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**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 23012/ 2024

In the matter between:

MEL PROPERTIES 100 (PTY) LTD
(Registration number: 2003/024967/07)

Applicant

and

NICOLAAS VAN DER WALT
(Identity number: 8[...])
Married out of community of property to-

First Respondent

LEE-ANN VAN DER WALT
(Identity number: 8[...])

Second Respondent

(Application for the Sequestration of the Estate of the First Respondent and relief ancillary thereto)

JUDGMENT DELIVERED ELECTRONICALLY ON 19 AUGUST 2025

MANGCU-LOCKWOOD, J

A. INTRODUCTION

[1] This is an application for provisional sequestration of the first respondent's estate in terms of sections 8(a)¹, 8(b)² and 8(e)³ of the Insolvency Act No. 24 of 1936 (*"Insolvency Act"*). No relief is sought against the second respondent, his wife, to whom he is married out of community of property. The preliminary issue that has arisen for adjudication is whether this Court is clothed with jurisdiction to determine the dispute.

[2] The first respondent is described in the papers as a businessman and restaurateur. He is a director of, amongst others, Tang Hospitality Group (Pty) Ltd, Tang Hospitality Group Holdings (Pty) Ltd and Tang Waterfront (Pty) Ltd (*"the Tang companies"*), all registered in South Africa according to the documents from the Companies and Intellectual Property Commission (*"CIPC"*) which are attached to the papers. He was involved in the day-to-day running of the restaurant businesses owned by the Tang companies, at Tang Waterfront Restaurant and Bar in Cape Town (*"Tang Waterfront"*) and Tang Sandton in Johannesburg (*"Tang Sandton"*).

[3] However, he states that since 19 September 2023, which is just over twelve months before the institution of these proceedings, he emigrated to Dubai, where he relocated to open another Tang restaurant (*"Tang Dubai"*), and has since been resident

¹ Section 8(a) provides: "A debtor commits an act of insolvency if he leaves the Republic or being out of the Republic remains absent therefrom, or departs from his dwelling or otherwise absents himself, with intent by so doing to evade or delay the payment of his debts".

² Section 8(b) provides: "A debtor commits an act of insolvency if a Court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment".

³ Section 8(e) provides: "A debtor commits an act of insolvency if he makes or offers to make any arrangement with any of his creditors for releasing him wholly or partially from his debts".

and carrying on business there, and that accordingly, this Court lacks jurisdiction to determine this dispute.

[4] The relevant background is that on 1 November 2023, the applicant obtained a court order (under case number 9018/2022) in which the first respondent was ordered to pay to the applicant an amount of R3,358,210.10, with interest. After the first respondent unsuccessfully applied for leave to appeal against the court order in this Court and in the Supreme Court of Appeal, the applicant caused a writ of execution (*“the writ”*) to be issued against him on 2 April 2024.

[5] On 26 April 2024 the first respondent, through his then attorneys, proposed settlement of the judgment debt, by payment of a total amount of R1.5 million in three tranches of R500,000. The compromise offer was rejected.

[6] During April 2024 the applicant obtained the services of tracing agents to locate the first respondent for service of the writ. The trace was unsuccessful. The tracers could not confirm an address for the first respondent.

[7] On 9 May 2024 the sheriff served the writ on the first respondent personally at Tang Waterfront. The return of service indicates that the first respondent failed to satisfy the writ in full or in part. It also indicates that the first respondent reported that he does not own any shares at the restaurant and that his address was at 120 Nelson Mandela Square, Sandton, 2196.

[8] There followed three unsuccessful attempts to execute the writ.

8.1 First, on 14 May 2024 the sheriff attempted to execute at Unit 8[...] E[...] Towers, 1[...] E[...] Place, Sandhurst, Sandton, which is the address indicated for the respondent in the CIPC documents attached to the papers. The service was unsuccessful, and the sheriff was informed that the first respondent *“no longer resides at the given address and is believed*

to be residing in Dubai [but] is set to return to Johannesburg at Tang at the end of May 2024”.

