

SOUTH AFRICA / JUDGMENT

Dippenaar N.O. and Others v Noordman N.O. and Others (2949/2022) [2022] ZAFSHC 181 (26 July 2022) [2022] ZAFSHC 181

COURT

Free State High Court, Bloemfontein

BEFORE

Van Rhyn

CASE / FILE NUMBER

2949/2022

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 2949/2022

In the matter between:

JOHANNES OLIVIER DIPPENAAR N.O.

1st Applicant

MARTHA MAGDALENA DIPPENAAR N.O.

2nd Applicant

JOHANNES JOSIAS VAN WYKN N.O.

3rd Applicant

and

O A NOORDMAN N.O.

1st Respondent

N KRUGER N.O.

2nd Respondent

HTA AFSLAERS (PTY) LTD in corroboration

with VENDOR AUCTIONEERS

3rd Respondent

I M KARAN t/a KARAN BEEF

4th Respondent

FIRSTRAND BANK

5th Respondent

BADENHORST ATTORNEYS

6th Respondent

MASTER OF THE HIGH COURT OF

SOUTH AFRICA

7th Respondent

CORAM: VAN RHYN, J

HEARD ON: 28 JUNE 2022

DELIVERED ON: 28 JUNE 2022

REASONS

was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 12:00 on 26 JULY 2022.

[1] On 28 June 2022 I made an order in the following terms in this matter, which came before me as an urgent application:

"It is ordered that:

1. Condonation is granted in terms of rule 6(12)(a) for non-compliance with the rules relating to form, service and time periods.
2. The First, Second and Third Respondents are interdicted and prohibited from auctioning or selling any of the property in the insolvent Estate of Geduld Boerdery Trust (B71/2021) at the auction scheduled to be held on 29 June 2022.
3. Reasons will be delivered in due course."

THE PARTIES

- [2] The three applicants are the trustees of the Geduld Boerdery Trust It 325/2008. The Geduld Boerdery Trust was finally sequestrated on 21 October 2021 (the “insolvent trust”). The first and second respondents, Ottlie Anton Noordman and Nicole Kruger are cited in their capacities as duly appointed Trustees of the insolvent trust. The third Respondent is HTA Afslalers (PTY) LTD, a company which in corroboration with Venditor Auctioneers received instructions to offer for sale, per public auction, the insolvent

trust’s moveable and immovable assets which includes a farm described as Portion [....] of the Farm [....] G [....], J [....] (the “farm G [....]”)

- [3] The fourth respondent is Ivor Michael Karan t/a Karan Beef. The fifth respondent is FirstRand Bank Limited t/a First National Bank. The sixth respondent is P H H Badenhorst incorporated t/a Badenhorst Attorneys. The fourth, fifth and sixth respondents are proven creditors of the insolvent trust.
- [4] The seventh respondent is the Master of the High Court, Bloemfontein. No relief is claimed against the fourth to seventh respondents. The urgent application was opposed by the first and second respondents. The application was issued on 27 June 2022. On 28 June 2022, at approximately 12h45, the notice to oppose and “provisional opposing affidavit” by the first and second respondents were filed. The urgent application was heard at approximately 14h00. Mr Gilliland, instructed by Van der Berg Van Vuuren Attorneys, appeared on behalf of the first and second respondents. Mr Coetzee of Steenkamp & Jansen Attorneys appeared on behalf of the applicants.
- [5] The first and second respondents disputed the urgency of the matter and asked that the applicants’ application be struck off the roll for lack of urgency with a costs order. In this regard it was contended that the second meeting of creditors of the insolvent trust was held on 13 May 2022. By the end of May 2022, at least, the applicants knew about the pending sale and auction to be held on the 29th of June 2022. Mr Gilliland therefore argued that the applicants failed to provide an explanation for the delay in bringing the application on the basis that the third respondent had already advertised the sale of the insolvent trust’s property on 25 May 2022.
- [6] Regarding urgency, it is apposite to state the factual background circumstances of the matter. On 30 May 2022 Mr Coetzee addressed a letter to the first respondent to enquire the basis upon which the auctioneers received authorisation to advertise the auction as no resolution was passed authorising the trustees to sell the property of the insolvent trust. In his letter Mr. Coetzee referred to section 82(1) of the Insolvency Act, Act 24 of 1936 (the “Insolvency Act”).

