

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

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

CASE NO: 2023-089863

15/10/2025

DATE

M M ANTONIE

In the matter between:

INVESTEC BANK LIMITED

Applicant

and

NISHAAL MAGANLAL DAJEE

Respondent

JUDGMENT

ANTONIE AJ:

INTRODUCTION

- [1] In this application the applicant seeks an order that the estate of the respondent be provisionally sequestrated and placed in the hands of the Master of the High Court. The respondent opposes the relief sought by the applicant.
- [2] The undermentioned facts are common cause:
- [a] The applicant and the respondent concluded a Mortgage Loan Agreement on or about 25 January 2022 and at Johannesburg (**the Loan Agreement**), in terms of which the applicant loaned and advanced to the respondent the sum of R2 205 750.00. The applicant would charge interest at its base rate minus 0.5%.
 - [b] The loan advanced to the respondent was repayable in 240 monthly instalments of R16 621.44 which was subject to a fluctuation in the interest rate.
 - [c] It was a condition of the Loan Agreement that the applicant would be entitled to register a mortgage bond over the respondent's wife's immovable property, Ms Himraj, in the sum of R2 200 000.00. It was a material term of the Loan Agreement that, should the respondent fail to pay any amount payable in full or should the respondent breach any other term or condition contained in the Loan Agreement, in such event the total amount outstanding would be immediately due and payable.
 - [d] A certificate issued by any manager or assistant manager of the applicant as to the indebtedness of the respondent shall constitute *prima facie* evidence of such indebtedness.
 - [e] On or about 25 August 2021 and at Johannesburg and pursuant to an application by the respondent, the applicant opened a private bank account in the name of

the respondent pursuant to the conclusion of a written agreement (**PB Agreement**). In terms of the application signed by the respondent, he acknowledges himself to be bound by the applicant's terms and conditions.

DEFAULT AND DEMAND

- [3] It is common cause that the respondent breached the Loan Agreement in that he failed to make payment of the monthly instalments or made sporadic payment thereof since inception. Notwithstanding multiple demands that he remedy his breach of the Loan Agreement, the respondent failed to do so. As at 24 August 2023 the respondent was in arrears in the sum of R209 061.99.
- [4] It is common cause that, as a consequence of the respondent's breach of the Loan Agreement and his failure to remedy same, the applicant elected to claim the total outstanding indebtedness and, as at 24 August 2023, the respondent became indebted to the applicant in the sum of R2 393 661.60 together with costs and interest thereon as from that date. The respondent's indebtedness as at that date is evidenced by a certificate of balance attached to the founding affidavit which, as mentioned earlier, constitutes *prima facie* evidence of such indebtedness.
- [5] In addition, the respondent breached the PB Agreement in that he exceeded his facility and, as at 24 August 2023 became indebted to the applicant in the sum of R41 380.14 together with interest as from that date. This is not in dispute.

THE RESPONDENT'S ALLEGED INSOLVENCY

- [6] The applicant contends that the respondent has committed an act of insolvency under section 8(g) of the Insolvency Act (**the Act**) and that he is factually insolvent. Section 8(g) of the Act provides that a debtor commits an act of insolvency if he gives notice in writing to any one of his creditors that he is unable to pay any of his debts.

[7] Section 10 of the Act, governing provisional sequestration provides:

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

[8] I deal with each of these grounds of insolvency separately below.

Whether the respondent committed an act of insolvency

[9] It is common cause that on 10 March 2023, the applicant's erstwhile attorney (**Mr Zindel**) had a telephone conversation with the respondent, shortly thereafter he recorded that conversation in an email addressed to the respondent in which he stated, *inter alia*:¹

"Unfortunately, as I have advised, the Bank will not afford you any further indulgences.

You have failed to honour your contractual undertakings under the loan agreement and private bank account. You failed to honour your undertakings to Kelly Woker at Investec, you failed to honour your undertakings to me.

...

I confirm further that you advised me that you cannot afford to pay the arrears. I record this is an act of insolvency."

[10] On 14 March 2023, the respondent's erstwhile attorneys addressed a letter to Mr Zindel in which they recorded that they acted on behalf of the respondent and his wife and stated *inter alia*:

¹ FA11, 02-124

- “5. Our client instructs us that he is aware that he is currently in arrears for the amount of R170 296.80 and has full intention to settle the arrear amounts but has unfortunately been unable to do so due to unforeseen personal circumstances that arose at his place of employment wherein he was placed under probation for a period of time.
6. He has recently found alternative employment and is now in a financial position to fulfill his obligations as per the Loan Agreement and settle the outstanding arrears and continue payments towards the bond as per the Loan Agreement.
7. For the sake of good faith and a long-standing relationship, our client proposes that he enter into an Acknowledgement of Debt (AOD) with your client in order to settle the amount in arrears, and be granted an opportunity to timeously fulfill his obligations in terms of the bond, which obligations he has previously been unable to adhere to as a result of his unfortunate circumstances.
8. Our client undertakes to make payment of R10 000.00 in monthly instalments towards the arrears and R5 000.00 monthly instalments towards his overdraft check. The payments in terms of the AOD shall run concurrently with his payments towards the capital which is in the amount of R21 000.00 per month,” (my emphasis)

[11] In my view, there can be little doubt that this letter from the respondent's attorney constitutes an act of insolvency as contemplated in section 8(g) of the Act. It states in express terms that the respondent is unable to settle the full amount of the arrears owing under the Loan Agreement. From this it must be inferred that he was also unable to pay his debt under the PB Agreement.