8.2 Next, on 2 July 2024 the sheriff attempted to execute at 1[...] K[...] Road, Sandhurst, Sandton, which the applicant states it believed was the first respondent’s new abode in Johannesburg. The sheriff’s return records: *“the [first] respondent now resides at Dubai, no assets could be found at the given address, as they have been shipped in early May. Mr Van Walt confirmed that he sold his vehicles”.*

8.3 Then, on 24 July 2024 the sheriff attempted to execute the writ at Tang Waterfront, but the return records that the first respondent was *“temporarily absent”*, and the sheriff served the writ on an unidentified male manager at the premises, who withheld his name.

[9] It was after the last unsuccessful attempt of execution of the writ that this application was launched, on or about 23 October 2024, but no personal service could be effected on the first respondent, and as a result the applicant applied, in terms of s 9(4A)(iv)⁴ for the Court to dispense with the furnishing of service upon him.

[10] The applicant’s attorney, Mr Van Der Westhuyzen, has deposed to a service affidavit in which he explains that, although the papers were served upon the Master and the South African Revenue Services on 24 October 2024, the service upon the first respondent proved elusive.

10.1 On 24 October 2024, he sent a copy of the application via e-mail to the first respondent and to his erstwhile attorney. Although there was no response from the first respondent, the e-mail was successfully delivered,

⁴ Section 9(4A)(a)(iv) provides: *“When a petition is presented to the court, the petitioner must furnish a copy of the petition to the debtor, unless the court, at its discretion, dispenses with the furnishing of a copy where the court is satisfied that it would be in the interest of the debtor or of the creditors to dispense with it.”*

as indicated by the delivery report attached to Mr Van Der Westhuyzen's affidavit. The erstwhile attorney though, advised that he no longer acted for the first respondent.

10.2 On 28 October 2024 Mr Van Der Westhuyzen attempted to serve on the first respondent's present attorneys, Kokkoris Attorneys, who advised that they did not, at that stage, hold instructions to represent the first respondent, and only represented the Tang companies.

10.3 On 31 October 2024 the sheriff attempted to serve the application at 3[...] N[...] Road, Mouille Point, and the sheriff's return of service records that the property was empty and locked.

10.4 On 4 November 2024, Mr Van Der Westhuyzen sent a copy of the application to a Dubai whatsapp address of the first respondent. Although the whatsapp message indicates that it was read by the first respondent, he failed to confirm receipt when he was asked to do so, and instead blocked Mr. Van Der Westhuyzen's account on his whatsapp.

[11] On 5 November 2024 Kokkoris attorneys advised by letter dated 5 November 2024 that the first respondent was now resident in Dubai and provided his residential address to the applicant's attorneys.

B. JURISDICTION

[12] The question arising is whether this Court is clothed with jurisdiction to adjudicate the sequestration application in light of the provisions of section 149(1) of the Insolvency Act which provide as follows:

“(1) The court shall have jurisdiction under this Act over every debtor and in regard to the estate of every debtor who-

- (a) on the date on which a petition for the acceptance of the surrender or for the sequestration of his estate is lodged with the registrar of the court, is domiciled or owns or is entitled to property situate within the jurisdiction of the court; or
- (b) at any time within twelve months immediately preceding the lodging of the petition ordinarily resided or carried on business within the jurisdiction of the court:

Provided that when it appears to the court equitable or convenient that the estate of a person domiciled in a State which has not been designated in terms of section 2 of the Cross-Border Insolvency Act, 2000 (Act 42 of 2000), should be sequestrated by a court outside the Republic, or that the estate of a person over whom it has jurisdiction be sequestrated by another court within the Republic, the court may refuse or postpone the acceptance of the surrender or the sequestration.”