- [7] On 1 June 2022 the first respondent replied that the contents of the Minutes of the Second Meeting of Creditors is rather confusing and conflicting in that no clear resolution was passed. However, first respondent replied that all the proven creditors were made aware of the offer to purchase the farm G [...] and that all the proven creditors are in agreement that, notwithstanding the offer to purchase, the auction should proceed as advertised.
- [8] Notice of a General Meeting to be held on 24 June 2022 at Jacobsdal to have a resolution adopted inter alia to ratify all actions taken by the trustees to date, is the further reason why the urgent application was delayed in order to first ascertain whether any such resolutions will be adopted. However, the General Meeting did not proceed due to improper notification thereof in terms of the Insolvency Act and therefore no such resolution was adopted.
- [9] The applicants could only proceed to draft the urgent application subsequent to the outcome of the General Meeting of Creditors scheduled for 24 June 2022. I found the matter to be urgent, as I was of the view that if I did not hear the matter, the applicants would not be afforded substantial redress at a hearing in due course. This matter concerns the sale per auction of moveable and immovable assets which also included game, scheduled to take place the following day.
- [10] The first and second respondents further took another point in limine pertaining to the locus standi of the applicants to bring their application. Mr. Gilliland contended that the first and second applicants' personal estates were also finally sequestrated by an order of this court on 21 October 2021. The applicants should have cited Mr Donovan Majiedt of Honey Attorneys in Bloemfontein, as the trustee in their personal estates, in this urgent application.
- [11] The insolvent trust's assets were vested in the first and second respondents on their appointment by the Master. Mr Gilliland therefore argued that the first and second applicants, as unrehabilitated insolvents, do not have the necessary locus standi to protect the property of the insolvent trust.
- [12] Mr Coetzee referred to *Jordaan v Richter en Ander*[1] and *Muller v De Wet N.O.*[2] and argued that the applicants, as trustees of the insolvent trust, retains a reversionary interest in the administration of the estate of the insolvent trust due to the possibility that any surplus of realised assets over liabilities may accrue to the trust and its beneficiaries. I was satisfied that the applicants as the trustees of the trust have, as persons interested therein, a limited right to approach the court regarding the administration of the estate of the insolvent trust because of the allegation that there has been an irregularity or failure to comply with the provisions of the Insolvency Act on the part of the first and second respondents.[3]

THE SALIENT FACTS.

- [13] Subsequent to the appointment of the first and second respondents as trustees of the insolvent trust, the Master convened the First Meeting of Creditors on 5 February 2022. The first and second applicants attended the First Meeting of Creditors on the request of the provisional trustee. At this meeting the fourth respondent's claim was approved. The first and second respondents thereafter gave notice of the Second Meeting of Creditors to be convened at Jacobsdal on 13 May 2022. The first and second applicants attended this meeting on request of the first respondent.
- [14] The first and second respondents did not attend the Second Meeting of Creditors. Claims of the fifth and sixth respondents, who were represented at the meeting, were proved at the Second Meeting of Creditors. The fourth respondent was not represented at the Second Meeting of Creditors. Only the fifth and sixth respondents were present to vote on the proposed resolutions or to provide the first and second respondents with alternative directives.
- [15] At the Second Meeting of Creditors the representative of the applicants made the creditors, who were present at the meeting, aware of the fact that an existing purchase agreement in respect of the immovable property of the insolvent trust was not referred to in the trustees' report. The presiding officer, E J van der Westhuizen noted in the "Minutes of Proceedings" that Mr. Badenhorst does not accept the report by the trustees. The following appears from the Minutes of Proceedings:

"4. Proposed Resolutions"

4.1 Voting for acceptance: Creditors numbered:

Die Kurator moet die transaksie behoorlik ondersoek en terugvoering gee aan krediteure.
Krediteur 2 stem teen die voorgestelde resoluëie.

