

SOUTH AFRICA / JUDGMENT

Stuart N.O and Others v Moolla N.O and Others (2816/2016, 2817/2016, 2818/2016, 2819/2016, 2820/2016, 2821/2016, 2822/2016) [2016] ZAKZDHC 18 (29 April 2016)

[2016] ZAKZDHC 18

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Topping AJ

CASE / FILE NUMBER

2816/2016, 2817/2016, 2818/2016, 2819/2016,
2820/2016, 2821/2016, 2822/2016

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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NOS: 2816/2016, 2817/2016,

2818/2016, 2819/2016,

2820/2016, 2821/2016 and 2822/2016

In the matters between:

MICHAEL LAWRENCE STUART N.O.....First Applicant

CHRISTIAAN FREDERIK DE WET N.O.....Second Applicant

JERIFANOS MAS HAM BA N.O.....Third Applicant

PULENG FELICITY BODIBE N.O.....Fourth Applicant

(in their capacity as the duly appointed joint provisional

liquidators of Carmol Distributors (Pty) Ltd (in Liquidation)

(Master's reference No. G1 023/2015)

And

YUNUS GOOLAM HOSEN MOOLLA N.O.....First Respondent

FATHIMA CARAWAN N.O.....Second Respondent

PRAKASH ROBERT DEEPLAL BAICHAN N.O.....Third Respondent

(in their capacities as the duly appointed trustees of the Yunus Moolla Trust,

NYM Family Trust, MZB Family Trust, Carmol Trust, MYM Family Trust,

SM Family Trust and Mubarakh Trust)

Delivered on 29th of April 2016

TOPPING AJ

- [1] I have before me seven applications, all instituted by the First to Fourth Applicant in their capacities as the joint provisional liquidators of the insolvent estate of Carmol Distributors (Pty) Ltd (in Liquidation) (hereinafter referred to as "Carmor"), seeking orders placing various trusts under sequestration in the hands of the master of this court. The First to Third Respondents are the duly appointed trustees of each respective trust in respect of which the orders are sought.
- [2] All seven applications were argued before me simultaneously. Although the applications are not consolidated, it is convenient to deal with them in one judgment as the issues raised in each application are common to all. For the sake of clarity however I shall identify the name of the trust in each application. In the application instituted under case number 2816/2016, the trust is the Yunus Moolla Trust: in case number 2817/2016, the trust is the NYM Family Trust: in case number 2818/2016, the trust is the MZB Family Trust: in case number 2819/2016 the trust is the Carmol Trust: in case number 2820/2016, the trust is the MYM Family Trust: in case number 2821/2016, the trust is the SM Family Trust: and in case number 2822/2016, the trust is the Mubarakh Trust.
- [3] By way of background, it is alleged in the founding affidavit filed in each of the applications that Carmol was a private company, registered in terms of the Companies Act, No. 71 of 2008, which has its registered address at 116 Acacia Greenstone, Edenvale, Gauteng. It is alleged that the First Respondent was responsible for the day-to-day running of Carmol and held himself out as its managing director. The Second Respondent was however in fact its sole director. It is stated that the First and Second Respondents were the initiators, driving forces and controlling minds behind Carmol and that the Third Respondent was involved in its administration and was appointed as its financial adviser. It is alleged by the Applicants that Carmol conducted an illegal scheme in terms of which it ostensibly traded in petroleum products and obtained money from members of the public, in the form of investors, under the pretext that such funds would be used to fund diesel trading and the profits generated therefrom would be used to pay returns to such investors. It is contended that, in truth, the trading of petroleum products only occurred a number of years ago.

- [4] It is alleged by the First Applicant, who deposed to the founding affidavits in each application, that he had conducted investigations which revealed that the investors had signed agreements that were styled as either loan or investor agreements and that an amount in excess of R 1 billion had been invested in Carmol through the scheme. He also stated that there were approximately 3800 such investors. It is alleged that the main business of the scheme was to accept deposits from the numerous investors and that the "legal business" was no more than a front to give an illusion that real business was being conducted. Investors were offered returns of between 6% and 8% per month. The deposits received from investors were applied primarily to effect return payments to other investors and to repay participants their deposits. It is alleged therefore that the scheme's continued existence was dependent on continuously obtaining sufficient investors in order to obtain the necessary funds to make payment of the return payment owing to existing investors. On the First Applicant's submission, the scheme's existence was temporary and furthermore, by its very nature, insolvent from inception.
- [5] The First Applicant then goes further to state that, as Carmol was contravening the provisions of section 11 (1) of the Bank Act, No. 94 of 1990, in that it conducted the business of a bank by soliciting and accepting loans from the general public in circumstances where it was not a registered bank, the South African Reserve Bank issued a directive to it, the First Respondent and Second Respondent on the 18th of February 2015 to repay the funds unlawfully obtained by them in accordance with section 84 of the Banks Act. This led to Carmol being provisionally

