creditors that should he be provisionally sequestered, it would be to the advantage of the larger body of creditors. A provisional sequestration continues to be the most appropriate means of ensuring an equitable material benefit for the entire body of his creditors.[12]
- [31] Upon consideration of the relevant factors and applying the legal principles, the applicant has fully discharged the onus that rested on it to justify granting of the relief sought in the its notice of motion. The evidence has shown overwhelmingly that the applicant remains a creditor for a liquidated claim; the first respondent committed an act of insolvency and that a provisional

sequestration of his estate may be to the advantage of the body of his creditors.

Costs

- [32] The applicant seeks an attorney and client costs of this application be costs in the administration of the insolvent estate of the first respondent. 'The scale of attorney and client is an extraordinary one which should be reserved for cases where it can be found that a litigant conducted itself in a clear and indubitably vexatious and reprehensible conduct. Such an award is exceptional and is intended to be very punitive and indicative of extreme opprobrium.'[13] If regard is had to the nature of the proceedings at hand, being provisional sequestration, an opportunity may still be presented to the parties on the return date to have a meaningful ventilation of relevant issues in determination of costs. Any determination of punitive cost must have an objective basis as such costs would be justified where there is an extra-ordinary conduct.

Notwithstanding an invitation that the parties provide supplementary arguments on the costs order sought by the applicant, this invite did not receive a positive response. In the circumstances, I am convinced that the most equitable approach to costs at this stage would be to allow it to stand over for later determination.

Order

[33] The following order is made:

1. That the estate of the first respondent be placed under a provisional sequestration in the hands of the Master of the High Court.
2. That the rule nisi is hereby issued calling on the first respondent and all persons interested to appear and show cause, if any, to this Honourable Court, on Tuesday 5 August 2025 (Motion Court) as to why an order should not be granted in the following terms:
 - a. That the estate of the first respondent be placed under final order of sequestration; and
 - b. That the costs stand over for later determination;
3. That service of the order is effected as follows:
 - a. By the Sheriff on the first and second respondent personally;
 - b. By the sheriff on the South African Revenue Services Cape Town;
 - c. By the Sheriff upon the employees of the first respondent (if any) and any trade unions which represents the employees;
 - d. By one publication in each of “the Cape Times” and “Die Burger newspapers; and
4. By sending a copy of this order to all known creditors of the first respondent, with claims in excess of R20,000.00 by prepaid registered mail.

Acting Judge of the High Court

Appearances

Counsel for the applicant: Adv Jean Bence

Instructed by:

Koegelenberg Attorneys

41 Vasco Boulevard

Goodwood, Cape Town

Counsel for the respondent: Adv Claire Cawood

Instructed by:

Mr Allan Jones – First Respondent

Date of Hearing: 26 May 2025

Date of Judgment: 3 June 2025

This judgment was handed down electronically by circulation to the parties' representatives by email.

- [1] Applicant's replying affidavit, paragraph 23 to 25
- [2] Affidavit of Allan George Jones, dated 16 October 2025
- [3] Pheko and Others v Ekurhuleni City 2015(5) SA 600 (CC) at 1
- [4] Badenhorst v Northen Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T)
- [5] Express Model Trading 289 CC vs Dolphin Ridge Corporate 2015
- (6) SA 224 (SCA)
- [6] Secretary, Judicial Commission of Inquiry into allegations of State Capture v Zuma and Others 2021 (5) SA 327 (CC) at para 59
- [7] Meskin & Co v Friedman 1948 (2) SA 555 (W) at 559
- [8] Also followed in Stratford and Others v Investec Bank Ltd & Others (CCT 62/14) [2014] ZACC 38; 2015 (3) BCLR 358 (CC); 2015 (3) SA 1 CC; 2015 36 ILJ 583 (CC) (19 December 2014) paragraph 45; Braithwaite v Gilbert (Volkskas Intervening) 1984 (4) SA 717 (W) 718 B; Nutrigrun (Pty) Ltd v Odendaal & Another (Case No. 5603/2017) HCFS (26 April 2018), paragraph 6.
- [9] Meskin & Co v Friedman
- [10] The Insolvency Act 24 of 1936, Section 26
- [11] The Insolvency Act 24 of 1936 Section 10 (c)
- [12] Meskin v Friedman *supra*
- [13] Plastics Convertors Association of SA on behalf of Members v National Union of Metalworkers of SA and Others (2016) 37 ILJ 2815 (LAC) at para 46

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