4.2 Proposed Amendments:

Voting for Acceptance: Creditors numbered:

Die Kurator moet die transaksie behoorlik ondersoek en terugvoering gee aan krediteure."

- [16] According to the applicants the representative of the fifth respondent did not vote to either adopt or reject the proposed resolution. Only the sixth respondent voted against the resolution. The first and second respondents did not attend the meeting and in the absence of any request for a further postponement, the presiding officer closed the meeting.
- [17] Mr. Coetzee argued that clear directions were provided by the creditors present at the Second Meeting of Creditors to the first and second respondents to investigate the offer to purchase the farm G [...]. Therefore, the notice of the auction scheduled for 29 June 2022 was premature and unauthorized. The decision to proceed with a sale of the insolvent trust's assets is contrary to the directions given by the creditors at the Second Meeting of Creditors held on 13 May 2022.

[18] Mr Gilliland contended that the adjudication of this application turns on the interpretation of the provisions of section 82(1) of the Insolvency Act.

THE APPLICABLE LEGAL PRINCIPLES AND CASE LAW

[19] The general rule is that the trustee is vested with the insolvent's estate, including the latter's property, rights and obligations. On his appointment, that is, after confirmation of his or her election and delivery to him or her of a certificate of appointment,[4] the insolvent's assets vests in the trustee(s).

[20] The trustee should not as a rule sell any of the estate's assets until the second meeting of creditors has been held.[5] A trustee should not proceed with the administration or liquidation of the estate until creditors have had an opportunity to give him/her directions how to proceed. Consequently, as soon as the trustee is in a position to do so, he should convene the second meeting of creditors by notice in the Government Gazette and thereat (or at an adjourned second meeting with the Master's written permission obtained prior to the second meeting, or within one month after the acceptance of an offer of composition in terms of the Act) submit a full written report on those affairs and transactions and on any matter of importance relating to the insolvent or the estate and more specifically in regard to[6] -

- (a) the assets and liabilities thereof;
- (b) the cause of insolvency;
- (c) the books of the insolvent, stating in what respects (if any) the record (if any) of transactions is insufficient, or defective or incorrect;
- (d) the transactions of the insolvent prior to sequestration and what reason (if any) there is to suppose that the insolvent has been guilty of an offence;
- (e) any allowance he has made for the insolvent regarding his support and his reasons for do so doing;
- (f) any business he may have been carrying on behalf of the estate, any goods he may have purchased for that business and the result of such carrying on of that business;
- (g) any legal proceedings by or against the estate which were suspended by the sequestration which may be pending or threatened against the estate;
- (h) any uncompleted contract entered into by the insolvent for the acquisition of the immovable property or any current lease entered into by the insolvent as lessee;
- (i) any matter affecting the administration or realisation of the estate which requires the direction of creditors.

[21] Such report should be prepared in triplicate and lodged with the officer presiding at the meeting, who should annex the original to the minutes thereof.[7] At least 14 days before the advertised date of the second meeting the trustee must send to creditors whose names and addresses he knows, a copy of the report and of the inventory received by him from the deputy- Sheriff. The trustee must submit any recommendations

regarding resolutions or directions which he thinks ought to be passed or given by creditors.[8]

[22] Section 81(3) provides as follows:

“(a) The creditors may, at the meeting in question, direct what action shall be taken by the trustee in respect of any matter reported to them under paragraph (e), (f), (g), (h) or