Whether the applicant is factually insolvent

[12] As recorded above, it is common cause that the applicant accelerated the debt owing under the Loan Agreement and, as at 24 August 2023, the respondent became indebted to the applicant in the sum R2 393 661.60. Prior to the hearing, the applicant

filed updated certificates of balance in respect of the Loan Agreement and the PB Agreement which record:

[a] As at 6 October 2025, the respondent was indebted to the applicant in the sum of R2 786 012.35 under the Loan Agreement.

[b] As at 6 October 2025, the respondent is indebted to the applicant in the sum of R52 433.92 under the PB Agreement.

[13] In addition, it is common cause that the respondent has failed to make any payment towards the outstanding balance under the PB Agreement since 1 March 2023. That speaks volumes.

[14] Where, as in this instance, the application is opposed, the issue is whether on the papers there is a balance of probabilities in favour of the applicant in respect of the facts upon which it relies as providing the basis for the court to reach the relevant opinion.² There is no dispute that the respondent is indebted to the applicant in the amounts recorded above, and the respondent has adduced no evidence that he is able to pay those debts in full.

[15] In the circumstances, I am of the opinion that, *prima facie*, the applicant has established as against the respondent a claim in excess of R2.6 million; the respondent has committed an act of insolvency; and that the respondent is insolvent.

Advantage to creditors

[16] In the founding affidavit the applicant adduced evidence that the respondent was a director of five companies, alleging that he is an active business person. The applicant goes on to contend that the provisional sequestration of the respondent's estate will

² *Kalil v Decotex (Pty) Ltd & Another* 1988 (1) SA 943 (A)

be to the advantage of creditors because, *inter alia*, it will permit a trustee to investigate whether:

- [a] The respondent is a shareholder in any of those companies and, if so, exercise his shareholding and, if appropriate, realise same for the benefit of creditors.
- [b] Call up any loan accounts in such companies.
- [c] Determine whether the respondent earns an income from his directorships, which can be dealt with in terms of section 23(5) of the Act.

[17] The respondent does not genuinely dispute these allegations in his answering affidavit. He put up a general denial and put the applicant to the proof thereof. In my view, that is insufficient to demonstrate that, *prima facie*, it would not be to the advantage of creditors to grant an order of provisional sequestration.

In all of the circumstances, I make the following order:

1. The estate of the respondent is provisionally sequestrated in the hands of the Master of the Gauteng Division, Johannesburg (**the Master**).
2. A rule *nisi* is issued calling upon all persons interested to show cause, if any, to this court on the 19th day of January 2026 at 10h00 or so soon thereafter as the matter may be heard, why the estate of the respondent should not be finally sequestrated in the hands of the Master and why the costs of this application, should not be costs in the sequestration.
3. This order shall operate with immediate effect as a provisional order for the sequestration of the respondent.
4. Service of this order shall be effected by:

- 4.1. Service on the respondent at 103 Minuach Street, Highway Gardens, Ekurhuleni and on his attorneys.
- 4.2. Service on the employees of the respondent, if any, in accordance with the requirements of section 9(4)(A) of the Insolvency Act, 24 of 1936.
- 4.3. Service on every registered trade union/s which represents any employee of the respondent, if any, in accordance with the requirements of section 9(4)(A) of the Insolvency Act, 24 of 1936.
- 4.4. Service on the South African Revenue Service, Johannesburg.
- 4.5. Service on the Master of the High Court, Johannesburg.
5. The respondent is directed to provide an affidavit to the applicant and the court stating whether he has any employees and, if so, providing the names, contact details and addresses of such employees if any, within 5 (five) days of date of this order.
6. A copy of the application and order to be served on the respondent's attorney of record, Mr Jones where it must be available to any employees of the respondent.




MICHAEL ANTONIE

Acting Judge of the High Court

Gauteng Local Division, Johannesburg

Date of Hearing: 8 October 2025

Date of Judgment: 14 October 2025

For the Applicant: Adv M De Oliveira

Instructed by: Werksmans Attorneys

For the Respondent: Jared Jones, Attorney

Delivered:

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for the hand down is deemed to be 15 October 2025.