



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 59206/13

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

2/4/2015

IN THE MATTER BETWEEN:

SUZETTE PLOTZ

APPLICANT

AND

GEORGE MICHAEL MASS

RESPONDENT

J U D G M E N T

KUBUSHI, J

[1] This is an application for the provisional sequestration of the respondent. At the time when the application was launched, the respondent was indebted to the applicant in the amount of R2 700 000. The debt resulted from a divorce settlement made an order of court on 16 February 2010.

[2] The original amount in the divorce settlement was R9 500 000. After the application was issued, an amount of R7 100 000 was paid. The said amount is made up of R6 500 000 which was attached in the respondent's attorney's trust account and R600 000 was paid after the Settlement Agreement (details of which are stated below) was signed.

[3] The applicant originally approached the court on an urgent basis. After papers were exchanged, the parties settled the matter and entered into a Settlement Agreement which was made an order of court as well.

[4] In terms of the Settlement Agreement, payment of the outstanding amount of R2 700 000 was deferred free of interest to the 30 April 2014. The respondent also consented to a provisional sequestration order in the event that payment as envisaged in the Settlement Agreement is not made.

[6] Despite the settlement reached, the amount remained unpaid. A writ of execution in the amount of R2 967 304, 70 was issued to satisfy the judgment debt, but, the sheriff could only attach and remove assets to the value of R19 100. There were not enough assets to satisfy the outstanding judgment debt.

[7] The matter was as a result set down on the unopposed roll to obtain a provisional sequestration order. The respondent filed an answering affidavit admitting that he has consented to the provisional sequestration order but contended that he had a right to put

all the relevant facts before court for the court to be able to exercise its discretion whether or not a sequestration order should be granted. His only defence to the applicant's claim was that the reason he had not paid the judgment debt was because he was in the process of securing funds and required time within which to do so.

[8] In argument before me, the respondent's counsel, conceded the indebtedness on behalf of the respondent but submitted that the respondent did not receive fully thought out advice in respect of this matter. Counsel, however, stated that he had been instructed to request a stand down of the matter for six weeks within which to give the respondent time to dispose of his Richards Bay property. According to counsel, a purchase agreement for the said property had already been signed with a potential buyer who did not require registration of a mortgage bond over the property and as such guarantees in respect of the purchase price could be provided within the requested period of six weeks.

[9] On the facts of the application itself, the contention by the respondent's counsel was that in the final analysis the matter was within the discretion of the court to determine whether or not to grant the provisional sequestration order. His assertion being that where there is only one creditor the potential disadvantages are inherently fewer and correspondently weaker and since the relief sought concerns the status of a person the court must still make a decision despite the consent by the respondent. Consent by the respondent in circumstances of this case is a nullity because the court has to make a finding on the facts before it. The discretion of the court cannot be ousted by the respondent's consent to sequestration, so the argument went.

[10] At the end of the hearing I reserved judgment for six weeks, giving the respondent an opportunity to provide the applicant with the guarantees for the judgment debt and/or to pay the outstanding judgment debt. On 11 March 2015 I was notified by the appellant's attorneys of record that the respondent had to date thereof not received any payment from the respondent and that the six week period was to expire during that week. The notice was e-mailed to the respondent's attorneys of record and no response has been forthcoming.

[11] On the facts of this case, in order for the applicant to succeed in her claim, she must prove the following:¹

- (a) That she has a liquidated claim for not less than R100 against the respondent.
- (b) That the respondent has committed an act of insolvency and/or is insolvent.
- (c) That there is reason to believe that it would be in the advantage of all creditors of the respondent if his estate is sequestrated.
- (d) That the application complies with the formal requirements mentioned in s 9 (3), 9 (4) and 9 (4A) of the Insolvency Act 24 of 1936.

[12] From the facts stated above in this judgment, it is common cause that the applicant has complied with the above mentioned requirements of the Insolvency Act. It is not in dispute that at the time when the application was launched, the applicant was a creditor

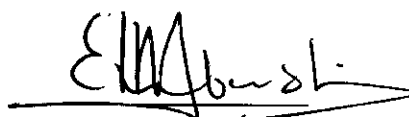
¹ See s 10 (1) of the Insolvency Act 24 of 1936

in the amount of more than R9 500 000. The applicant is still a creditor of the respondent in the amount of approximately R3 200 000 in terms of the judgment and outstanding warrant, which amount remains unpaid. The amount of R2 700 000 has increased due to interest calculation and costs.

[13] As regards costs of suit, I am of the view that the respondent was vexatious in opposing the application after he had consented in the Settlement Agreement for an order for provisional sequestration. This matter comes back a long way. The respondent has been given a chance to settle this matter on many occasions and on each occasion he signed a settlement agreement. None of the agreements have been honoured. He was given an opportunity by me as well. But, this did not assist. Having given him an opportunity to pay off the debt as he had asked me to do, he showed no courtesy at all of informing me that he was unable to do so.

[14] In the circumstances, I make the following order:

- (a) The draft order marked with an "X" and initialled is made an order of court.

A handwritten signature in black ink, appearing to read 'E. M. Kubushi', with a long horizontal flourish extending to the right.

E. M. KUBUSHI

JUDGE OF THE HIGH COURT

APPEARANCES**HEARD ON THE**

: 05 MARCH 2015

DATE OF JUDGMENT

: 02 APRIL 2015

APPLICANT'S COUNSEL

: ADV. SJJ VAN RENSBURG

APPLICANT'S ATTORNEY

: TINTINGERS INCORPORATED

RESPONDENT'S COUNSEL

: ADV. M HELBERG SC

RESPONDENT'S ATTORNEY

: PJ KLEYNHANS ATTORNEYS