wound up on the 1st of October 2015, in the Gauteng Local Division, Johannesburg, and being finally wound up on the 30th of November 2015. Attention is drawn to the fact that in the judgment delivered upon the granting of the final winding up order, the court stated that "there is more than a prima facie case, and the probabilities favour the Applicant's (i.e. the Registrar of Banks) case that the business of the Respondent (i.e. Carmol) is unlawful and contravenes the Banks Act'.[1]

- [6] Reference is also made to the fact that an application, pursuant to the provisions of section 131 (1) of the Companies Act, No. 71 of 2008, it was instituted in this court on the 26 of November 2015 seeking to place Carmol under supervision and to commence business rescue proceedings. Such application was instituted some four days before the hearing of the application for the final winding up order on the 30th November 2015. It is submitted by the First Applicant that the sole purpose of instituting the business rescue application was to frustrate the winding up proceedings instituted in the Gauteng Local Division. If this was the case, it did not have the desired effect as the court held, upon the authorities cited in the judgment, that the institution of the business rescue proceedings did not have the effect of staying the winding up proceedings and accordingly granted an order winding up Carmol on the 30th of November 2015. If one has reference to the judgment, concern was also raised by the court as to the merit of instituting business

rescue proceedings in circumstances where the company to be rescued was conducting unlawful business. By way of completeness, the First Applicant points out that the said business rescue application was withdrawn on the 29th of February 2016.

- [7] The First Applicant then goes on to state in the founding affidavits that, pursuant to his investigations, he has determined that there are a number of trusts which have been identified in the scheme that were created solely for the use as conduits for the transfer of funds between Carmol, the First and Second Respondents and their family members. These are the trusts forming the subject of the various liquidation applications before me. This contention appears to be supported by the contents of the various trust deed and, in particular, the commonality of the trustees, the beneficiaries, the founder of the trusts and each trust's purpose.
- [8] If one has reference to the various applications, the trusts appear to fall into two categories, with the Yunus Moolla Trust, the NYM Family Trust and the MZB Family Trust all owning immovable properties and the Carmol Trust, the SM Family Trust, the MYM Family Trust and the Mubarakh Trust having no known assets other than funds standing to the credit of their respective bank accounts. It is alleged by the Applicants that none of the trust conduct business or have any source of income.
- [9] It is demonstrated in the respective application papers, duly supported by bank statements, that various payments have been made by Carmol into the respective trust's bank accounts. It is demonstrated in the -5- founding affidavits filed in each application that the following amounts have been transferred from Carmol to the respective trusts: the sum of R 10,635,314.14 to the Yunus Moolla Trust, the sum of R 3,017,836.00 to the NYM Family Trust, the sum of R 3,126,761.00 to the MZB Family Trust, the sum of R 1,100,000.00 to the Carmol Trust, the sum of R 700,000.00 to the MYM Family Trust, the sum of R 700,000.00 to the SM Family Trust and the sum of R 1,100,000.00 to the Mubarakh Trust. It is alleged by the Applicants that such payments have been made in fraud of creditors, or in any event, without just cause. They accordingly contend that such payments either fall foul of the *actio pauliana*, or constitute payments made *sine causa*, and that as a result, the Applicants have an enrichment claim for the repayment of such amounts from the respective trusts.
- [10] It is contended, in respect of those trusts owning immovable properties, that the funds were utilised to purchase the immovable properties owned by them. As far as the non-property owning trusts are concerned, it is demonstrated that such funds were paid into the respective trust's bank account but the Applicants have no knowledge as to the extent of the funds currently standing to the credit of such accounts. The contention is made that the balances would have diminished since the date of the funds being paid into such accounts as a consequence of either the funds being withdrawn or bank and related charges being levied thereon.

