

SOUTH AFRICA / JUDGMENT

Changing Tides 17 (Pty) N.O v Johannes and Another; In Re: Changing Tides 17 (Pty) Ltd N.O v Johannes and Another (4141 S/2013) [2014] ZAGPPHC 115 (13 March 2014)

[2014] ZAGPPHC 115

COURT

North Gauteng High Court, Pretoria

BEFORE

Murphy

CASE / FILE NUMBER

4141 S/2013

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IN THE HIGH COURT
OF SOUTH AFRICA, PRETORIA
(REPUBLIC OF
SOUTH AFRICA)
CASE
NO: 4141 S/2013

DATE: 13 MARCH 2014
In the matter

between: CHANGING TIDES 17
(PTY) LTD N.O. Intervening Creditor
(in its capacity
as Trustee of the South African Home Loans Guarantee Trust)
And

VAN DEN BERG: BILLY
JOHANNES.....First
Applicant

Identity Number: 7.....

VAN DEN BERG: JEANETTE.....Second
Applicant
In the Ex Parte

Application of:

VAN DEN BERG: BILLY JOHANNES.....First
Applicant

Identity Number: 7.....

JUDGMENT**MURPHYJ**

1. The applicants have made application for the voluntary surrender of their estate.
2. The application is complete and the procedural requirements have been met in terms of section 4 of the Insolvency Act 24 of 1936 (“the Act”).
3. Changing Tides 17(Pty) Ltd made application to intervene and opposed the application for surrender on the ground that voluntary surrender will not be to the advantage of the creditors.
4. The issue of contention between the applicants and the intervening creditor is whether the assets and liabilities have been accurately valued and consequently whether the potential dividend for distribution amongst the creditors is sufficiently advantageous.
5. The applicants value their immovable property as having a forced sale value of R1 250 000, to which they add R7 350 in respect of movables. The bond amount on the property is stated to be R981 612, 80. After the deduction of administration costs and taxes, the amount available for distribution among the concurrent creditors (valued at R348 812) is R101 920,84, giving a dividend in the rand for the creditors in an amount of 29 cents.
6. The intervening creditor contends that the value of the immovable property is overstated. It attaches a valuation reflecting that the property bears a market value of R860 000 with a forced sale value of R602 000. It contends further that even if the applicants’ valuation were accepted, the dividend is overstated for two reasons. Firstly, the applicants have understated the amount owing in respect of the bond on the property by R10 000; and secondly the stated forced sale value of the immovable property at R1 250 000 represents 80% of R1 560 000, the estimated market value, when the forced sale value, according to the applicant’s own valuer, should in fact be 70% i.e. R1 092 000. The consequence of these two miscalculations is that the amount available for distribution to creditors has been overstated by an amount of R168 000 (R10 000 plus R1 250 000 minus R109 2000). The amount available for distribution would then be zero. For that reason, the intervening creditor rightly submits there will be no advantage to creditors as there would be nothing to distribute and a contribution by creditors would most likely be required.

7. But even if the property were to be realised for more than 70% of the estimated market value, if it were sold for a mere R30 000 less than the hoped for R1,25 million, the dividend would fall below a probable dividend of 20 cents in the rand, being the amount stipulated as the acceptable amount in the Practice Manual of the Gauteng Division of the High Court, Pretoria. Given the varying valuations that is a distinct possibility. The fact

that the intervening creditor represents more than 70% of the creditors in value is a relevant consideration in assessing its concerns.

8. In the premises, I am of the view that the applicants have not discharged their onus to show on a balance of probabilities that there will be an advantage to creditors if their estate is sequestrated.

9. I make the following orders:

- i) The intervening party is granted leave to intervene in the application.
- ii) The application for voluntary surrender is dismissed.
- iii) The applicants are ordered to pay the costs of the intervening party.

JR MURPHY

JUDGE OF THE HIGH COURT

Date Heard: 26 February 2014

For the Applicants: Adv B Lee

Instructed By: Michael Senekal Attorneys

For the Intervening Creditor: Adv W Roos

Instructed By: Velile Tinto & Associates

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