- (i) of subsection (1).
- (c) If no directions have been given by the creditors at the second meeting of creditors, any resolution or direction alleged in the affidavit referred to in paragraph (a) of subsection (1)bis to have been recommended to the creditors of the estate and which could lawfully have been passed or given by the creditors at such meeting shall, if the Master so approves, be deemed to have been passed or given, as the case may be, by the creditors at such meeting.
- (d) Subject to the provisions of this Act, the Master may, if no directions have been given by the creditors at the second meeting of creditors, in addition to any resolution or direction approved of by him under paragraph (b) or if no such a resolution or direction has been so approved of, give such directions relating to any matter reported to the creditors under subsection (1) or to the administration or realisation of the estate as he thinks fit.
- (d) Notwithstanding the provisions of subsection (3) of section 53, any resolution or direction approved under paragraph (b) and any direction given by the Master under paragraph (c) shall be binding

upon the trustee.” (emphasis added)

[23] For purposes of the adjudication of this matter the contents of section 81(3) of the Act read with the contents of section 82 is of importance. Section 82 reads as follows:

“(1) Subject to the provisions of section eighty-three and ninety the trustee of an insolvent estate shall, as soon as he is authorised to do so at the second meeting of the creditors of that estate, sell all the property in that estate in such manner and upon such conditions as the creditors may direct: Provided that if any rights acquired from the State under a lease, licence, purchase, or allotment of land is an asset in that estate, the trustee shall, in his administration of the estate, act in accordance with those provisions (if any) which by the law under which the rights were acquired, are expressed to apply in the event of the sequestration of the estate of the person who acquired those rights: Provided that if the creditors have not prior to the final closing of the second meeting of creditors of that estate given any directions the trustee shall sell the property by public auction or public tender. A sale by public auction or public tender shall be after notice in the Gazette and after such other notices as the Master may direct

and in the absence of directions from creditors as to the conditions of sale, upon such conditions as the master may direct.” (emphasis added)

DISCUSSION

[24] One of the most important duties that requires the trustee’s attention pertains to the realisation of the insolvent estate’s assets. After consideration of the trustee’s report and documents submitted therewith, it is competent for creditors to give such directions as to the future administration of the estate to the trustee.[9] If the creditors fail to do so, any proposed resolution or direction referred to in the trustee’s affidavit submitted to the Presiding Officer, if lawful, is and if the Master approves, deemed to have been passed or given by the creditors. If no direction have been given by creditors and there is no proposed resolution or direction for the Master to approve, the Master may give directions

relating to any matter reported to creditors, or as to the administration or realisation of the estate, as he thinks fit.[10]

[25] A trustee occupies a position of trust, not only towards creditors but also towards the insolvent himself, or as in this matter the insolvent trust. Even though the trustee must primarily act in the best interest of creditors, he must also have regard to the interests of the insolvent where these interests are not in conflict with the interest of creditors.[11] Mr Gilliland argued that it is clear from the contents of the Minutes of the Second Meeting of Creditors that the presiding officer closed the meeting. It is contended on behalf of the first and second respondent that, on the basis that the creditors did not, prior to the final closing of the second meeting of creditors give any directions, the trustees will sell the property by public auction or public tender. The trustees published the notice of the advertisement of the auction in the Government Gazette. The presiding officer sent the minutes of the meetings to the Master who has been in possession of the minutes for approximately six weeks. The fact that the Master has not given any directions is a clear indication that he does not intend to exercise his discretion that he has in that regard.

[26] It was furthermore argued on behalf of the first and second respondents that the third requirement that has to be met, as it is envisaged in section 82(1) of the Act, is that the trustees must obtain directions from the creditors regarding the conditions of sale. It is contended that the trustees enquired from the fourth and fifth respondents, who are the major creditors in both number and amount, regarding the conditions of sale and thus has met the third requirement envisioned in Section 82(1) of the Act. It is therefore argued that the first and second respondents have met all the requirements envisioned in section 82(1) and as a result the sale should proceed as scheduled.