[11] The Applicants rely on the provisions of section 9 (1) of the Insolvency Act, No. 24 of 1936 in all the applications and contend that, upon the investigations conducted by the First Respondent, it is apparent that each of the trusts are factually insolvent. It is contended in this regard that Carmol's claim against each respective trust exceeds its assets. As far as the trusts that own immovable properties are concerned, it is demonstrated in the respective application papers that each of the

-6- respective immovable properties is valued at an amount less than the amount demonstrated as having been paid by Carmol into the respective trust's bank account. This being the case, it is demonstrated that the Yunus Mooia Trust's liabilities exceed

its assets by the sum of R3,160,319.14, the NYM Family Trust's liabilities exceed its assets by the sum of R 617,836.00 and the MZB Family Trust's liabilities exceed its assets by the sum of R 776,761.00. Although the Applicants were not able to state what the balances of the bank accounts of those trusts that do not own immovable property were, the Respondents put up an extract from a report compiled by KPMG Services (Pty) Ltd, pursuant to its investigation of Carmol and the respective trusts at the instance of the South African Reserve Bank, which demonstrates that, as at the 19th of June 2015 (the date of the report) the funds standing to the credit of each of the trust's bank accounts were less than the funds that had originally been paid into them by Carmol. The SM Family Trust had a deficit of R 854.00, the MYM Family Trust had a deficit of R 830.00, the Carmol Trust had a deficit of R 568,600.00 and the Mubarakh Trust had a deficit of R 1,480.00. The

Applicants therefore rely on the inference to be drawn, in respect of those trusts that do not own immovable property, that, by virtue of all the trust not having any known income, or not conducting any business, that the amounts in the respective bank accounts would have diminished and that they were also factually insolvent

[12] It is accordingly contended by the Applicants that the sequestration of the respective trust's estates would allow a trustee, once duly appointed, to institute the necessary proceedings to recover the shortfall between the amount realised through the sale of the immovable properties and the amounts owing to Carmol. It is further contended that the trustee could further identify and take control of other assets of the trusts, wherever such can be found, and can also institute and convene an insolvency enquiry for the purposes of interrogating persons as to the whereabouts of other assets and other funds that may be available to it. It is accordingly contended that the sequestration of the respective trust estates would be to the advantage of their creditors.

[13] In response to the applications, the First and Second Respondents filed an initial answering affidavit and a supplementary answering affidavit which were identical in content in each application. In such affidavits the Respondents do not materially challenge the allegations made by the Applicants in the respective founding affidavits. Instead, they attacked the locus standi of the Applicants, as the provisional liquidators of Carmol, to proceed with the sequestration applications in the light of an application that has allegedly been instituted in this court for Carmol to be placed under supervision and for business rescue proceedings to

be commenced. It is alleged by the Respondents that as business rescue proceedings had been commenced against Carmol the Applicants lacked the necessary authority to continue with these sequestration proceedings by virtue of the provisions of section 131 (6) of the Companies Act, No. 71 of 2008.

[14] Section 131 (6) reads as follows:

If liquidation proceedings have already been commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until-

- (a) the court has adjudicated upon the application; or
- (b) the business rescue proceedings end, if the court makes the order applied for"

[15] It is contended by the Respondents that, by virtue of the aforesaid provisions of the Companies Act, the commencement of a business rescue application in respect of Carmol suspends the liquidation proceedings instituted against it until such time as the court has adjudicated upon the business rescue application or the business rescue proceedings end. It is accordingly

contended that, as the liquidation proceedings have been suspended, any authority that the Applicants may have received to institute

these sequestration applications has also been suspended, as well as their office as provisional liquidators, and that they are

accordingly not entitled to continue with the sequestration applications at present. It was submitted on behalf of the Respondents in argument that it would be proper, in such circumstances, for these applications to be adjourned until such time as the business rescue application had been adjudicated upon by this court.

[16] It was accepted by the Respondent's counsel during argument that in order to rely upon the provisions of section 131 (6) of the Companies Act, the Respondents would have to establish that the business rescue proceedings in question had commenced. It was also conceded that, in order to do so, the Respondents would have to demonstrate that the business rescue application in question had been lodged with the registrar, had been duly issued, that a copy thereof had been served on the Companies and Intellectual Property Commission and that each affected person had been properly notified of the application.[2]

[17] In their preliminary answering affidavit, the Respondents make the allegation that "an application to place Carmol in business rescue has been delivered. In support of this submission they annex, as annexure "AA", a copy of the relevant notice of motion which they contend evidences the filing of the application with the registrar and service thereof on the First and Fourth Respondents cited therein, namely Carmol and the South African Revenue Service, on the 18th of April 2016. A perusal of annexure "AA" demonstrates that the registrar's date stamp is affixed to the face of the notice of motion, indicating that it was

issued on the date alleged, that a date stamp of the South African Revenue Service is affixed next to where its address is reflected on the document and that a manuscript notation indicating receipt is made next to where the words “Carmol Distributors (Pty) Ltd, 1st Respondent, c/o Mr Yunus Moolla” are reflected on the document. The annexure therefore seems to support the above contentions.

