

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

CASE NO: 2022-048135

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

In the matter between

**DCV ALTERNATIVE POWER SOLUTIONS
CC T/A DCV LINTEL SUPPLY**

Applicant

and

IVAN ALAN EDWARD PRETORIUS
(ID number 7[...])

Respondent

JUDGMENT

ANDRÉ GAUTSCHI AJ

[1] This is the return day of a provisional sequestration order. The applicant seeks confirmation of the rule and to place the estate of the respondent into final sequestration. The respondent seeks a discharge of the rule and dismissal of the application.

[2] Two odd events occurred shortly prior to the hearing before me. The first was that the respondent delivered a supplementary answering affidavit two court days before the hearing, without any explanation as to why it was delivered that late or seeking any indulgence. This was not the first time that the respondent

had done something at the last minute. He delivered a notice of intention to oppose late on 24 April 2024, causing the matter enrolled for 7 May 2024 to be removed from the roll, with the respondent agreeing to pay the wasted costs on a punitive scale. His answering affidavit was delivered on 27 August 2024, the day before the set down date of 28 August 2024. The last minute delivery of documents smacks of a stratagem to delay any impending hearing. The second was that another creditor, using the same attorneys as the applicant, delivered an intervening application on 25 October 2025, the Saturday prior to the hearing before me on Monday 27 October 2025.

[3] At the outset of the hearing, applicant's counsel, Mr J M Hoffman, indicated that he wished the application to proceed. For that purpose he was prepared to have the late supplementary answering affidavit admitted and to waive the applicant's right to reply thereto. Respondent's counsel, Mr C E Thompson, indicated that if the intervening application remained, the respondent wished to have an opportunity to answer thereto. That caused me to enquire of the intervening creditor's counsel, Mr L Hollander, what he intended to do about the intervening application. He indicated at first that it was conditional and could simply wait in the wings to see which way the wind blew at the hearing before me. Once I indicated that that was not acceptable, after a short stand down Mr Hollander informed me that the intervening application would be withdrawn, to allow argument in the application to proceed.

[4] The provisional sequestration order was granted on 2 September 2025 by Wasserman AJ. He had before him the founding papers, an answering affidavit and a replying affidavit, as well as a supplementary affidavit handed up to him

from the Bar at the hearing. Mr Hoffman read excerpts from the transcript of the previous hearing to me, from which it was clear that counsel then appearing for the respondent, Mr Stander¹, had consented to the supplementary affidavit being admitted. That caused Mr Thompson to advise me that neither he nor his attorney (the respondent's present attorneys, not being the attorneys of record at the time of the previous hearing) was aware of the fact that the supplementary affidavit had been handed to Wasserman AJ and formed part of the papers before the court (as opposed to simply having been uploaded onto CaseLines). Attached to that affidavit there were two letters, virtually identical, one with prejudice and the other without prejudice, written by the respondent's then attorney, offering to compromise the debt. The applicant intended to rely on this as a third offer to compromise, being an additional act of insolvency in terms of section 8(e) of the Insolvency Act, No 24 of 1936 ("the Insolvency Act")². This affidavit had not been dealt with by the respondent in his supplementary answering affidavit, and Mr Thompson indicated that he wished to take instructions from the respondent *inter alia* about whether this letter had been written on the respondent's instructions and whether it had been explained to him that such a letter could constitute an act of insolvency. He had not been able to get hold of the respondent on the day of the hearing, to take instructions, and sought a postponement in order to do so. In reserving judgment, I reserved judgment on this aspect too.

¹ The respondent had a different counsel and attorney at that hearing.

² Section 8(e) reads:

"A debtor commits an act of insolvency –

...

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

[5] For reasons which will become clear, I decline to afford the respondent an opportunity of a further postponement, and I shall decide the matter on the papers before me.

[6] The salient facts may be stated as follows.

[6.1] On or about 14 November 2019, the applicant obtained a court order against the respondent for the payment of two amounts, namely R 976 141.78 plus interest at 10.25% and R 1 034 337.37 plus interest at 14.5%. The fact of the judgment debt is not in dispute. The judgment debt was joint and several with Alleyroads Construction (Pty) Ltd and Alleyroads Supply (Pty) Ltd in respect of the first amount, and joint and several with Alleyroads Construction (Pty) Ltd in regard to the second amount.

[6.2] On 15 February 2021, the respondent through his attorney made his first offer of compromise in writing. The relevant part reads (after dealing with the financial position of Alleyroads Construction (Pty) Ltd and Alleyroads Supply (Pty) Ltd):

“Mr Pretorius, cited herein in his capacity as surety, owns no assets which are capable of being liquidated for the purpose of settling this debt and the judgment creditor will likely be required to go through a financial enquiry process to determine his ability to repay part or all of the debt. You are no doubt aware that this is a slow, tedious and often, fruitless exercise.”

