

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2025-087641

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

24 June 2025

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA Applicant
LIMITED

(Registration number: 1962/000738/06)

and

SNYMAN DE JAGER ATTORNEYS

First respondent

(Registration number: 1995/004537/21)

NOMVULA FLORENCE PHANGISA

Second Respondent

(Identity number: 7[...])

REASONS

CORAM: LIEBENBERG AJ:

[1] The matter came before me in urgent court on 17 June 2025 when I granted an order in the following terms:

1. The time periods, forms and procedures provided for in the Uniform Rules of Court are dispensed with and this application is heard on an urgent basis in terms of Rule 6(12)(a) of the Uniform Rules of Court.
2. Pending the final determination of the sequestration application issued out of this Honourable Court against the second respondent under case number 2025-079012, the first respondent is interdicted and restrained from paying out, distributing, or otherwise releasing the net proceeds from the transfer of the immovable property described as Erf 4[...] Midstream Estate, Extension 53 Township, Gauteng Province ("**Midstream Property**") to the second respondent or to any party, save by a further order of this Honourable Court.
3. The second respondent is ordered to pay the costs of this application.

[2] These are the reasons for my order.

[3] The applicant sought approached the court on an urgent basis for an order to preserve the net proceeds of the Midstream immovable property owned by the second respondent pending finalisation a sequestration applicant it launched against her. The first respondent, who did not participate in these proceedings, is the appointed conveyancer attending to the process of facilitating registration of transfer of ownership of the immovable property from the second respondent to the purchaser.

The applicable principles

[4] An anti-dissipation interdict is a species of interim interdict, which may be granted where a respondent is believed to be deliberately arranging its affairs in such a manner of as to render eventual execution hollow. Its purpose is to preserve the asset(s) in issue between the parties.

[5] The onus rests on an applicant for an interim interdict to demonstrate that (i) it has a *prima facie* right which it seeks to protect; (ii) a well-grounded apprehension of irreparable harm if the interdict is not granted; (iii) that the balance of convenience favours the applicant; and (iv) that it does not have another satisfactory remedy.¹ In *Knox D'Arcy Ltd and Others v Jamieson and Others*² (*Knox D'Arcy*) the Supreme Court of Appeal imposed additional jurisdictional facts to be established by an applicant seeking an anti-dissipation interdict, to wit (iv) a claim against a respondent and (v) that the respondent is (intentionally) secreting or dissipating assets, or is likely to do so with the intention of defeating the applicant's claim, except when dealing with special situation such as under the law of insolvency.³

[6] Faced with factual disputes, the appropriate test to be applied to determine whether the applicant is entitled to the relief it seeks, is set out in *Webster v Mitchell*⁴ as modified in *Gool v Minister of Justice*.⁵

“Take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered. If serious doubt is thrown upon the case of the applicant he could not succeed in obtaining temporary relief, for his right, *prima facie* established, may only be open to “some doubt”. But if there is mere contradiction, or unconvincing explanation, the matter should be left to trial and the right be protected in the meanwhile, subject of course to the respective prejudice in the grant or refusal of interim relief.”

The applicant's case

[7] The applicant is a creditor of the second respondent in an amount exceeding R 17 million. The bulk of the second respondent's indebtedness flows from two written Guarantee and Shortfall Undertakings (“the guarantees”) she executed in

¹ *Setlogelo v Setlogelo* 1914 AD 221

² 1996 (4) SA 348 (SCA)

³ At 372F-H

⁴ 1948 (1) SA 1168 (W) at 1189

⁵ 1955 (2) SA 682 (C) at 688D-E

favour of the applicant for the debts of a close corporation, against which liquidation proceedings are pending also in this Court. In addition, the second respondent is indebted to the applicant in an amount of approximately R 3.4 million under a mortgage bond registered over the Midstream property.

[8] In mid-April 2025, the deponent to the founding affidavit learnt of the sale of the Midstream property. Thereafter the applicant's attorney engaged with the first respondent on various occasions, to established the extent of the anticipated net proceeds of the sale and the estimated date of the registration of transfer. The second respondent took affront to these engagements, and she accused the applicant of scuppering the transaction. She also refused to agree that the net proceeds of the sale be applied to make payment of her indebtedness to the applicant under the guarantees. On the common cause facts, the anticipated extent of the net proceeds amount to approximately R 800 000.00.

