

SOUTH AFRICA / JUDGMENT

Jordaan and Another v Le Roux and Others (070088/23) [2025] ZAGPPHC 651 (20 June 2025)

[2025] ZAGPPHC 651

COURT

North Gauteng High Court, Pretoria

BEFORE

N L Moila

CASE / FILE NUMBER

070088/23

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case Number: 070088/23

(1)

REPORTABLE: YES / NO

(2)

OF INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED: YES/NO

DATE

SIGNATURE

In

the matter between:

JOHANNES
CHRISTIAAN HERMANUS JORDAAN
FIRST APPLICANT
RUAAN
OOSTHUIZEN
SECOND APPLICANT
and
NICO LE
ROUX
FIRST RESPONDENT
KOBUS VAN DER WESTHUIZEN
N.O.
SECOND
RESPONDENT
SELBY MUSAWENKOSI
NTSIBANDE N.O.
THIRD RESPONDENT
JACOLIEN FRIEDA BARNARD
N.O. FIRST INTERVENING APPLICANT
RICHARD MASOANGANYE
N.O. SECOND INTERVENING APPLICANT

JUDGMENT

Moila, AJ

Introduction

[1] There are two applications before this court. The first application is an opposed application for final sequestration of the First Respondent on the basis that he committed an act of insolvency in terms of section 8(g) of the Insolvency Act[1], as he is unable to pay the first applicant an amount of R8,012,198.00 and the second applicant, R1,824,457.00. The First Respondent's

estate was placed under provisional sequestration on 26 July 2023. The rule nisi was extended until 10 March 2025 on the opposed roll. The second application is an application to intervene by two intervening applicants. The intervening applicants seek leave to intervene in the application for sequestration against the First Respondent.

[2] The first Respondent appeared in person and opposed the application. The first Respondent submitted that he had never acted in his personal capacity when he signed the acknowledgement of debt but had always acted on behalf of the companies. It is the companies that were under stress and have been liquidated. He is not insolvent.

- [3] As foreshadowed above, the intervening Applicants are applying to be granted leave to intervene in the application for sequestration against the first respondent. They submitted that an amount of R3,429,769.42 and R1,734,000.68 was transferred from the third Respondent, Companies IPG Main Sales and IPG Properties, to the First Respondent's bank account. In total, the First Respondent owes both companies R5,163,770.10.

The parties.

- [4] The first and second Applicants are creditors and respective investors of capital into the trade and business of the first Respondent pursuant to a verbal agreement and acknowledgement of debt concluded between the parties.
- [5] The First Respondent is an adult male, married out of the community of property to Anna Magrieta Le Roux, residing at 40 Glen Eagle Drive, Silver Lakes Golf Estate, Pretoria. He was the sole director of IPG Properties (PTY)Ltd and IPG Properties main sales and collectively traded in the name and style of "IPG".
- [6] The second and third Respondents were appointed as provisional liquidators of IPG properties.
- [7] The intervening Applicants are appointed liquidators in the insolvent estate of IPG Main Sales (Pty) Ltd, duly appointed by the Master and confirmed on 27 September 2023 at the first meeting of creditors.

Background and facts

- [8] The first Respondent was the sole director of both IPG Properties (Pty) Ltd and IPG Main Sales (Pty) Ltd. The first Respondent and the two companies collectively traded as "IPG" and operated a Ponzi-type, unregulated, and unlawful investment scheme. They all used the same address: 4[...] G[...] E[...] Drive, Silver Lakes Golf Estate, Pretoria.
- [9] The first Respondent solicited and accepted investments from the general public (hereinafter referred to as "Investors") to advance the unlawful scheme. The first Respondent entered into verbal agreements with the first and second Applicants. The terms of the agreement were to the effect that the Applicants would deposit money into the first Respondent's Standard Bank account number 1[...]. It was agreed that the first Respondent would use this money to purchase immovable property at a price below market value and then immediately sell the property for a profit.
- [10] Generally, the agreement stipulates that the first Respondent, after selling the immovable properties, will increase the capital by approximately 30% within roughly three months and pay out the capital, along with the predetermined profit, on a fixed date.

