

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NUMBER: 42659/2008

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE ~~YES~~/NO

(2) OF INTEREST TO OTHER JUDGES ~~YES~~/NO

(3) REVISED ☒

DATE 27/07/10 SIGNATURE [Signature]

In the matter between:

STONE RIDGE COUNTRY ESTATE
HOMEOWNERS' ASSOCIATION

Applicant

and

MUJTABA HASSDAN SYED
NASEERA HASSAN SYED
ABSA BANK LTD.

30/7/2010
1st Respondent

2nd Respondent

3rd Respondent

JUDGMENT

GOODEY AJ:

[1] INTRODUCTION:

- 1.1 This is an application for an order in terms whereof the Respondents' joint estate should be provisionally sequestrated.

- 1.2 The Applicant obtained leave from this Court to effect service of the sequestration application by means of substituted service.

[2] AD POINTS IN LIMINE:

- 2.1 I have been called on to consider the following separate issues before turning to the merits. These are:

- 2.2 e a matter is decided on exception, there are two relevant considerations

- 2.2.1 The Intervening Creditors failure to comply with the Court Order issues on 25 September 2009 and the resultant request for condonation;

- 2.2.2 The authority of Mr De Bruyn to represent the Intervening Creditor and the lack of proof that the Intervening Creditor has authorised the litigation.

[3] AD: CONDONATION:

3.1 On the 25th September 2009 the Intervening Creditor was ordered to file his answering affidavit within 15 days.

3.2 The affidavit was only filed on the 22nd February 2010 – almost 4 months late!

3.3 The Intervening Creditor advances only two reasons in this regard:

3.3.1 Page 78 (paragraph 41) of the papers:

*“The reason why the Intervening Creditor was not in a position to file this opposing affidavit timeously can be ascribed solely to the fact that the Intervening Creditor endeavoured to obtain an additional valuation from the valuator who complied **Annexure “JH8.** During February 2010 it became apparent that an additional*

*expense of between R8 000,00 to R10 000,00 would have to be expended in order to obtain an additional valuation. It was then decided not to incur such costs and that **Annexure "JH8"** will have to suffice for present purposes."*

3.3.2 On the same page and paragraph:

"I respectfully submit that the Intervening Creditor has presented the Honourable Court with important facts and information which shall enable the Court to properly adjudicate the Applicant's application and request the Honourable Court to take this into account in considering whether to grant the Intervening Creditor the condonation sought by it."

3.4 As to the first reason:

How an amount of between R8 000,00 and R10 000,00 can be of any consideration to the Intervening Creditor, taking into account its size, boggels the mind.

3.5 As to the second reason:

Although important facts and information were indeed put forward by the Intervening Creditor, it is definitely clear that the Intervening Creditor is over exaggerating its contribution in this regard.

3.6 In view of the foregoing, the application for condonation should be refused. However, I will be applying the utmost leniency condone it.

[4] **AD: AUTHORITY OF MR DE BRUYN:**

4.1 Having perused the resolution, it is clear that Mr De Bruyn has/had the necessary authority.

[5] **RELIEF SOUGHT BY THE INTERVENING CREDITOR:**

5.1 The Intervening Creditor request the Court to:

- “
1. *Condone the Intervening Creditor's late filing of its Opposing Affidavit.*
 2. *Dismiss the application with costs on a scale as between attorney and client.”*

[6] **THE MERITS:**

6.1 For the Applicant to succeed with its application it has to convince the Honourable Court that:

6.1.1 its has a claim which entitles it, in terms of Section 9(1) to apply for the sequestration of the Respondents' estate;

6.1.2 the Respondents' have committed an act of insolvency or is factually insolvent;

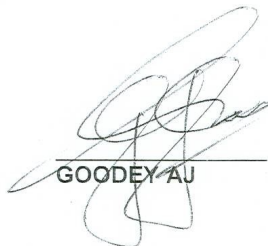
6.1.3 there is reason to believe that it will be to the advantage of creditors of the Respondents if their estate is sequestrated.

- 6.2 It is trite law that the onus of satisfying these requirements rests on the shoulders of the Applicant. No more than *prima facie* proof of these facts needs to be produced for a provisional order to be granted.
- 6.3 Applicant argued that it had satisfied these requirements with reference to the papers and also to the following:
- 6.3.1 Applicant's judgment against the Respondents;
- 6.3.2 The *nulla bona* alternatively the First Respondent's factual financial position alternatively the fact that the Respondents have left South Africa without provision for the payment of their debts;
- 6.3.3 The First Respondent's ownership of the immovable properties.
- 6.4 Having perused the papers, I am satisfied that the Applicant made out a *prima facie* case.

[7] CONCLUSION:

I therefore make the following order:

1. The Intervening Party's opposition is dismissed with costs;
2. Prayers 1 and 2 of the notice of motion are made an order of Court
and the return day will be the 21st of September 2010;
3. Costs will be costs in the insolvent estate.



GOODEY AJ