

SOUTH AFRICA / JUDGMENT

Lehane N.O v Lagoon Beach Hotel (Pty) Ltd and Others (15678/14) [2014] ZAWCHC 203; 2015 (4) SA 72 (WCC) (17 October 2014)

[2014] ZAWCHC 203

COURT

Western Cape High Court, Cape Town

BEFORE

Yekiso

CASE / FILE NUMBER

15678/14

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 15678/14

DATE: 17 OCTOBER 2014

In the matter between:

CHRISTOPHER D LEHANE N.O.....Applicant

And

LAGOON BEACH HOTEL (PTY) LTD.....1st Respondent

CASTORENA LTD.....2nd Respondent

INVESTEC BANK LTD.....3rd Respondent

DLA CLIFFE DEKKER HOFMEYR.....4th Respondent

GREAT AFRICA 999 INVESTMENT (PTY) LTD.....5th Respondent

Cape Town, Friday, 17 October 2014

Before the Honourable Mr Justice Yekiso

ORDER

Having heard counsel for applicant and the respondents, respectively on the anticipated return day of a rule nisi, and having read the papers filed of record,

IT IS ORDERED THAT:

- [1] The appointment, in terms of the law of Ireland, of the applicant as the Official Assignee in Bankruptcy of Mr Sean Dunne within the Republic of South Africa, is recognised;
- [2] The applicant and/or his duly authorised agents in South Africa are empowered, after having provided security to the satisfaction of the Master for the due and proper performance of his administration by virtue of this order and for the Master's costs and charges, to administer the estate of Mr Sean Dunne in respect of all of his assets which are or may be found to be situated within the Republic

of South Africa;

- [3] All rights as defined by the Insolvency Act, 24 of 1936, as amended, without derogating from the generality thereof and, in particular, sections 64, 65, 66, 69 and 82, shall, until this order is amended, mutatis mutandis exist in relation to the said administration as if the said Act applied thereto pursuant to a sequestration order granted by the Order of Adjudication of the Bankruptcy Court, Dublin, Republic of Ireland against Mr Sean Dunne on 29 July 2013, provided that:

[3-1] The rights and duties relating to the election and appointment of a trustee will not apply;

[3.2.] Only a creditor whose whole cause of action arose within the Republic of South Africa shall by virtue of this order acquire any rights to prove a claim;

[3.3.] The rights and duties defined by section 70 of the Insolvency Act, 24 of 1936, as amended, shall exist in relation to the administration; and

[3.4.] Any assets and any funds remaining after the payment of all monies due in respect of the aforementioned charges, costs and proven claims may be transferred from the Republic of South Africa only with the written permission of the Master.

- [4] The applicant and the Sheriff for the magisterial district of Cape Town are authorised to attach the first respondent's issued securities for purposes of enforcing the interdict referred to in paragraph 5 below.

- [5] Subject to paragraph 6 below, save with the leave of the applicant and failing that, the leave of this Court, and pending a period of six months after the finalisation of proceedings referred to in the founding affidavit herein and anticipated to be instituted in the Republic of Ireland to set aside certain dispositions Mr Sean Dunne made to Mrs Gayle Dunne (his spouse):

[5.1.] The first respondent is interdicted and restrained from dealing with any money or other assets it may hold and representing the proceeds realised from the disposal of any of its assets, including one or more of the sectional title units the first respondent owns in the Lagoon Beach Hotel Sectional Title Schemes described as SS Lagoon Beach 814, SS Lagoon Beach 816, SS Lagoon Beach 190, SS Lagoon Beach 595 and SS Lagoon Beach 596 (hereinafter "the Units") in any

manner whatsoever, including but not limited to encumbering same, using same to declare and pay dividends and/or transferring same to third parties;

[5.2] The fourth respondent is interdicted and restrained from dealing with or in any way disposing of any monies received or held (in any capacity, be it as principal, agent, stakeholder or otherwise) pursuant to a transaction between:

