



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)

Case number: 65348/2012

Date: 24 May 2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
24/5/2013	<i>[Signature]</i>
DATE	SIGNATURE

In the matter between:

CORPORATE MONEY MANAGERS (PTY) LTD

1st Applicant

CMM FINPRO (PTY) LTD

2nd Applicant

MICRO CAPITAL (PTY) LTD

3rd Applicant

FOUR RIVERS TRADING 307 (PTY) LTD

4th Applicant

REGENT GROUP CAPITAL (PTY) LTD

5th Applicant

ESCAPE INVESTMENTS (PTY) LTD

6th Applicant

(T/A SAKHA IBLOKHO)

CMM TREASURY SERVICES (PTY) LTD

7th Applicant

CMM CASH MANAGEMENT FUND

8th Applicant

PIETER HENDRIK STRYDOM N.O

9th Applicant

JOHN RODERICK GRAEME POLSON N.O.

10th Applicant

LOUIS STRYDOM

11th Applicant

and

PANOMO PROPERTIES 49 (PTY) LTD

Respondent

JUDGMENT

PRETORIUS J.

[1] This is an application for the liquidation of the respondent by the court in terms of the provisions of the Companies Act No 71 of 2008 and more particularly item 9 of chapter 5 of the Transitional arrangement, applicable in terms of the new Companies Act, No 71 of 2008. The respondent has been placed under voluntary liquidation in terms of section 80 of the new Companies Act. The applicants apply for an order setting aside the voluntary liquidation order by the court and for a liquidation order pursuant to the respondent's commercial insolvency.

[2] An application was launched by the applicant on 7 November 2011 in terms of which the applicants have proven that the respondent is commercially insolvent, that it is unable to pay its debts and that it would be just and equitable to wind-up the respondent as an insolvent company.

[3] An order for provisional liquidation of the respondent was granted on 18 June 2012. On the return date the particulars of a voluntary liquidation in terms of section 8 of the Companies Act of 2008 was presented to the court by the respondent.

[4] The applicants applied for a fresh provisional liquidation order setting aside the voluntary order and was granted a provisional order. Due to technical reasons the provisional order was subsequently discharged.

[5] The current application was relaunched for liquidation of the respondent as an insolvent company by the court. The applicants contend that it is in the interest of creditors that the respondent be finally liquidated in terms of the provisions of the Companies Act of 2008, read with the provisions of Chapter XIV of Act No 61 of 1973 and that the voluntary liquidation be set aside.

[6] At the outset, during argument, counsel for the applicants informed the court that Mr Parreira, the deponent to the founding and replying affidavits of the respondent, had been provisionally sequestered on 10 April 2013. Therefore, according to the applicants, Mr Parreira has no *locus standi* to oppose the application for liquidation. Section 69(8)(b)(i) of the **Companies Act No 71 of 2008** provides:

“(8) A person is disqualified to be a director of a company if-

(a)

(b) Subject to subsections (9) to (12), the person –

(i) is an unrehabilitated insolvent;”

[7] The object of this provision is not punitive, but to protect the public and shareholders by ensuring that their interests are not endangered in any way.

[8] In the present matter the respondent did not inform the applicants or the court immediately when Mr Parreira was sequestrated and the applicants only became aware of it a couple of days before the present application was heard. There is no explanation before court by the respondent explaining why he was sequestrated or any explanation of any kind as to why the business has failed. There is no application that Mr Pareira should still be regarded as a director of the respondent.

[9] There is no explanation as to why Mr Parreira's sequestration was not immediately conveyed to the applicants and the court.

[10] The disqualification of an unrehabilitated insolvent arises as soon as the order for provisional sequestration of a person's estate is made, which in this instance was 10 April 2013. The argument by Mr Pienaar, for the respondents, that when the pleadings were completed Mr Parreira had not been provisionally sequestrated cannot be supported as the provisions in the Act are quite clear and not subject to different interpretations. Mr Pareira cannot represent the respondent in any way due to him being an unrehabilitated insolvent.

[11] In the circumstances, the court finds that Mr Parreira has no *locus standi*.

[12] The court finds on a balance of probabilities, after having considered all the arguments and authorities and reading the papers that the respondent is insolvent and must be liquidated a provisional liquidation order should be granted.

[13] The following order is made:

1. That Panamo Properties 49 (Pty) Ltd and all other interested parties be and are hereby called upon to show cause, if any, to this Honourable Court on 12 August 2013 at 10h00 or soon thereafter as the matter may be heard:
 - 1.1 Why the respondent should not be compulsorily wound-up by order of this Court;
 - 1.2 Why any voluntary winding-up implemented in respect of the Respondent, should not be set aside;
 - 1.3 Why the costs incurred by the Applicants, under case number 63748/2011, should not be ordered to be costs in the winding-up by the Court of the Respondent;
2. That this order shall operate as an order provisionally winding-up the Respondent compulsorily;

3. That this order be served forthwith upon Respondent at its registered office and a copy of this order shall be published in the Government Gazette and once in the Citizen newspaper;
4. That the order be served on the employees of the Respondent, if any, and that the Applicants' attorneys file an affidavit on the return date in respect of service and compliance with this order;
5. That this order be served on the Companies and Intellectual Property Commission;
6. That the costs of this application be costs in the winding-up of the Respondent.



Judge Pretorius

Case number	: 65348/2012
Heard on	: 24 May 2013
For the Plaintiff	: Adv Badenhorst SC
Instructed by	: Roestoff & Kruse
For the Defendant	: Adv Pienaar
Instructed by	: EW Serfontein & Associates INC
Date of Judgment	: 24 May 2013