[13] As indicated by the stamp of the registrar of this Court, this application was lodged with the registrar on 23 October 2024. As at that date, the common cause facts indicate that the first respondent was not resident within the jurisdiction of this Court.

[14] It is not disputed that on 19 September 2023 the first respondent obtained the status of a resident in Dubai, and in that regard, he has attached a copy of his resident identity card for that country, and it records that it was issued on 19 September 2023. He adds that his wife is also a Dubai resident, and his children have been enrolled in school in Dubai. He adds that he is due to obtain tax residency in Dubai imminently.

[15] He explains that it was sometime during the middle of 2023 that he and his family decided to emigrate from South Africa, and that at about the same time he was

approached to open a Tang restaurant in Dubai, which he saw as an opportunity to facilitate the emigration. In July 2023, he, together with the board of the Tang companies made the final decision that he would permanently relocate and divest himself of day-to-day responsibilities of carrying on the restaurant businesses of Tang Waterfront and Tang Sandton, and that he would set up all the necessary business structures and facilities in Dubai to secure the opening of Tang Dubai. For that purpose, it was necessary for him to become a resident of Dubai.

[16] None of these allegations are denied. The facts set out earlier regarding the unsuccessful service of the writ and of this application confirm the first respondent's version regarding his new residence. Save for the writ which was personally served on him on 9 May 2024, no service could be effected on the first respondent in South Africa. At every turn, from at least 14 May 2024, the sheriff was informed of Dubai possibly being the first respondent's new residence.

[17] The return of 14 May 2024 confirmed that the first respondent "*no longer resides at the given address and is believed to be residing in Dubai, Respondent is set to return to Johannesburg at Tang at the end of May 2024*". Again, in the return of service of 2 July 2024 there was specific mention of the first respondent's residence in Dubai, where it is recorded that "*the respondent now resides at Dubai, no assets could be found at the given address, as they have been shipped in early May...*"

[18] The general principles to be considered when considering "*residence*" have been considered by our courts.⁵ It involves some degree of permanence, and "*some sense of stability or something of a settled nature*".⁶ It is a "*home, place of abode, the place where [a person] generally sleeps after the work of the day is done.*"⁷ But ultimately, whether a person resides at a particular place at any given time depends upon all the

⁵ See *Mayne v Main* (182/99) [2001] ZASCA 35; [2001] 3 All SA 157 (A); 2001 (2) SA 1239 (SCA) (23 March 2001).

⁶ *Tick v Broude and Another* 1973(1) SA 462 (T) at 469 F-G.

⁷ *Ex Parte Minister of Native Affairs* 1941 AD 53 at 59.

circumstances of the case seen in the light of the applicable general principles.⁸ In the circumstances of this case, the applicant discovered, at the same time that it discovered that the first respondent had vacated his ordinary residence, that he may have been residing in Dubai.

[19] Insofar as the sheriff managed to effect personal service on 9 May 2024, the first respondent explains that this was one of the occasions on which he was visiting the Republic, and when he managed to sell his motor vehicles as reported in the return of 12 July 2024. He admits returning to South Africa at times to sort out his movable assets, visit friends and colleagues and keep up to date with the managers and staff of the restaurants to ensure that Tang Dubai emulates the same quality standard as the South African restaurants.

[20] The evidence therefore establishes that the first respondent was resident in Dubai from at least 19 September 2023. Furthermore, since he had a residence permit to live in Dubai from that date, the evidence has established that that was his domicile - the place where, for legal purposes, a person is by law presumed present to be present at all times.

[21] As regards *“ownership or entitlement to property which is situated within the jurisdiction of this Court”*, the first respondent states that he does not own any property - movable or immovable - within this Court’s jurisdiction. He denies ownership of any shares in the Tang companies, as does the second respondent.