[27] It was furthermore argued by the first and second respondents that the first respondent had already investigated the allegation of an offer to purchase the property of the insolvent trust for an amount of R23 645 000.00 by the time the second meeting of creditors took place. The court was referred to a string of e-mails and letters appended to the answering affidavit from which it is evident that the second applicant, referred to a purchase agreement during

September 2021 and since then several further allegations that “offers to purchase” the farm G [...] were made. On behalf of the first respondent it is therefore submitted that the so-called “offers to purchase” the property of the insolvent trust are not bona fide and the allegations are made solely in an attempt to delay and frustrate the sequestration proceedings.

- [28] Appended to the first and second respondents answering affidavit, is the approved conditions of sale which provide for a confirmation period after conclusion of the auction. Both the fourth and fifth respondents have, in writing, agreed to an extension of the period for confirmation of the purchase price to 5 August 2022. The first respondent indicated that he shall cause the revised conditions of sale to be communicated before the auction commences and shall more over cause any contract of sale to be amended accordingly.
- [29] The first and second respondents argued that this approach will have the consequence that the applicants will have until 5 August 2022 within which time they and the proposed purchaser may raise the money that has not been forth coming and to pay it over to the transferring attorney to ensure that the farm G [...] be sold at the highest price.
- [30] The legal framework regarding the authority to sell the insolvent estate’s property is explained as follows by Jafta J (dissenting judgment) N J Swart v Starbuck and Others:[12]

“[53] For a better understanding of the issue, it is necessary to begin by outlining the relevant statutory provisions. Lying at the heart of the matter are provisions of the Act which divest insolvent persons of their estates and vest them in the Master of the High Court (Master) until a trustee is appointed, at which stage the estate vests in the trustee. This position is triggered by an order that sequesters the estate of an insolvent person. From the moment such order is granted, the insolvent person may not deal with or dispose of assets in his or her estate. The authority to exercise rights in respect of the estate property vests in the Master until a trustee is appointed. On the appointment of the trustee, that authority relocates to the trustee.”

And further,

“[55] The authority contemplated in section 18(3) is a valid authority. This means that for a provisional trustee to sell assets of the insolvent estate, he or she must be in possession of a valid authority from a court or the Master, empowering him or her to sell the property in question. Section 80bis outlines a process to be followed in obtaining authority from the Master. Briefly, this section prescribes a jurisdictional fact which must be in place before the Master issues approval. It requires the trustee to furnish the Master with a written recommendation incorporating reasons why authority to sell is sought. I return to this issue later.”

[56] Section 82(1) is the other provision that governs a sale of assets of the insolvent estate. However, this provision applies to a sale authorised by creditors at the second meeting of the creditors. It requires a trustee to sell all the property in the insolvent estate upon being authorised to do so and to act in terms of a direction issued by creditors at the meeting in question. Section 82(8) protects innocent purchasers of assets against liability arising from a sale conducted in contravention of section 82.” (emphasis added)

[31] The issue that needs to be determined is whether the trustees had been authorised to sell the assets of the insolvent

trust by the creditors at the second meeting, alternatively after the second meeting of creditors or whether the Master has granted

authorisation to sell the assets of the insolvent trust. In a letter by the first respondent, dated 1 June 2022 and addressed to Mr Coetzee, it is noted that the contents of the Minutes of the Second Meeting of Creditors are unclear and confusing. The first respondent furthermore states that: “The Trustees take instructions from proven creditors based on number and value” According to the first respondent’s letter the issue regarding the offer to purchase the farm G [...] has been made known to the proven creditors and that the creditors are in agreement that the auction should proceed. The first respondent furthermore replied that the creditors “did not give any direct instructions to the Trustees, per resolution, in respect of the sale of assets, meaning the manner in which the assets are to be sold and the minutes are silent on that aspect”.