- [18] The Respondents then allege that service of the business rescue application, via email sent on the 18th of April 2016, has been effected on the Second, Third and Fifth to Eighth Respondents cited therein. In support of this they put up annexure “BB” to the preliminary answering affidavit. The Second Respondent is the Registrar of Banks, although service is said to have been effected upon its attorneys, the Third Respondent is the Companies and Intellectual Property Commission and the Fifth to Eighth Respondents are the Applicants herein. It is alleged that service has been effected on their attorneys. A perusal of annexure “BB” indicates that it is an email that has been sent in two parts. If one compares the email addresses reflected on the notice of motion with the respective email addresses reflected on the annexure itself it would appear that the document has been emailed to the persons alleged.
- [19] Service is alleged to have been effected on the Third Respondent in the business rescue application, namely the Companies and Intellectual Property Commission, on the 19th of April 2016, via the Deputy Sheriff. The Sheriff’s return of service is annexed as annexure “CC”. A perusal of the document confirms the allegations.
- [20] It is then alleged by the Respondents in the answering affidavit that “[other] affected parties are the investors in/creditors of Carmol (“the investors’% Service on the investors was effected via email on 18th April 2016 and 19th April 2016. Annexed hereto marked “DD”, is proof of service on the investors”. If one has reference to annexure “DD” it consists of 21 emails with a number of email addresses reflected on the face of each of them. Each email is addressed to The Investors in Carmol” and advises that one Sameer Kathrada has launch an application for Carmol to be placed in business rescue. It also appears that page 1 to 28 of the 80 page application has been attached to each email.
- [21] It is then alleged by the Applicant that, “accordingly, it is respectfully submitted that the application to place Carmol in business rescue has been made and/or delivered”.
- [22] In their replying affidavit, the Applicants put up a copy of the founding affidavit in the business rescue application concerned. In that affidavit, it is alleged that “according to Mr Mooila”, which is a reference to the First Respondent in these proceedings, “Carmol has more than 3500 investors” and that “a schedule of the investors is annexed hereto marked 7T. It is further stated that, to the deponent’s best knowledge and belief, the schedule is “a complete list of the investors”. That schedule is also annexed to the replying affidavit put up by the Applicants herein. The document consists of some 49 pages reflecting a schedule of the names of the investors concerned. Apart from the list of names, and a date next to each name, no other information is contained in the schedule. Upon a rough count, it appears

that some 75 names are reflected on each page of the schedule. This would support the allegation that the schedule reflects the names of some “3500 investors” of Carmol. Apart from alleging that “service on the affected persons will be effected by email and appropriate proof of this will be placed before this Honourable Court’ the deponent to the founding affidavit in the business rescue proceedings goes no further.

- [23] If one compares the schedule of investors put up in the business rescue application to annexure “DD” in these proceedings, which the Respondents herein contend evidences notification of the business rescue application to ail the affected parties, there is simply no correlation between the email addresses reflected in the emails forming annexure “DD” to the names reflected on the schedule of investors put up in the business rescue application itself. I was advised by counsel representing the Applicants during argument that he has undertaken the exercise and has determined that there are only approximately 780 email addresses reflected on annexure “DD”. This was not disputed by the Respondents’ counsel. If one accepts that it is contended in the founding affidavit in support of the business rescue application that there are in excess of 3500 investors of Carmol, annexure “DD” to these proceedings certainly does not support the contention that all affected parties have received notice and are aware of the business rescue application. If anything, it leads to the opposite conclusion. At best, on what has been put up by the Respondent in these proceedings, only some 780 of the 3500 investors have in fact received notice of the business rescue application. That being the case, the only conclusion I can come to is that business rescue proceedings have not commenced in respect of Carmol, or, at the very least, that the Respondents have failed to establish such proceedings have come commenced. I am accordingly of the view that the Respondent’s contention that the Applicants are not entitled to proceed with these applications, by virtue of the provisions of section 131 (6) of the Companies Act, is without merit
- [24] The Applicants’ counsel raised a number of further arguments in response to the Respondents’ contention that the Applicants were not entitled to proceed with these applications by virtue of the provisions of section 131 (6) of the Companies Act. These included a submission that the business rescue proceedings had not been instituted in the correct court as this court did not have jurisdiction in respect of the matter as Carmol’s registered office was in Gauteng and that the liquidation proceedings had been instituted out of that court. Further arguments were raised regarding the merits of the business rescue application in the light of the contention that Carmol was conducting an unlawful business and that business rescue proceedings were not appropriate in such circumstances. It was further argued that the powers of the provisional liquidators were not, in any event, suspended by virtue of the provisions of section 131 (6) in the present circumstances. In view of my finding that it has not been established that the business rescue proceedings relied upon by the Respondents have commenced, I find it unnecessary to deal with these further submissions. It is however apparent from what was contended before me that should the Applicants succeed in any one of the arguments raised before me, the Respondents’ opposition to these proceedings, based on the provisions of section 131 (6) of