[22] It is common cause that the first respondent is a director of Tang Waterfront. It is also common cause that Miramar Holdings (Pty) Ltd, a South African company whose sole director is the second respondent, holds 50% of the shares in Tang Waterfront. According to the applicant, this shows that the first respondent has a vested interest in the three Tang restaurants. The argument in this regard is that the first respondent was

⁸ *August and Another v Electoral Commission and Others* (CCT8/99) [1999] ZACC 3; 1999 (3) SA 1; 1999 (4) BCLR 363 (1 April 1999) para 24; *Mayne v Main* para 6.

appointed as Miramar's sole director on the day of its registration, 10 December 2019, and when he resigned on 3 August 2020 he was replaced by the second respondent. The applicant states this is a clear indication that the first and second respondents have, throughout, had exclusive control of Miramar, that its purpose is to hold the first respondent's 50% share or interest in Tang Waterfront. It is moreover highly likely, says the applicant, that the first respondent not only conducts business within this Court's jurisdiction as an active director of Tang Waterfront, but that he also owns or is entitled to property within the jurisdiction of this Court.

[23] The first respondent states that he does not own any shares in any of the Tang companies or in Miramar Holdings. He also denies that the second respondent owns any shares in Miramar Holdings, and in this respect his version is confirmed by the second respondent who has deposed to a confirmatory affidavit. He states he has no investments or funds in South Africa, and neither does his wife

[24] Whilst the accountant of Tang Waterfront has confirmed that Miramar has a 50% shareholding in Tang Waterfront, there is no evidence before this Court that the first respondent is entitled to a vested interest in Tang Waterfront via Miramar. In the founding affidavit the applicant initially stated that this vested interest in Tang Waterfront was on account of the first respondent being a director of Tang Waterfront and his wife being the sole director of Miramar, which in turn holds 50% of the shares in Tang Waterfront. Even in the founding affidavit, this connection was tenuous and did not rise to the level of establishing a *prima facie* case, but in any event, as I have stated, it is denied by the respondents who deny ownership of any shares in Miramar or Tang Waterfront.

[25] In the replying affidavit, the applicant complains that the first respondent has not disclosed the full structure by means of which he and the second respondent obtain pecuniary benefits of Miramar's 50% shareholding in Tang Waterfront. But the applicant has not disputed the first respondent's version that neither he nor the second

respondent hold shares in Miramar. In those circumstances, it is unclear on what basis Miramar can hold the first respondent's 50% share or interest in Tang Waterfront.

[26] The inferences sought to be drawn by the applicant are not supported by any facts or evidence. The general rule regarding the drawing of inferences is that the inference that is sought to be drawn must be consistent with all the proved facts; if it is not, then the inference cannot be drawn.⁹ If there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.¹⁰ No evidence has been placed before this Court to refute the first and second respondents' claim that they are not entitled to an interest in Tang Waterfront, through Miramar.

[27] There remains for consideration whether the first respondent can be said to have carried on business within the jurisdiction of this Court within the twelve months immediately preceding the lodging of the petition, as required in terms of s 149(1)(b).

[28] The first respondent highlights the fact that, since his relocation to Dubai he has not been carrying on business in South Africa but has been doing so at Tang Dubai where he is employed as a manager, and his salary from that role is his sole source of income. He also does not own any shares in the South African companies.

[29] Firstly, it needs to be stated that it is possible for a person to carry on business in more than one district at a time.¹¹ The fact that the first respondent is carrying on business in Dubai does not preclude him from carrying on business within this Court's jurisdiction.

[30] Secondly, whether an individual is "carrying on a business" is an issue that must be examined with regard to the factual circumstances, and requires examination of the

⁹ *S A Post Office v Delacy and Another* 2009 (5) SA 255 (SCA) at para 35. *R v Blom* 1939 AD 188 at 202-203.

¹⁰ See *S v Essack & another* 1974 (1) SA 1 (A) at 16C-E, quoting *Caswell v Powell Duffryn Associates Collieries Ltd* [1939] 3 All ER 722 at 733.