- [11] The payment terms of the verbal agreements were documented through an acknowledgement of debt. This document outlined the agreed-upon capital investment and specified the amount of profit that would be paid in the future. The acknowledgement of debt binds both the first Respondent and IPG as co-principal debtors, making them jointly and severally liable to the investor.
- [12] The first applicant claims the return of the capital amount of R 8,012,198.00. The second applicant, in the same manner, made the respective investments with the first respondent and claims a cumulative amount of R1 824 457.00.
- [13] IPG Main Sales (Pty) Ltd was placed under final liquidation on 11 July 2023, and IPG Properties (Pty) Ltd was liquidated on 22 August
2023. On 17 July 2023, the applicants launched an urgent application seeking to place the first respondent in provisional sequestration. On 26 July 2023, the first respondent was placed in provisional sequestration. The first respondent only filed his opposing affidavit on 25 October 2023.
- [14] The applicants have served the provisional sequestration order to the following entities: the Master of the High Court, SARS, on the first respondent via the sheriff,
- on the employees of the first respondent via the sheriff, on the trade unions of the first respondent via the sheriff, applicants published the provisional sequestration order in the Beeld newspaper and in the Government Gazette.
- [15] The applicants are seeking the final sequestration of the first respondent's estate. Liquidators in the insolvent estate of IPG Main Sales (Pty) Ltd, duly appointed by the Master of the High Court on 26 July 2023 and confirmed on 27 September 2023 at the first meeting of the creditors, are applying for leave to intervene in the main sequestration application brought by the applicants against the first respondent. The first Respondent transferred an amount of R 3 429 769.42 and R 1 734 000.68 from the companies IPG Main sales and IPG Properties to his personal bank account.

Submissions by Applicants

- [16] Applicants' counsel submitted that on 8 May 2023, a letter of demand was sent to the first Respondent via e-mail by the Sheriff. They demanded payment of the money invested. The first Respondent failed to honour the payment obligation but instead gave notice of his inability to pay. Counsel asserted that the first respondent is factually insolvent.
- [17] Mr. de Leeuw averred that the first Respondent is indebted to eight known creditors. On the first Respondent's own version, he is also indebted to MFC in the amount of R 250,000.00. The first Respondent does not own any immovable property. He owns the following movable property:

17.1 GWM P Series with registration number J[...]

17.2 Kia Sportage with registration number X[...];

17.2 Radical tops future trailer with registration number J[...].

Therefore, the first Respondent's liabilities, fairly estimated, exceed his assets, fairly valued.

[18] The Applicants' Counsel argued that once a prima facie case is established, it falls to the first Respondent to rebut it by drawing a full, true and accurate picture of what his assets and liabilities are. Counsel referred the court to Hannover Reinsurance Group Africa (PTY) Ltd and another [2], where the court held:

"There is no onus on the respondents but an evidentiary burden on them to show that the provisional order is resisted on bona fide and reasonable grounds. If the Respondents succeed in doing so, the provisional order should be discharged and the application

dismissed."

[19] The Applicants' Counsel further submitted that the first Respondent's defence is that he is not insolvent. However, he failed to present concrete evidence before the court to fully prove his financial position, including the assets he owned and the extent of his creditors.

[20] Counsel referred the court to what was stated by Wallis J (as he then was) in *First Rand Limited v Evans*;^[3]

"...where the conditions prescribed for the grant of a provisional order of sequestration are satisfied, then, in the absence of some special circumstances, the court should ordinarily grant the order. It is for the Respondent to establish the special or unusual circumstances that warrant the exercise of the court's discretion in his or her favour."

[21] Mr. de Leeuw further argued that the first Respondent made allegations that he sold the GWM P Series motor vehicle, but did not explain when and how it was sold. The more likely scenario might be that the first Respondent is attempting to dispose of his assets. That also constitutes an act of insolvency in terms of section 8 (c) of the Insolvency Act.

[22] Counsel further averred that the first Respondent does not deny that the applicants invested money in his business. The first Respondent signed the acknowledgements of debt stating that they were jointly liable to Mr JCH Jordan.

[23] The Applicants' Counsel referred this court to a WhatsApp message sent by the first respondent to the first applicant which was confirmed by the first respondent's legal representative (the passage translated from Afrikaans to English) reads as follows:

"Good afternoon, client. As you know, many of my payments are behind, and I am struggling to pay on time. My business is going through a lot of stress at this stage, but I want to reassure everyone that I will settle all the arrears, as well as people who want their capital back by the end of May. My legal advisor and I are sorting things out. Rest assured that the payments will be made."

- [24] Counsel concluded that if the court grants final sequestration, it will be to the advantage of all creditors. The requirements of granting a final sequestration have been satisfied by the Applicants.

First Respondent's

submissions

- [25] The first Respondent submitted that he acted on behalf of the companies when the acknowledgement of debt was signed. He never bound himself as a co-principal debtor. The Standard bank accounts belonged to the companies and were not his personal bank accounts. The WhatsApp messages are not of a personal nature.
- [26] The Applicants must claim against the second and third Respondents as the companies have been liquidated. The first Respondent is not indebted to the applicants, nor did he sign or conclude any agreements with the Applicants. No court of law found that the first Respondent conducted a Ponzi scheme. The first Respondent submitted that the Applicants contracted and signed agreements with the companies.
- [27] The first Respondent further submitted that he does not own any immovable properties, and his companies are liquidated. Consequently, there is no discernible benefit for creditors, nor is there a valid reason to believe that the sequestration of the first Respondent's estate would serve to their advantage.
- [28] He concluded that there is absolutely a real and bona fide dispute of facts in this matter, and the parties must orally explain the terms of the AOD and the WhatsApp message. The application must be dismissed with costs or referred for oral evidence.