The letter then continues to make an offer of settlement to pay R 1 000 000, or make some land parcels available, or to cede some shares. As contemplated in section 8(e) of the Insolvency Act, this is

an offer to make an arrangement with a creditor to release him partially from his debt. This letter was first referred to in and attached to the replying affidavit.

[6.3] The application for the sequestration of the respondent's estate was launched in 2022.

[6.4] On 26 August 2024, just before delivery of the answering affidavit, the respondent made his second offer of compromise in writing. The relevant parts of the letter read:

“As discussed, our client has instructed us to make the following **“WITHOUT PREJUDICE”** settlement proposal and as such, our client herewith tenders payment in the amount of R 1 000 000.00 ..., in full and final settlement of our client's (in his personal capacity) liability towards your client.

...

Further be advised that our client will be drawing these funds from its other entities and as such, our client will only be in a position to make such payment within 21 days from date hereof.”

This letter is again an offer to make an arrangement to be partially released from his debt. It is also an acknowledgement of the respondent's inability to pay the reduced amount from his own funds. It was also first referred to in and attached to the replying affidavit.

[6.5] After many fits and starts the application was eventually set down for hearing on 1 September 2025, and came before Wasserman AJ on 2 September 2025. On that day he granted the provisional sequestration order, returnable on 27 October 2025. Wasserman AJ clearly thought that the answering affidavit revealed no defence, and granted the

provisional order.

[6.6] As already indicated, the supplementary affidavit was handed up to Wasserman AJ at the hearing before him. It contained two annexures, which were the with and without prejudice letters which the applicant relies on as the third offer of compromise. The without prejudice letter reads:

“We confirm our instructions to make the following settlement proposal on behalf of our client:

[After setting out details and value of one of the respondent’s companies, that owns a property] Our client proposes the following three options in terms of the property in settlement of his debt:

1. Your client can have can have (*sic*) 33% shares in the office;
2. Your client can purchase the office at R 5 mil and repay our client the balance after settlement of his debt;
3. Our client will sell the office and pay your client the indebted amount from the proceeds of the sale. Our client consents to your client appointing their own conveyancer to attend to the transfer of the property.”

The with prejudice offer is in virtually identical terms.

[7] The case made out in the founding affidavit was that the applicant had made several unsuccessful attempts to execute on the court order against the companies and the respondent, and had held two unsuccessful auctions of the respondent’s shares in Alleyroads Energy (Pty) Ltd, the holding company of the group. It then chronicled attempts to have the respondent’s immovable property declared specially executable, which the respondent then sold to another of his companies, Alleyroads Holdings (Pty) Ltd. The applicant branded this as an act

of insolvency in terms of section 8(c) of the Insolvency Act³. Under the heading of advantage to creditors, the applicant *inter alia* made the allegation that it would be just and equitable for the respondent's estate to be sequestrated forthwith as he was unable to pay his debts. The founding affidavit also dealt with the required formalities.

- [8] The judgment debt is not in dispute, as I have already indicated. Advantage to creditors, although notionally in dispute, may quickly be dispensed with. The respondent's case is that he is well able to pay the debt and, even if untrue, establishes reason to believe that a sequestration of his estate will be to the advantage of creditors. The formalities are also not really in dispute.
- [9] The respondent's main attack is on the act of insolvency. In his heads of argument, Mr Hoffman relied on section 8(b) (*nulla bona* return), section 8(c) (disposition of property with the effect of prejudicing creditors) and section 8(e) (an arrangement to be released from indebtedness) of the Insolvency Act. The answering affidavit and supplementary answering affidavit raise mainly technical points, the main one being that the respondent had come to meet a case under section 8(c) of the Insolvency Act, that any other alleged acts of insolvency were not relied on in the founding affidavit, but in the replying affidavit (and supplementary affidavit), and could therefore not be taken into account against the respondent.

³ Section (c) reads:

"8. A debtor commits an act of insolvency –

...

(c) if he makes or attempts to make any disposition of any of his property which has or would have the effect of prejudicing his creditors or preferring one creditor above another."