the Companies Act, would not succeed.

[25] The First and Second Respondents also raised the issue of the service of the respective sequestration applications upon them. In the Returns of Service placed before me in these applications, it is evident that all seven applications were served personally upon the Third Respondent on the 23rd of March 2016. It is further evident from the Returns of Service filed in respect of service upon the First and Second Respondents

that the applications were alleged to have been served upon them at 3 Athens Avenue, Thorn Valley Estate, Blackrock Street, Greenstone Hill as well as Unit 116, Acacia Greenstone, Stoneridge Drive, Edenvale “by leaving a copy at the mentioned premises”. There is a further notation that the first premises were “vacated” and that the second premises were “kept locked”. The said addresses are alleged to be the First and Second Respondent’s residential address.

[26] The First and Second Respondents denied that the aforesaid addresses are their residential addresses and contend that the First Applicant ought to have known that their address in Gauteng is 128 Greenstone Crescent, Greenstone Hill, Greenstone, Johannesburg, Gauteng and that their address in KwaZulu-Natal is 201B Point Vista, The Executive, 220 Umhlanga Rocks Drive, Umhlanga. They therefore contend that copies of the applications have not been furnished to them, as is required in terms of the provisions of section 9 (4A) (a) (iv) of the Insolvency Act, No. 24 of 1936.

[27] The First Respondent however states in the supplementary answering affidavit that he had received a copy of the applications from the attorney representing the Third Respondent upon service of the applications upon him. It is therefore common cause that both the First and Second Respondents are in possession of copies of the sequestration applications, have opposed same and were in a position to depose to an answering affidavit in opposition thereto. The point raised by the Respondents’ counsel in argument was that, as sequestration involved an issue of status, service of the application papers had to be effected upon the First and Second Respondents, via the Sheriff, personally.

[28] The provisions of section 9 (4A) (a) (iv) of the Insolvency Act read as follows:

“When a petition is presented to the court, the petitioner must furnish a copy of the petition—

(iv) to the debtor; unless the court, at its discretion, dispenses with the furnishing of a copy where the court is satisfied that it would be in the interest of the debtor or of the creditors to dispense with it.

It is apparent from the aforesaid provisions that the manner in which a copy of the application for sequestration is to be “finished”

upon the debtor is not prescribed. I am therefore of the view that any method of delivery is permissible as long as the application is thereby brought to the attention of the debtor.[3] I therefore do not agree with the Respondents' counsel's submission that personal service had to be effected formally by the Sheriff. It appears that the intention of the provision is to ensure that, save where the court is satisfied that such circumstances

exist, the audi alteram partem rule is to be upheld by giving the debtor notice of the application and affording him an opportunity to be heard. This has occurred in the present instance and I accordingly reject the Respondents' submission that the applications cannot be proceeded with as formal service has not been effected upon the First and Second Respondents.

[29] As already mentioned herein, the Respondents have not challenged the allegations contained in the founding affidavits filed in the respective sequestration applications in any material respect. Save for making the bald statement that the various trust bank accounts had been frozen by KPMG at the time of its investigation and that, to the best of his recollection, the balance in the various accounts exceeded R 5 million as at that date, the First Respondent makes no other submission in response to the allegations made in the founding affidavits. The document put up by the Respondents in support of such contention however does not support the notion that the bank accounts have been frozen and, if anything, supports the Applicants' submissions as to what the status of the various bank accounts are. Should the Applicants' submissions regarding the status of the bank accounts not be correct, I am of the view that it would have been a simple matter for the Respondents, who must, by virtue of their position as trustees of the respective trusts, be in possession and control of their accounting records, to have put up copies of the respective bank statements to show that the Applicants' submissions are wrong. The First Respondent however contents himself by simply stating that "unfortunately, the Second Respondent and I cannot recall the precise balances in the accounts".