Intervening Applicants

submissions

- [29] Intervening Applicants request that the first Respondent's affairs be liquidated and be placed under the supervision of the Master because the first Respondent is unable to pay his debts and is, in fact, insolvent. Alternatively, the first Respondent has committed an act of insolvency as defined in section 8 of the Insolvency Act.
- [30] Counsel averred that they have locus standi because they were duly appointed liquidators in the insolvent estate of IPG Main Sales (Pty) Ltd, duly appointed by the Master of the High Court on 26 July 2023 and confirmed on 27 September 2023 at the first meeting of the creditors.
- [31] Counsel for the intervening parties further submitted that they support the Applicants' application that the first Respondent be finally sequestrated and his estate be placed in the hands of the Master. It will be to the advantage of the creditors to secure and protect the remaining assets therein.

[32] Counsel also argued that the first Respondent had opposed the intervening application but failed to file an opposing affidavit. They have served the application on the first Respondent's employees, the first and second applicants, SARS, and the Master of the High Court and obtained security from the Master. The first respondent owes both companies, the creditors, a total of R 5,163,770.10.

[33] In conclusion, Counsel submitted that the court grants them leave to intervene in the first and second applicants' application for sequestration against the first respondent.

Issues in dispute

[34] From the above discussions, this court is enjoined to determine the following disputed issues:

- (a) Whether the applicants had provided sufficient evidence to satisfy the requirements of section 12 of the Insolvency Act to declare the first respondent insolvent?
- (b) Should leave be granted to the intervening applicants to intervene in the application to declare the first Respondent insolvent?

Legal principles and discussions

[35] Section 12 of the Insolvency Act deals with the final sequestration or dismissal of a petition for sequestration. It outlines the procedures after a provisional sequestration order is made, determining whether to proceed with final sequestration or dismiss the petition. Section 12 of the Act provides as follows :

Final Sequestration

- (a) If the court is satisfied that the estate should be sequestrated, it will issue a final sequestration order. This order makes the sequestration official and irrevocable.

Dismissal of Petition

- (b) If the court is not satisfied that the estate should be sequestrated, it will dismiss the petition. This means the sequestration proceedings are terminated, and the debtor's estate remains unaffected.

Requirements for a final order of sequestration

[36] In terms of section 12(1) of the Act, the applicants must satisfy this court that:

- (a) they have established a liquidated claim against the respondent of not less than R100,00;
- (b) the respondent has committed an act of insolvency or is, in fact, insolvent; and
- (c) there is reason to believe that it will be to the advantage of creditors if the respondent's estate should be sequestrated.

[37] It is trite that the applicants bear the onus of proof in respect of each of these requirements.

[38] Section 8 of the Insolvency Act serves as a tool for creditors to compel the sequestration of a debtor's estate, even without proving the debtor's actual inability to pay their debts. In terms of section 8, the debtor commits an act of insolvency if:

- a) The debtor leaves the Republic with the intent to delay or evade payment of debts.
- b) The debtor cannot satisfy the judgment granted against them, and the Sheriff finds no property to attach and execute to satisfy the

judgment.

- c) Debtor conceals or disposes of property with the intent to defraud creditors.
- d) Debtor removing property with the intention of prejudicing creditors
- e) Debtor fails to comply with a court order for the surrender of their estate, even if they are capable of doing so.
- f) Debtors give written notice to creditors that they are unable to pay their debts.
- g) The debtor is a trader who has given notice in the Gazette in terms of section 34(1) and is, therefore, unable to pay all his debts.
- h) The Debtor, being a trader, unable to pay debts after notice of transfer of business.

[39] In *Meskin & Co v Friedman* the court held that[4] the degree of proof necessary to satisfy this requirement was considered. Roper J, as he then was, stated the following;

“Under sec. 12, which deals with the position when the rule nisi comes up for confirmation, the Court may make a final order of sequestration if it ‘is satisfied’ that there is such reason to believe. The phrase ‘reason to believe’, used as it is in both these sections, indicated that it is not necessary, either at the first or the final hearing, for the creditor to induce in the mind of the Court a positive view that sequestration will be to the financial advantage of creditors. At the final hearing, though the Court must be ‘satisfied’, it is not to be satisfied that sequestration will be to the advantage of creditors, but only that there is reason to believe that it will be so. In my opinion, the facts put

before the Court must satisfy 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 are none at all, but there are reasons for thinking that as a result of enquiry under the Act, some may be revealed or recovered for the benefit of the creditors, that is sufficient.” (my emphasis).