[10] It is accepted that the respondent was not able to deal in the answering affidavit with any allegations involving section 8(e) of the Insolvency Act, since the first two letters relied on appeared for the first time in the replying affidavit, and the third in the supplementary affidavit. However, the respondent's response in his supplementary affidavit is illuminating. As I have already indicated, he raised mainly technical points. With regard to section 8(e), he dealt with the letter of 21 February 2021, correctly pointing out that it was a letter which pre-dated the launching of the sequestration application. However, he ignored, completely, the letter of 26 August 2024, and although I accept that counsel and attorney for the respondent were not aware that the supplementary affidavit had served before the court, the respondent knew about this affidavit, and pointedly avoided dealing with its contents by the following statement in his supplementary affidavit:

“Nor can the purported supplementary affidavit dated 21 October 2025 be utilised in order to remedy this inherently defective case.”

It is therefore clear to me that the respondent pointedly avoided dealing with the problematic letters, and that he had the opportunity, had he wanted to use it, to deal with the letters comprising the third offer of compromise. It is clear to me that, had the respondent pertinently been advised that the applicant's supplementary affidavit was indeed before the court, he would still have avoided dealing with the third offer of compromise. For that reason, it seems to me that the request for postponement is not justified, and I decline to give effect to that request.

[11] Mr Hoffman relied on the case of Berrange⁴, which is to the effect that a sequestrating creditor is entitled to rely on an act of insolvency which occurred after the date of the founding papers. This is undoubtedly a salutary rule, and especially in the present case, where the respondent used the opportunity to deliver a supplementary answering affidavit after the provisional order had been granted, in order to resist a final sequestration order, and therefore had the opportunity to deal with anything new in the replying or supplementary affidavits.

[12] After the hearing, Mr Thompson sought leave to make further written submissions, to which there was no objection, and Mr Hoffman responded. The main point made by Mr Thompson was that the Berrange case did not go as far as allowing a later act of insolvency to rescue an initially defective application. He submitted that the Berrange case dealt with the situation where a further act of insolvency had been committed, not a later act of insolvency where none could be proved before. That is not what may, in my view, be extracted from the Berrange case. In that case, the applicant relied on two acts of insolvency, one (section 8(a) of the Insolvency Act) in the founding affidavit and the other (section 8(d) of the Insolvency Act) in the replying affidavit. The SCA relied upon the later act of insolvency, and in respect of the earlier (section 8(a)) found that it was not necessary to make a finding with regard to that because of the conclusion reached on the section 8(d) act of insolvency.

[13] Mr Hoffman, correctly in my view, submits, with reference to the Hammerle

⁴

Hassan and Another v Berrange NO 2012 (6) SA 329 (SCA) at para 41

Group and Chopdat cases⁵ that an insolvency application is a matter which involves public interest and public policy, which is why it is accepted law that an offer of compromise, even if made without prejudice, can establish an act of insolvency in terms of section 8(e) of the Insolvency Act⁶.

[14] There is a further accepted principle, which also deviates from usual procedure, and resonates with the concept of an insolvency application being in the public interest and involving public policy, namely that if the applicant relies in his application on an act of insolvency but is unable to establish that it was committed, but it is clear that the debtor is in fact insolvent, the court may grant a final sequestration order on the latter ground, even if not relied on in the application⁷.

[15] The second offer of compromise establishes an act of insolvency in terms of section 8(e) of the Insolvency Act. That is sufficient to allow the applicant to succeed. It renders it unnecessary for me to deal with other aspects raised in the application, and also unnecessary for me to concern myself with the third offer of compromise, which simply reinforces my refusal to accede to the respondent's request for a postponement.

[16] The applicant has in my view succeeded in establishing that a final sequestration order ought to be granted, and that the rule should be confirmed.

⁵ Absa Bank Ltd v Hammerle Group 2015 (5) 215 (SCA); Absa Bank Ltd v Chopdat 2000 (2) SA 1088 (W)

⁶ Absa Bank Ltd v Hammerle Group *supra* at paras 11-13; Absa Bank Ltd v Chopdat *supra* at 1092H-1094F

⁷ Steytler & Co v Kasker & Allie 1935 CPD 102; Jackson v Smith 1928 TPD 773; Corner Shop (Pty) Ltd v Moodley 1950 (4) SA 55 (T); Saber Motors (Pty) Ltd v Morophane 1961 (1) SA 759 (W)

[17] I therefore make the following order:

- 1 The estate of the respondent is placed under final sequestration.
- 2 The costs of the application shall be costs in the sequestration.

ANDRÉ GAUTSCHI
Acting Judge of the High Court
10 November 2025

Date of hearing:	27 October 2025
Date of judgment:	10 November 2025
For the applicant:	Adv JM Hoffman (instructed by HBGSchindlers Attorneys)
For the respondent:	Adv CE Thompson (instructed by NLHS Attorneys)