¹¹ *Tiger Oats Ltd v Commissioner, South African Revenue Service* 2002 (1) SA 146 (T) 152-153.

operations of the person concerned,¹² as does the meaning of “business”.¹³ As was stated in *Clarensville*¹⁴, regard must be had to the activity alleged to constitute a business, and if the activity amounts to what is normally described as “business” then it is a business.¹⁵

[31] The first respondent is a restaurateur who previously carried on business in South Africa through his directorship in the Tang companies, including Tang Waterfront. Whilst he was previously involved in the day-to-day activities of Tang Waterfront and Tang Sandton, he is now involved in the day-to-day activities of Tang Dubai. However, he remains a director over all these restaurants.

[32] There is no suggestion that his involvement in the South African restaurants was limited to being physically present on a day-to-day basis. He was involved as a director. Thus, his reliance on the fact that he is no longer involved in the day-to-day activities of Tang Waterfront, but is involved in those of Tang Dubai, is not sufficient when regard is had to the nature of his involvement in the companies before relocation. It is in that context that the applicant points out that nothing precludes him from being in contact with the personnel and management of Tang Waterfront by electronic means. In other words, from continuing his involvement in running the business of the restaurants.

[33] The first respondent’s claim that he no longer has a bank account in South Africa and that he has financially emigrated does not mean he was not carrying on business within this Court’s jurisdiction during the relevant period. In any event, there are no details of when exactly he closed his bank accounts for purposes of determining the twelve-month timeframe prescribed by section 149(1)(b). Nor are there any details regarding his tax emigration.

¹² *Ravfin 1 (Pty) Ltd v The Dunes Partnership* (A739/2010) [2011] ZAWCHC 360 (14 September 2011) para 33.

¹³ *Cape Town Municipality v Clarensville (Pty) Ltd* 1974 (2) SA 138 (C) at 149F - G.

¹⁴ *Cape Town Municipality v Clarensville (Pty) Ltd* 1974 (2) SA 138 (C) at 149 – 150; See *Tiger Oats Ltd v Commissioner, South African Revenue Service* 2002 (1) SA 146 (T) 152-153.

¹⁵ Referring to *Rolls v Miller* (1884) 27 Ch.D. 71 (CA) at page 88). at 148B-C

[34] As regards Tang Waterfront specifically, the first respondent has been an active director since registration of that business, on 31 January 2022. Although he states that his role is now akin to a non-executive director, there are no particularities given and his version in this regard is vague. In any event, I note that this version does not go as far as to state with certainty that he is in fact a non-executive director, but that it is ‘akin’ to one. The overall impression created from his version is that he seeks to place a distance between himself and his involvement in Tang Waterfront and the Tang companies.

[35] It is telling that, when the board of directors of the Tang entities – which included the first respondent - felt it necessary for the first respondent to divest himself of the day-to-day responsibilities at Tang Waterfront, they did not feel it necessary for him to resign as director of Tang Waterfront. He remains in the management of, not only Tang Waterfront, but all 3 Tang entities. It is in that capacity that he was requested to spearhead the opening of the new restaurant in Dubai.

[36] Although the Dubai restaurant is to have its own business structure and facilities, it is clearly linked to the South African entities. This is why, according to first respondent, he travels to South Africa on occasion to keep up to date with the managers and staff of the South African restaurants. He states that this is to ensure that he emulates the same quality standard and service in the Dubai restaurant. That is part of his management and directorship role, not only in Dubai but also in South Africa. He is in effect now a director in all the Tang entities.

[37] In *Clarensville*¹⁶ which was decided in this Division, it was held that the “*carrying on*” of a business means:

“...there must be either (i) an act of selling or supplying something plus an intention at that stage to continue selling or supplying as and when opportunity

¹⁶ See *Cape Town Municipality v Clarensville (Pty) Ltd* 1974 (2) SA 138 (C) at 151F-152B.

offers for as long as is thought desirable; or (ii) a series of acts of selling or supplying in circumstances from which this intention can be inferred.”¹⁷

[38] What is necessary is a definite intention to carry on the selling or supplying something or whatever the activity might be similar acts from time to time if opportunity offers; or the acts must be done not once or twice but successively with the intention of carrying it on so long as it is thought desirable.¹⁸

[39] It is common cause on the facts of this case that the first respondent continues to be a director in the Tang companies, including Tang Waterfront. There is no doubt that the purpose of the companies and businesses is to continue to generate an income. That is the purpose of the first respondent’s continued involvement in all these companies.