[9] On or about 29 May 2025 the applicant launched sequestration proceedings against the second respondent in this Court under case number 2025-079012.

[10] Attempts by the applicant to obtain agreement from the second respondent that the proceeds of the sale be held in trust pending finalisation of the sequestration proceedings came to naught, and the second respondent is insistent on receipt of the funds. The most recent of these attempts were made on 5 June 2025.

[11] By email dated 6 June 2025, the first respondent advised that registration of transfer of the Midstream property is expected at the end of June 2025. This gave galvanised the applicant in launching this application on 10 June 2025.

[12] As sequestrating creditor, and by virtue of holding a substantial claim against the second respondent, the applicant asserts a *prima facie* right to seek lawful and effective means to preserve the proceeds of the sale of the property, not for itself, but for the entire body of creditors of the second respondent.

[13] Based on *inter alia* substantial debts owed to the homeowners' association and municipality within whose area of jurisdiction the Midstream property falls, as

well as the second respondent's blatant refusal to give an undertaking to preserve the net proceeds of the sale pending final determination of the sequestration proceedings, the applicant expressed a legitimate and reasonable apprehension that she will dissipate the proceeds to the prejudice of the general body of creditors.

[14] As to the balance of convenience, the applicant submitted that if the interim relief sought is refused, the applicant, and the general body of creditors of the second respondent's estate, stand to suffer severe prejudice on the basis that they may not receive any dividends in the event that second respondent's estate is sequestrated. In contrast, if the interim relief is granted, the second respondent will suffer minimal prejudice if the first respondent is directed to hold the excess proceeds in trust, pending the outcome of the sequestration application. In light of the newly formed dedicated Insolvency Court in this Division, the sequestration application is likely to be determined swiftly, and in a matter of weeks.

[15] According to the applicant, and based on *Knox D'Arcy*, it need not demonstrate the absence of an adequate alternative remedy, yet it is self-evident that no adequate alternative exists.

The second respondent's case

[16] The second respondent raised on seven points *in limine*, and, in the baldest of manner, denied the salient allegations in the founding affidavit. I was satisfied that she did not raise genuine disputes of fact regarding either indebtedness to the applicant nor the inferences drawn about her dire financial affairs, and the concomitant fear that she will dissipate the net proceeds of the sale.

[17] As first point in limine, the second respondent contended that the matter was not urgent, and if it indeed deserved urgent attention, the urgency was self-created. Admitting that the registration of transfer was imminent, that the applicant sought to engage with the second respondent and that she refused to give the undertaking

sought on 5 June 2025,⁶ this Court is satisfied that the matter is one of urgency, that the urgency is not self-created, and that the applicant is unlikely to obtain substantial redress in due course, subsequent to the registration of transfer of the Midstream property.

[18] The second point in limine was aimed at the merits of the applicant's case and constituted a denial that the matter met the requirements of an interim interdict. As stated above, the essential elements of the applicant's case were set out in the founding affidavit, and the jurisdictional requirements for the relief sought were met therein. Neither of the second respondent's two answering affidavits dislodged the inherent probabilities of the applicant's case. In fact, the allegations contain in the two affidavits rather served to reinforce those probabilities.

[19] As a third point in limine, the second respondent complained that this application was an abuse of process or *lis pendens*, alleging that multiple proceedings had been instituted against her for the same underlying debt. I am satisfied that the defence does not bear scrutiny.

[19.1] The close corporation's indebtedness to the applicant arose from a number of loan agreements, whereas the second respondent's indebted to the applicant arose, in the main, from the two written guarantees. Although her "guarantee obligations" include the due and punctual performance by the corporation in respect of *inter alia* any present and future debts which the corporation may owe the applicant herein, the second respondent's obligations are separate and primary obligations to pay immediately upon written demand from or on behalf of the applicant any and all cash flow shortfalls which remain unpaid by the corporation.