[30] I am therefore of the view that, prima facie, the Applicants have established in the respective applications before me that they are entitled to orders provisionally sequestrating the estates of the respective trusts and placing them in the hands of the master of this court. The Applicants also sought to motivate me to direct the master of this court to consider the urgent appointment of a provisional trustee to take control and preserve the trusts' respective estates. During argument however it appeared that such a direction would, in reality, have no effect as the master would, in any event, appoint a provisional trustee within a week of the grant of this order. I accordingly decline to make such direction. Although not a requirement in sequestration applications, counsel for the Applicants submitted, by virtue of the large number of investors in Carmol, that it might be prudent to publish the provisional order of sequestration in the Government Gazette and in the Citizen Newspaper. I am in agreement with that submission.

[31] I therefore make the following orders:

In case number 2616/2016:

(a) The Yunus Moolla Trust (with Trust number IT103/2013)

(hereinafter referred to as “the trust”), duly represented by the Respondents in their capacities as the duly appointed trustee\$ of the trust, be and is hereby placed under provisional sequestration in the hands of the Master of the High Court.

(b) A rule nisi is hereby issued calling on the Respondents, and all other interested parties, to show cause, if any, to this Court sitting at Durban on the 24th day of June 2016, at 09h30, or so soon thereafter as the matter may be heard, why the estate of the trust should not be finally

sequestered in the hands of the Master of the High Court.

(c) That service of this order be effected:

(i) on the trust, duly represented by the Respondents; and

(ii) on the South African Revenue Service.

(d) That this order shall be published on or before the 3rd day of June 2016 in the Government Gazette and the Citizen Newspaper.

In case number 2617/2016:

(a) The SM Family Trust (with Trust number IT318/2014) (hereinafter referred to as “the trust”), duly represented by the Respondents in their capacities as the duly appointed trustees of the trust, be and is hereby placed under provisional sequestration in the hands of the Master of the High Court.

In case number 2618/2016:

(a) The MZB Family Trust (with Trust number IT319/2014) (hereinafter referred to as “the trust”), duly represented by the Respondents in their capacities as the duly appointed trustees of the trust, be and is hereby placed under provisional sequestration in the hands of the Master of the High Court.

(i) on the trust, duly represented by the Respondents;

and

In case number 2619/2016:

(a) The Carmol Trust (with Trust number IT1036/2013) (hereinafter referred to as “the trust”), duly represented by the Respondents in their capacities as the duly appointed trustees of the trust, be and is hereby placed under provisional sequestration in the hands of the Master of the High Court.

(i) on the trust, duly represented by the Respondents; and

In case number 2620/2016:

- (a) The MYM Family Trust (with Trust number IT321/2014) (hereinafter referred to as “the trust”), duly represented by the Respondents in their capacities as the duly appointed trustees of the trust, be and is hereby placed under provisional sequestration in the hands of the Master of the High Court.

in case number 2621/2016:

- (a) The Mubarakh Trust (hereinafter referred to as “the trust”), duly represented by the Respondents in their capacities as the duly appointed trustees of the trust, be and is hereby placed under provisional sequestration in the hands of the Master of the High Court.

In case number 2622/2016:

- (a) The SM Family Trust (with Trust number IT320/2014)

(hereinafter referred to as “the trust”), duly represented by the Respondents in their capacities as the duly appointed trustees of the trust, be and is hereby placed under provisional sequestration in the hands of the Master of the High Court.

- (ii) on the South African Revenue Service.

Date of hearing : 26 April 2016

Date Delivered : 29 April 2016

Appearances:

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[1] Reference is made to paragraph 15 of the judgment: Registrar of Banks v Carmol Distributors (Pty) Ltd: Gauteng Local Division,

Johannesburg, Case No. 29332/2015.

[2] Reference is made to the case of Taboo Trading 232 (Ptv) Ltd v Pro Wreck Scrap Metal CC and Others 2013 (6) SA 141 (KZN) at paragraphs 11.3 and 11.4.

See Berranqe NO v Hassan and Another 2009 (2) SA 339 (N) at 353 B-D where the court stated that: “Clearly, the legislature intended that in all cases irrespective of the nature of the creditors' claim against the debtor a copy of the petition has to be furnished to the debtor. The section does not use the term 'serve' but rather uses the word 'furnish', which is not a term of general application in our civil practice and procedure. It would seem that the legislature intended a form of informal service. The dictionary definition of 'furnish' is 'to provide, contribute, afford, supply, yield’”

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