[40] I am accordingly of the view that this Court has the requisite jurisdiction to adjudicate this matter because the first respondent carried on business within the jurisdiction of this Court within the twelve months immediately preceding the lodging of the petition, as required in terms of s 149(1)(b).

C. THE SEQUESTRATION

[41] Section 10 of the Insolvency Act provides as follows:

“10 Provisional sequestration

If the court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that *prima facie*-

(a) the petitioning creditor has established against the debtor a claim such as is mentioned in subsection (1) of section *nine*; and

(b) the debtor has committed an act of insolvency or is insolvent; and

¹⁷ *Claresonville* 149G-H.

¹⁸ *Claresonville* 149C-D.

(c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated, it may make an order sequestrating the estate of the debtor provisionally.

[42] In terms of s 10, the applicant is required to establish a *prima facie* case that the first respondent has committed an act of insolvency or is insolvent, and there is reason to believe that it will be to the advantage of creditors of the first respondent if his estate is sequestrated. If those circumstances are met, together with those in s 9(1) ¹⁹, the Court may make an order sequestrating the estate of the first respondent provisionally.

[43] It is trite that, in the ordinary course, sequestration proceedings are not to be used to enforce payment of a debt that is disputed on *bona fide* and reasonable grounds.²⁰ Where, however, the respondent's indebtedness has, *prima facie*, been established, the onus is on the respondent to show that this indebtedness is disputed on *bona fide* and reasonable grounds.²¹ Notwithstanding that the creditor is able to establish all the elements of the case for sequestration, the court still has a discretion as to whether or not to grant the provisional sequestration order.²²

[44] In these proceedings, the applicant is a judgment creditor of the first respondent with a liquidated claim against him of R 3 358 210.10, and it is not disputed that it is entitled to apply for the sequestration of his estate in terms of section 9(1) of the Insolvency Act. The debt, which is in the form of a court order, is not disputed on the papers.

¹⁹ Section 9(1) provides: "A creditor (or his agent) who has a liquidated claim for not less than fifty pounds, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than one hundred pounds against a debtor who has committed an act of insolvency, or is insolvent, may petition the court for the sequestration of the estate of the debtor."

²⁰ *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 348B; *Kalil v Decotex (Pty) Ltd and Another* [1987] ZASCA 156; [1988] 2 All SA 159 (A); 1988 (1) SA 943 (A) (*Kalil*) at 945E-F.

²¹ Op cit *Kalil* at 980C.

²² Section 10 of the Insolvency Act.

[45] As I have already indicated, the applicant relies on the provisions of sections 8(a), (b) and (e), as acts of insolvency on the part of the first respondent, and they provide as follows:

“A debtor commits an act of insolvency-

(a) if he leaves the Republic or being out of the Republic remains absent therefrom, or departs from his dwelling or otherwise absents himself, with intent by so doing to evade or delay the payment of his debts;

(b) if a court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment;

...

(e) if he makes or offers to make any arrangement with any of his creditors for releasing him wholly or partially from his debts...”

[46] The first respondent has failed to make payment of any portion of the debt. Since the personal service of the writ upon him, he has failed to satisfy the judgment or to indicate disposable property sufficient to satisfy the debt. The conditions of s 8(b) are accordingly satisfied.