[5.2.1.] the first respondent and fifth respondent regarding, inter alia, the sale by the first respondent of any of its assets (including but not limited to one or more of the Units); and/or

[5.2.2.] the second respondent, alternatively, the current shareholder(s) of the first respondent and a third party regarding, inter alia, the sale of its/their shareholding in the first respondent to that third party;

[5.3.] The second respondent, alternatively, the current shareholder(s) of the first respondent is/are interdicted and restrained from dealing with their shareholding in the first respondent in any manner whatsoever (including but not limited to selling, donating,

encumbering, pledging or otherwise transferring same);

[5.4.] The second respondent is interdicted and restrained from dealing with any proceeds received from the same of its securities in the first respondent in any manner whatsoever, including but not limited to using same to declare and pay dividends and/or by transferring same to any third party;

[5.5.] The first respondent is forthwith obliged to account to this Court regarding the existence of any assets and/or money as contemplated in paragraph [5.1], and the particulars and/or quantum thereof.

[6] Nothing in paragraph [5.1] above shall have the effect of prejudicing the rights of the third respondent as secured creditor of the first respondent or guarantor in respect of the purchase price pursuant to the sale of assets of the first respondent to the fifth respondent. Without derogating from the generality of the foregoing:

[6.1.] Upon any sale and transfer of the Units, or any of them, the third respondent shall be entitled to receive payment from the proceeds of any such sale of the full amount of the first respondent's indebtedness to the third respondent secured by the sectional cover mortgage bonds B000023474/2007 and B006568/09 registered over the properties described as sections 128, 1000 - 1202, and 2000 in the Lagoon Beach Sectional Title Schemes in the sum of R54 596 850-24, plus interest with effect from 23 September 2014;

[6.2.] It is recorded that the third respondent has issued payment guarantees, payable to the fourth respondent and Absa Bank respectively, on the sale and transfer to the fifth respondent of the immovable properties owned by the first respondent, and nothing in this order shall preclude the third respondent from effecting payment to the fourth respondent or to Absa Bank pursuant to such payment

guarantees;

[6.3.] While it is recorded that the first respondent is not currently in default of its payment obligations to the third respondent, the third respondent shall be entitled to pursue its ordinary legal remedies as a creditor of the first respondent, including issuing legal proceedings against the first respondent for payment of any amounts which may become due, owing and payable to the third respondent at any time pursuant to its position as a second creditor, and/or seeking the winding-up of the first respondent, in which event nothing in this order shall preclude the third respondent from giving effect to its rights as a judgment creditor or secured creditor in winding-up, as the case may be.

[7] Unless the proceedings referred to in paragraph [5] are instituted within 90 days of this order, the orders in paragraphs [5.1] to [5.5] will lapse.

[8] The applicant may, at any time prior to the effluxion of the six month period referred to in paragraph [5], approach this Court on the papers herein, duly supplemented where necessary, to show cause as to why the orders referred to in paragraphs [5.1] to [5.5] should not remain extant for such further period as this Court may deem meet, and in which case the orders in paragraphs [5.1] to [5.5] will (subject to paragraph [6]) remain extant pending the determination of any such application.

[9] Any costs of the Master of giving effect to this order will be costs in the administration of Mr Sean Dunne's Estate.

[10] The costs of this application shall be paid by the First Respondent; such costs to include the costs of two counsel. There shall be no order as to costs against the Second to Fifth Respondents.

[11] A copy of this order shall be delivered by electronic mail to Mr Sean Dunne and Mrs Gayle Dunne c/o Mr James Berman, Zeisler & Zeisler PC at email address: lberman@zeislaw.com and c/o Clerkin Lynch Solicitors, 30 Molesworth Street, Dublin, Ireland at email info@clerklynch.com.

BY ORDER OF COURT

REGISTRAR

Hayes Inc

Box 687, Cape Town

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2014/203.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/lehane-no-v-lagoon-beach-hotel-pty-ltd-and-others-unknown-topic-awchc-2014>

Prepared on 12 October 2026 · Esheria