[40] The first requirement for granting the relief is that the unpaid part of the liquid claim must exceed R100.00. The first respondent was unable to pay the first Applicant an amount of R8,012,198.00 and the second Applicant R1,824,457.00. The Applicants have satisfied the first requirement. They demanded payment, but nothing was forthcoming.

- [41] The first Respondent committed an act of insolvency contained in section 8(f) of the Insolvency Act by giving a notice in writing to his creditors that he was unable to pay any of his debts as per the WhatsApp message relied on by both the first and second Applicants.[5]
- [42] The first Respondent also committed another act of insolvency in terms of section 8 (c) of the Insolvency Act. He made allegations that he sold the GWM P Series motor vehicle but did not provide an explanation on when and how it was sold. It seems to me that he was attempting to dispose of his assets.
- [43] I am satisfied that the Applicants have met the second requirement. The first respondent committed acts of insolvency in terms of sections 8(c) and 8(f) of the Insolvency Act.
- [44] In terms of section 12(1)(c) of the Insolvency Act, the court must be satisfied that there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated.
- [45] Actual advantage to creditors need not be established. All that has to be established is that there is reason to believe that there will be an advantage. This belief must be predicated upon facts which engender that belief and does not need to be established on a balance of probabilities.
- [46] The Applicants are not the only creditors. The first Respondent also owes his companies, which are liquidated, and eight other known creditors. In *Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd and Hawker Aviation Partnership and others*[6] Held that the court need not be satisfied that there will be advantage to creditors in the sense of immediate financial benefit
- but that the court need be satisfied only that there is reason to believe-not necessarily a likelihood, but a prospect not too remote -that as a result of investigation and inquiry assets might be unearthed that will benefit creditors.
- [47] The first Respondent was the sole director of both IPG Properties (Pty) Ltd and IPG Main Sales (Pty) Ltd. The first respondent and the two companies collectively traded as “IPG” and operated a Ponzi-type unregulated and unlawful investment scheme.
- [48] The first Respondent entered into verbal agreements with the first and second Applicants. The Applicants would deposit money into the first Respondent's Standard Bank account. The first Respondent will use this money to purchase immovable property at a price below market value and then immediately sell the property for a profit.
- [49] The first Respondent signed the acknowledgements of debt stating that they were jointly liable to Mr JCH Jordan, the first applicant. The fact that he is not personally liable is hereby rejected.

I now turn to consider the application to intervene

- [50] A party seeking to intervene in a final sequestration application must demonstrate that it has a direct or substantial interest in the subject matter. The intervening parties have locus standi to intervene in the application because they were appointed as liquidators of IPG Main Sales (Pty) Ltd. The second and third respondents also support the sequestration application. The first respondent owes both companies a total of R 5 163 770.00.
- [51] The first Respondent had opposed the intervening application but failed to file an opposing affidavit. The intervening parties have served the application on the first Respondent's employees, the first and second Applicants, SARS, and the Master of the High Court and obtained security from the Master.
- [52] In my view, the interest of justice demands that leave be granted to the intervening applicants. Consequently, leave is hereby granted to the intervening parties to join the applicants' application to declare the first respondent insolvent.
- [53] I am satisfied that the first Respondent committed acts of insolvency, and there is a reasonable prospect that some pecuniary benefit will result to creditors and that, as a result of the enquiry, some assets may be revealed or recovered for the benefit of the creditors.

Costs

- [54] Costs will be costs in the sequestration.

Order

- [55] I therefore make the following order:

1. Leave to intervene is granted to the first and second intervening Applicants.
2. The Provisional sequestration order dated 26 July 2023, the rule nisi is confirmed, and the first respondent is finally sequestrated,
3. The applicants' and intervening applicants' costs to be cost in the first respondent's insolvent estate on scale C

N.L MOILA

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: 20 June 2025. This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties and their legal representatives via email, as well as by uploading it to the electronic file of this matter on Caselines.

Counsel for the applicant: R de Leeuw

Instructed by: CDJ INC

Counsel for the intervening applicants: Z Schoeman

Instructed by: Mathys Krog Attorneys

Counsel/attorney for first respondent: CAVR Inc. Attorneys

Counsel/Attorney for second and third respondent: Matthys Krog Attorneys

[1] Act 24 of 1936 (as amended).

[2] 2012

(1) SA 125 (GSJ) para 58.

[3] 2011

(4) SA 597 (KZD) at para 28.

[4] 1948

(2) SA 555 (W) at 558-559.

[5] See above at paragraph 23.

[6]

[2006] ZASCA 51; 2006

(4) SA 292 (SCA) at para 29.

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