[47] Given the first respondent’s explanation of how his relocation arose, which is not disputed, it has not been established on a balance of probabilities that his absence from the Republic is with the intent to evade payment of the applicant’s debt within the contemplation of s 8(a) of the Insolvency Act. However, it is clear that he relies on the relocation as a shield from the obligation to pay, and the effect of it has undoubtedly

been evasion and delay in paying the debt. He relocated with full knowledge of the debt and made no arrangements with the applicant for payment of it.

[48] But even before the relocation, the record establishes that the first respondent was evading payment through his absences and numerous residential addresses. I accept that the applicant has failed to explain its attempt to serve at the Mouille Point address in these proceedings, although I note that the parties were embroiled in litigation in previous proceedings under case numbers 9144/2019 and 9018/20/22.

[49] However, it is clear from the sheriff's returns discussed earlier that the first respondent was evading service. One clear instance is that on 9 May 2024, when personal service of the writ was effected upon him, he not only failed to mention the relocation to Dubai, which according to him had already taken place in the previous year, but he gave the sheriff a residential address of 1[...] N[...] M[...] square, Sandton 2196. There is no attempt in the papers to explain this apparent falsity. Accordingly, the requirements of s 8(a) are met in that the first respondent absented himself with the intent of evading or delaying the payment of his debts.

[50] In addition, on 26 April 2024 he made an offer of compromise through his then attorneys, for payment of a total amount of R1,5 million in three tranches, which was rejected by the applicant. The provisions of section 8(e) have accordingly been satisfied in that he offered to make an arrangement with the applicant for releasing him from his debt.

[51] I am accordingly satisfied that the first respondent has committed acts of insolvency in terms of ss 8(a), (b) and (e).

[52] As to whether there is advantage to be gained by the creditors, the applicant states that, due to this being a strictly arms-length application, it has no direct knowledge of the first respondent's assets and liabilities. However, it argues that there is a reasonable prospect that if the estate of the first respondent is sequestrated, the

trustee shall in due course be able to identify and recover substantial assets for the benefit of all of the first respondent's creditors. In this regard, the applicant relies on the fact that the first respondent is an experienced, well-heeled businessman who conducts business both here and abroad; resides in a luxury polo estate in Dubai which means he has access to substantial financial resources; is listed as a director in 19 South African entities; and houses his business interests in various local entities, some of which are controlled by the second respondent, and others by himself.

[53] The law requires that the Court must be satisfied from the facts and circumstances placed before it that there is a reasonable prospect that creditors will receive some financial benefit. In the oft-quoted case of *Meskin*²³ the court stated as follows:

*“The right of investigation is given, as it seems to me, not as an advantage in itself, but as a possible means of securing ultimate material benefit for the creditors in the form, for example, of the recovery of property disposed of by the insolvent or the disallowance of doubtful or collusive claims. In my opinion, the facts put before the Court must satisfy it that there is a reasonable prospect – not necessarily a likelihood, but a prospect which is not too remote – that some pecuniary benefit will result to creditors. Even if there are none at all, but there are reasons for thinking that as a result of the enquiry under the Act some may be revealed or recovered for the benefit of creditors, that is sufficient...”*²⁴

[54] Discussing the above passage, the court in *Dunlop Tyres*²⁵ observed as follows:

²³ *Meskin & Co v Friedman* 1948 (2) SA 555 (W) at 559.

²⁴ See also *London Estates (Pty) Ltd v Nair* 1957 (3) SA 591(D) at 593C-D; *Braithwaite v Gilbert (Volkskas Bpk Intervening)* 1984 (4) SA 717 (W) at B-C.

²⁵ *Dunlop Tyres (Pty) Ltd v Brewitt* 1999 (2) SA 580 (W), where Leveson J referred to the judgment of Nicholas J in *Klemrock (Pty) Ltd v De Klerk and Another* 1973 (3) SA 925 (W) and to the dictum of Roper J in the *Meskin* case (*supra*).

