REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: **01883/2016**

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED

Date: **WHG VAN DER LINDE**

In the matter between:

MONYETLA PROPERTY HOLDINGS (PTY) LIMITED	**Applicant**
And	
DOUBELL, PETER JOHN	**Respondent**

JUDGMENT

Van der Linde, J:

[1] This is the extended return day of a provisional sequestration order issued by this court. On the papers the matter appeared opposed but at the hearing the respondent, who appeared in person, said that he opposed neither a sequestration order nor the appointment of a trustee. He said that he invited an appointed trustee to conduct investigations into his

affairs, because he has nothing to hide, and wanted in any event to have his name cleared of all the allegations of untoward conduct that had been levelled against him. His name and reputation were important to him, he said.

[2] The respondent is clearly a businessman of considerable experience and intelligence. The many ventures in which he has been interested show this, and his submissions to the court illustrated that he is astute and knowledgeable in matters commerce.

[3] Despite these considerations I have considered independently of the concession whether the rule nisi should be confirmed; and I have concluded that it should. This short judgment sets out the main reasons for this conclusion.

[4] The respondent's indebtedness to the applicant, that the respondent had committed an act of insolvency, and that the respondent was factually insolvent, are all common cause on the papers. What is disputed is whether it will be to the advantage of creditors to sequestrate him.

[5] Mr Shepstone who appeared for the applicant creditor relied particularly on Stratford and Others v Investec bank Ltd and Others, 2015 (3) SA 1 (CC) at [43] to [46] for the proposition that this requirement is proved if the applicant shows that there is a reasonable prospect that some pecuniary benefit will result to creditors.

[6] In my view the following considerations show that such a prospect exists. First, the respondent was generally more forthcoming about the business activities of the failed corporations in which he had been involved when making oral submissions to court, than he had been on his affidavit. In this regard it is generally accepted that a respondent in this context must make a clean breast of how exactly how his present predicament had come about. He must take the court into his confidence, and explain fully his present financial position.

[7] That was not done in his two affidavits. It is still unclear precisely how the respondent's income and that of his wife are generated. That there was and perhaps still is a business

relationship between them is clear; the respondent explained that he had signed unlimited suretyships for the corporations, and his wife limited suretyships. They had sold the fixed properties referred to in the affidavits to repay their indebtedness to the banks. The properties were in fact bonded to the hilt to secure the loans advanced to them (he and his wife) by the banks.

[8] His wife's indebtedness as surety has in all instances now, with the exception of Nedbank, been paid; this was done from the proceeds of the sale of the properties. She still owes Nedbank in the region of R800 000, and this is being repaid at R5000 per month.

[9] It seems to me that a trustee would want to investigate whether the proceeds of the properties were used to pay the debts of the principal debtor in each instance; or whether in some or all of the cases the proceeds of the sales were used first to discharge the accessory debt of one surety, the respondent's wife, and not both of them, each to the extent of his or her aliquot share. This is one potential area of investigation that could lead to impeachable transtions.

[10] A second area of investigation is the sale of the respondent's one half share in their residential property to his wife. At least three questions arise here: Was the sale at market value? What was the origin of the funds used to pay for the one half share? And to what end were the proceeds of the sale applied?

[11]A third area of investigation concerns the nature of the respondent's interest, historically and currently, in a number of concerns: EP Dental Equip CC which was liquidated on 14 September 2010; Redlex 277 (Pty) Ltd; The Jireh Family Trust; Green Flash Trading 167 (Pty) Ltd; and The Dental Institute Rivonia (Pty) Ltd, which was liquidated on 18 April 2012. It appears that at least the first Close Corporation and Redlex 277 had fixed property.

[12]In oral submissions the respondent explained the company of which he is currently a director, Sci-Vision (Pty) Ltd, took over the business from the ashes of the Close Corporation. The affidavits did not disclose this; and one does not know precisely which assets wound

their way into the new company; nor, for that matter, who the beneficial owner is of the new company.

[13]The papers do not disclose either what happened to the assets of The Dental Institute Rivonia (Pty) Ltd; in oral submissions the respondent says that they were not subsumed into the new company, but those are his untested verbal assurances. A trustee may want to investigate this further.

[14] A fourth area of investigation is the true owner of the shares in the new company, and in particular the relationship between the company and the respondent's family trust. The respondent says the family trust is the true owner; but the trust deed shows that the respondent is an income beneficiary and that the trust is a discretionary trust. If the shares in the new company truly belong to the trust, how did the trust source the wherewithal to pay for those shares?

[15]In all, this is not a case in which the respondent's affidavits have fully explained to the court how the financial predicament came about. The applicant was a landlord of the respondent's business, and the arrears are substantial. The respondent's explanation in his first affidavit for his inability to repay the landlord is disquietingly blasé. In my view the applicant has made out a sufficient case for confirmation of the rule.

[16]In the result the following order issues:

A final sequestration order issues, and the estate of the respondent is placed under the control of the Master of the High Court.

WHG van der Linde
Judge, High Court
Johannesburg

For the applicant: Adv. Shepstone
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Date argued: 6 September, 2016
Date of judgment: 7 September, 2016