IN THE NORTH GAUTENG HIGH COURT
PRETORIA
(REPUBLIC OF SOUTH AFRICA) 20/05/2011

CASE NO:42034/2010

FIRSTRAND BANK LIMITED
APPLICANT

V

WILLIAM PETER TONKIN
1ST RESPONDENT

ALIDA TONKIN
2ND RESPONDENT

RETURN DAY OF PROVISIONAL ORDER OF SEQUESTRATION. INTERVENTION

CORAM SAPIRE AJ

JUDGMENT

This was the return day of a provisional order of sequestration in terms of which William Peter Tonkin and his wife, Alida Tonkin were provisionally sequestrated.

B J K Property Group (Pty) Ltd has appeared to intervene and to seek the discharge of the provisional order.

The basis of the opposition is as follows:

(a) The intervening party is in terms of a Deed of Sale the purchaser of the main asset in the estate of the Respondents namely Plot 179, Leeuwfontein, Pretoria.

(b) The intervening creditor claims that it will be severely prejudiced if the Respondents are placed in final sequestration. This it is said gives the intervening party the necessary locus standi to bring the application.

(c) The contract in terms of which the intervening creditor purchased the property from the Respondents is an agreement in terms of the alienation of Land Act, No 68 of 1981. The intervening creditor claims a vested interest and/or a substantial or direct interest in the proceedings before the Court.

The basis of the opposition is that the intervening party seeks to demonstrate that the advantage to creditors on which the Applicant relies is illusory. The valuation by the Applicant of the property is R1 800 000, 00. This the intervening party says is incorrect and a more probable value is R1 500 000, 00 and could be as low as R1 000 000,00 in the current recess period.

The contention is that based on the independent valuation by the intervening party that there will be no dividend paid to concurrent creditors.

It is common cause that the Respondents have not been completely truthful in compiling their state of affairs presented in an earlier application for the surrender of their estate.

The Applicant which seeks confirmation of the Rule has indicated that the advantage to creditors is not

confined to the dividend which may be expected to accrue. What is of importance is that the trustee would be able to investigate the affairs of the Respondents and explore the possibility that other assets should be included in the insolvent estate.

What is required is that the Court should be satisfied that there is a reasonable prospect not necessarily likelihood but a prospect which is not too remote that some pecuniary benefit will result to creditors. The circumstances surrounding the insolvency and the sale of the property bear investigation.

The strange thing about the sale is that it was on terms but the Respondents had the right to remain in occupation paying a rental of such a magnitude that the instalments of the purchase price would never be completed.

In any event the intervening creditor has its remedy in terms of the Act applicable to its purchase and there is no reason why it should not avail itself of those provisions.

Accordingly, there is no reason why the provisional order should not be confirmed and the order of the Court is:

> The provisional order is confirmed.

SAPIRE AJ

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