[32] Mr Coetzee replied on 6 June as follows:

“The content of paragraph 4 would not have been confusing and conflicting if any of the trustees attended the meeting. The second creditor after learning about the offer to purchase on(sic) the trust immovable property for a purchase amount, which would settle all claims of proven creditors if registered, directed the trustees to investigate the transaction and to report back to the creditors. The second creditor thereafter voted not to adopt the proposed resolution of the Trustees, attached to the report, until such time that the trustees complied with the directive.”

[33] From the contents of the above reply it is obvious that the recording of the resolutions passed at the Second Meeting of Creditors are indeed confusing and unclear. What is however clear is that the trustees were instructed to investigate the offer to purchase the assets of the insolvent trust and to report to the creditors on their findings. I therefore agree with the submission made on behalf of the applicants that no resolution to proceed with the sale of the assets of the insolvent trust was passed prior to the closing of the second meeting of creditors.

[34] Appended to the founding affidavit is a letter dated 22 June 2022 from Smart House Afrika (Pty) LTD confirming that NVC Fund Holding Trust has approved substantial funding for various property development projects which includes the full purchase price of R23 645 000.00 for “Leswale Game Lodge in G [...]”, Free State Province, the property of the insolvent trust. It is furthermore stated that the funding has to be cleared which is anticipated to be

completed within 31 working days from 22 June 2022. The response from the first and second respondents was that the applicants, during June 2021 in their answering affidavit in opposing the application to sequestrate the trust, already indicated that prospective purchasers were interested in purchasing the farm G [...]. In fact, several different entities have since 2014 presented offers to purchase the farm and nothing has come of these averments to settle all debts and to avoid the process of sequestrating the trust and selling off its assets. Therefore, no reliance can be placed on any offer to purchase the property of the insolvent trust.

- [35] Even though the first respondent may be correct in his assumption that nothing will come of the latest offer to purchase the farm G [...], and that the allegation of such offer is merely an attempt to frustrate and delay the process, I am of the view that a resolution was adopted in terms whereof the trustees had to investigate such offer to purchase and report back to the creditors, alternatively such directive was made by the presiding officer who acted as the representative of the Master at the meeting. To my mind the first and second respondents have to comply with the directions provided at the Second Meeting of Creditors. The first and second respondents' reliance on the fact that the Master has not given any directions in the period since the minutes of the Second Meeting of Creditors had been submitted, is not in accordance with the contents of the report submitted by the Master shortly prior to the hearing of this application. The contents of the Master's report dated 28 July 2022 reads as follows:

"2. I am the seventh respondent in this matter and since no relief is sought against me I do not intend to oppose the application.

3. I do however wish to bring the following information to the attention of the Honourable Court, namely:

3.1 The first and second respondents did not approach my office for directions in terms of section 82(1) of the Insolvency Act, 24 of 1936.

3.2 In the Government Gazette of 27 May 2022 notice was given of a meeting in terms of section 41 or 42 of the Insolvency Act, supra, to take place before the Magistrate Jacobsdal, on 24 June 2022. The purpose of the meeting was for the proof of further claims, to accept the trustee's report, to adopt resolutions and to proceed with an enquiry. I am not sure if the meeting indeed took place as my office has not yet been placed in possession of the minutes.

4. I have no further information which could be of assistance to the Honourable Court. I abide by the decision of the Honourable Court."

- [34] Clearly the Master took note that a meeting was scheduled to take place on 24 June 2022 and awaited the outcome of that meeting. The Master has not been informed that the meeting did not take place. It is alleged that the trustees' report did not contain any information regarding the purported offer(s) to purchase the farm (and other assets) of the insolvent trust and that subsequent to being so informed at the Second Meeting of Creditors, at least

Mr Badenhorst, on behalf of one of the creditors indicated that he voted against all the proposed resolutions being passed during the meeting held at Jacobsdal based on the fact that he did not have information regarding the agreement of sale referred to by Mr Coetzee. It is clear from the contents of the email appended to the answering affidavit from Mr Badenhorst, that further information is requested to enable the creditors “to consider our options herein” Only after consideration of the trustees’ report and documents submitted therewith is it competent for creditors to give directions as to the future administration of the estate.