[19.2] The liquidation proceedings have no bearing on the relief the applicant sought against the second respondent herein, who is not a party to those proceedings.

[19.3] It is trite that sequestration proceedings do not amount to proceedings for the recovery of a debt, but rather to bring about a convergence of claims in

⁶ See *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at paras 8 and 9.

an insolvent estate to ensure that it is wound up in an orderly fashion and that creditors are treated equally.⁷ Accordingly, the relief sought in the sequestration application is distinct from the relief sought in the matter before this Court.

[19.4] The preservation order is not nor is it intended to be (part-)payment to the applicant of its claims against the second respondent. On a conspectus of the allegations before this Court, the preservation order sought by the applicant appear to be a necessary step in preventing the dissipation of the second respondent's (limited) assets pending finalisation of the sequestration proceedings against her.

[19.5] Similarly, the nature of the preservation order sought cannot be regarded as similar to the default judgment which the applicant obtained against the second respondent, which default judgment is in any event the subject of an application for rescission.

[20] Under the rubric of a fourth point in limine, the second respondent seeks to attack the merits of the sequestration application. The second respondent's attempts appear feeble in as much as she does not deny that she executed the two guarantees, nor that she did not make payment upon demand issued in terms of those guarantees. The second respondent does not deny that she committed an act of insolvency in terms of section 8(g) of the Insolvency Act,⁸ nor does she make any attempt to gainsay the applicant's allegations that she is factually insolvent by putting up details of the nature and extent of her estate. It follows that the applicant established at least a *prima facie* case in the sequestration proceedings.

[21] The fifth point in limine relates to what the second respondent termed an irregular and premature pre-sequestration preservation order. An interdict is aimed at feared future injury.⁹ In the face of the second respondent failure to make disclosure of the nature and extent of her estate, it is reasonable to infer that, should the interim order be refused, the second respondent will dissipate the proceeds

⁷ E.g. *Naidoo v ABSA Bank Ltd* 2010 (4) SA 597 (SCA) at [4]

⁸ Act 24 of 1936.

⁹ *United Democratic Movement and Another v Lebashe Investment Group (Pty) Ltd and Others* 2023 (1) SA 353 (CC) at para 48

pending the sequestration proceedings. As such, I am satisfied that the order sought is not improper or irregular.

[22] As her sixth point in limine, the second respondent suggested that the order sought is overly broad, vague and unsustainable for referring only to “*the net proceeds*” and not limited in duration. This objection is baseless: on the common cause facts, “*the net proceeds*” is easily ascertainable from the statement of account to be presented by the first respondent, *pro forma* versions whereof is annexed to the affidavits; and patently, the preservation order is to endure only until finalisation of the sequestration proceedings.

[23] Finally, and as a seventh point in limine, the second respondent submitted that the applicant has another suitable remedy, because she “*is known to own and operate a business with tangible assets, which the Applicant could pursue through ordinary legal processes (once its sequestration application is successful, if at all).*”

[23.1] The second respondent made no attempts to detail the nature of the business, or the tangible assets she refers to; and made no attempts to assuage the applicant’s explicit concerns that she would dissipate the net proceeds, contending that there is no duty on her to do so.

[23.2] As the risk of repetition, the sequestration proceedings are not aimed at recouping the second respondent’s indebtedness to the applicant. Similarly, the anti-dissipation order is not aimed at debt recovery, but at the preservation of the net proceeds for the general body of creditors., and not just the applicant.

[23.3] Accordingly, absent an undertaking not to dissipate the net proceeds of the sale of the Midstream property, I cannot fathom another adequate remedy available to protect and preserve those proceeds pending finalisation of the sequestration proceedings.

[24] In sum, applying the test for resolving factual disputes in matters concerning interim orders, the interim order was apposite.

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

Heard on 18 June 2025

Reasons on 24 June 2025

For the applicant:

Adv PG Louw

Instructed by: Edward Nathan Sonnenbergs Inc (Ref: L Davids/K Lund)

For the second respondent:

Advs Maponya and Tabete

Instructed by: Sitsula Attorneys (Ref: URG/CIV/NOM)