*“Taking that passage as my starting point, it will be seen that in the case of an arm’s length transaction a sequestrating creditor does not have to set out in its founding affidavits the detail and intensity of averments required when the nature of the claim is under scrutiny as required by Nicholas J in the Klemrock case, although a proper case should always be made out. It will be sufficient if the creditor in an overall view on the papers can show, for example, that there is reasonable ground for coming to the conclusion that upon a proper investigation by way of an enquiry under s 65 of the Act a trustee may be able to unearth assets which might then be attached, sold and the proceeds disposed of for distribution amongst creditors.”*²⁶

[55] Thus, the provisions of s 12(1)(c) of the Insolvency Act will generally be satisfied if a case is made out that there is a reasonable prospect that the sequestration of the debtor’s estate will result in some advantage or benefit to creditors. It is not a requirement to show that the sequestration will in fact be to the financial benefit of creditors; a court need merely be satisfied that there is reason - good reason - to believe that it will be so.²⁷ And the belief must be rational or reasonable and, the court must be furnished with sufficient facts to support it.²⁸

[56] Turning to the facts, as I have already discussed, the papers show that the first respondent is an experienced, well-heeled businessman who conducts business in South Africa and abroad.

[57] I also note that the first respondent’s name appears as a director alongside 19 South African entities according to CIPC records, although it is recorded that 8 of the companies are inactive, whilst he is listed as having resigned from 5 of them. The first respondent states that, save for the three Tang entities, all the entities have either been deregistered or are dormant. But contrary to his version, the CIPC records indicate that

²⁶ *Dunlop Tyres* at 583F-G.

²⁷ See also *Hillhouse v Stott*; *Freban Investments (Pty) Ltd v Itzkin*; *Botha v Botha* 1990 (4) SA 580 (W) at 585C-D.

²⁸ *Ibid.*

he is an active director in the three Tang companies, plus Miramar Entertainment (Pty) Ltd (not to be confused with Miramar), Billionaire Club Sandton (Pty) Ltd, and Circle Restaurant (CC). Thus, there are 3 directorships mentioned in the CIPC documents which are unaccounted for. The discrepancy between the first respondent's version and the CIPC records has not been explained.

[58] Although first respondent is living in a luxury estate, he states that he is renting and owns no assets in Dubai. At the same time according to his evidence, he sold and/or disposed of his South African assets to facilitate his relocation, which gives rise to the possibility of assets being available to make payment to creditors. After all, in April 2024, which was after the first respondent's relocation, he made an offer to pay an amount of R1,5m which was to be paid within a total period of 8 months.

[59] For all these reasons, I am of the view that there is good reason to believe that there is a reasonable prospect that the sequestration of the debtor's estate will result in some advantage or benefit to creditors. I have found no reason to exercise this Court's discretion against granting this application.

D. ORDER

[60] In the circumstances, the following order is made:

1. The estate of the first respondent is hereby placed in provisional sequestration in the hands of the Master of this Court, in terms of the provisions of the Insolvency Act 24 of 1936.
2. A rule *nisi* is hereby issued calling upon the first respondent and all interested persons to show cause, if any, to this Court, on **29 September 2025**, why:
 - (a) the estate of the first respondent should not be finally sequestrated;
 - and

(b) the costs of this application should not be costs in the sequestration.

3. The service and publication of this order shall be effected as follows:

- (a) Service by the sheriff on the first respondent at Kokkoris Attorneys, R[...] Office Park, Block A, First Floor, 1[...] J[...] S[...] Avenue, Parktown North, Johannesburg.
- (b) Service on the employees of the first respondent and any trade union(s) that may represent the employees, if any;
- (c) Service on the South African Revenue Service; and
- (d) Service on the Master of the High Court, Cape Town.

N. MANGCU-LOCKWOOD
Judge of the High Court

Appearances:

For the applicant : Adv A.R. Newton
Instructed by : BDP Attorneys
F. Van Der Westhuyzen

For the respondents : Adv P. Cirone
Instructed by Kokkoris Attorneys
M. Poyiadjis