- [35] From the contents of the Minutes of the Second Meeting of Creditors it can be gathered that the proposed resolutions or directions in the trustees’ report were not passed. I therefore assume that a follow-up general meeting was scheduled to take place at Jacobsdal on 24 June 2022 to have resolutions adopted and to ratify all actions taken by trustees to that date. This meeting did not take place. “It is wrong of a trustee to endeavour to hold the sale of the estate assets against the express wishes of creditors”[13] To my mind the resolution passed at the Second Meeting of Creditors were recorded as that the trustees need to investigate the offer to purchase the property of the insolvent trust and to report to the creditors in this regard. Only if no directions have been given by creditors and there is no proposed resolutions or direction for the Master to approve, the Master may give directions relating to any matter reported to creditors, or as to the administration or realisation of the estate, as he thinks fit.
- [36] The trustees did not obtain any directions from the Master and therefore any resolution of creditors as recorded in the minutes of the meeting is binding on the trustees in so far as it is a direction to the trustees[14] and a trustee who acts contrary to any such resolution may be interdicted from so doing.[15] The creditors did not ask the opinion of the trustees regarding the proposed agreement of sale of the assets of the insolvent trust. The creditors present at the second meeting of creditors did not have any information regarding the previous or current offers to purchase the farm Groenlvei due to the failure of the trustees to record such offers in the Trustees’ Report. The resolution passed at the second meeting of creditors was to provide the creditors with a full written report on the affairs and transactions relating to the insolvent trust’s estate which would include all the necessary information regarding the previous and current offers to purchase the farm (and other assets of the farm G [....]) with a view of providing the creditors with the relevant information to make an informed decision regarding the procedure to be followed which would obviously be to the benefit of the creditors and the insolvent trust. It is common cause that the first and second respondents have, at the time of the hearing of this application, not yet been authorized to sell the property of the insolvent trust.
- [37] As a result I was satisfied that the applicants made out a proper case to stop the auction to proceed on the following day on the basis that neither the creditors agreed to the sale per auction of the assets of the insolvent trust nor did the trustees obtain the direction of the Master to proceed with the sale of the insolvent trust’s assets.

[38] As to the issue of costs, the applicants did not ask for a costs order and no costs order was thus made.

VAN RHYN J

On behalf of the Applicant:

MR R COETZEE

Instructed by:

STEENKAMP JANSEN ATTORNEYS

BLOEMFONTEIN

On behalf of the 1st & 2nd Respondent: ADV. J GILLILAND LOUW

Instructed by:

NOORDMANS ATTORNEYS

[1] 1981(1) SA 490 (O).

[2] 2001 (2) SA 489 (WLD).

[3] Jacobs v Hessels 1984 (3) SA 601 (T) at 604; Mookrey v Smith NO and Another 1987 (1) SA 332(CPD) at 335.

[4] Section 56(2)

[5] Section 18(3).

[6] Section 81(1); Thorne v the Master 1964 (3) SA 38 (N) at 45.

[7] Regulation 2.

[8] Section 81(1)(bis) (a).

[9] Section 81 (3) (a).

[10] Section 81(3)(c).

[11] Jacobs v Hessels 1984 (3) SA 601 (T) at 605G.

[12] 2017 ZACC 23 at [53]

[13] Mars: The Law of Insolvency in South Africa, (Ninth Ed) 15.17 page 331 - 332

[14] Section 53(3); De Jager's Trustees v the Master 1918 CPD 535; Consolidated Caterers Ltd v Patterson NO 1960 (4) SA 194 (E); Thorne v The Master 1964 (3) SA 38 (N).

[15] Doornbruck v Doornbruck's Trustees 17 CTR 1135.

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