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

Case number: 2025-209294

Date of hearing: 18 November 2025

Date delivered: 20 November 2025

(1) **REPORTABLE: YES/NO**

(2) **OF INTEREST TO OTHERS JUDGES: YES/NO**

(3) **REVISED**

DATE 20/11/25

SIGNATURE

In the application between:

SORTETEX (PTY) LTD

First Applicant

PIETER HENDRIK STRYDOM N.O.

Second Applicant

YUSUF EBRAHIM N.O.

Third Applicant

**(in their capacities as provisional liquidators
OF SORTETEX (PTY) LTD**

and

FRANCOIS NICOLAAS VAN DER WESTHUIZEN
(ID. 7[...])

First Respondent

TANYA VAN DER WESTHUIZEN
(ID. 7[...])

Second Respondent

JUDGMENT

SWANEPOEL J:

[1] This is an application brought by the applicants for the provisional sequestration of the estate of the first respondent. The first applicant is represented by the second and third applicants, who are the provisional liquidators of its insolvent estate. The respondents are married out of community of property. No relief is sought against the second respondent, and she is only cited inasmuch as she may have an interest in the application as the first respondent's spouse.

[2] The first respondent is an erstwhile director of the first applicant. The first respondent has admitted that he is indebted to the first applicant in the sum of R 4 312 509. During an insolvency enquiry held in respect of the first applicant, the first respondent admitted that he held a loan account in the first applicant for the aforesaid amount. The first respondent also conceded in writing that the balance of his loan account amounts to R 4 312 509. Although the first respondent put his indebtedness in dispute in the answering affidavit, his counsel conceded in argument that the first respondent was so indebted.

[3] The applicants have, therefore, established a claim in terms of section 10 (1), read with section 9 (1) of the Insolvency Act, 24 of 1936 ("the Act").

[4] The first respondent does not dispute that he is insolvent and that he cannot pay his debts. The first respondent's inability to pay his debts is apparent from the fact that shortly after he testified in the insolvency enquiry, he applied to be placed under debt review in terms of the National Credit Act, 2005. By so-doing, the first respondent unequivocally conceded that he is unable to pay his debts.

[5] The first respondent raised two defences to the application. Firstly, he argued that the application was not urgent. Secondly, he contended that his sequestration would not be to the advantage of creditors. The first respondent raised other issues in the answering affidavit, some whimsical, others with a little more substance, but none were persisted with in argument. The first respondent's initial *in limine*

argument, that the citation of his wife as second respondent constituted misjoinder, was expressly abandoned in argument.

[6] As far as urgency is concerned, there is always a measure of urgency to a sequestration application (or winding up).¹ Furthermore, the facts of this case also justify the bringing of the application on an urgent basis. The first respondent admits that he has a number of creditors. He owes money to three commercial banks.

[7] The first respondent is also liable to LNDR Business Credit (Pty) Ltd in the sum of R 27 251 170.52 as surety on behalf of the first applicant. Moreover, he has been sued on a suretyship by Hollard Insurance Company Ltd for payment of the sum of R 5 000 000. In respect of the latter claim, the first respondent has alleged that he has a cast-iron defence in that he did not sign a suretyship in his personal capacity. This contention is blatantly false. The suretyship speaks for itself, and the first respondent clearly bound himself as surety and co-principal debtor.

[8] In my view, it is highly improbable that the first respondent will not be hit with a spate of law suits, which makes it more important to establish a concursus creditorum as soon as possible. I find that the applicants have established urgency.

[9] The second defence raised was that there would be no advantage to the first respondent's creditors were the first respondent to be sequestrated. The first respondent says that he only owns one asset, an immovable property which he owns jointly with his wife. He says that his equity in the property amounts to only R 1 250 000. He says that, given the costs associated with declaring the property specially executable, there would be little equity for distribution between his creditors. There are, he says, insufficient assets in his estate to establish an advantage to creditors.

[10] However, the first respondent has failed to provide the second and third applicants with a CM 100 form, despite having been requested to do so during September 2025, which suggests to me that he does not wish to play open cards

¹ Ex Parte Nell and Others NNO 2014 (6) SA 545 (GP); Absa Bank v De Klerk and Related Cases 1999 (4) SA 835 (E)

regarding his assets and liabilities. Given the fact that the first respondent was clearly untruthful regarding the Hollard suretyship, I am not inclined to take his word regarding the extent of his assets.

[11] Whilst section 10 (c) of the Act requires a court to find that there is reason to believe that sequestration would be to the advantage of creditors, that does not mean that an applicant has to show that there would likely be an immediate financial advantage to creditors. If there is a reasonable prospect that an investigation might uncover hidden assets in due course, that would be to the advantage of creditors.²

[12] In this case, there is a substantial amount of money owed to the first applicant that is currently unaccounted for. In my view the only manner in which these monies can be effectively traced is by an enquiry held by the trustee of the first respondent's estate. I find, consequently, that the first respondent's sequestration would to the advantage of his creditors.

[13] I make the following order:

[13.1] The forms and service provided for in the Uniform Rules of Court are dispensed with and the matter is heard as one of urgency.

[13.2] The estate of the first respondent is placed under provisional sequestration in the hands of the Master of the above Honourable Court.

[13.3] A rule *nisi* is issued calling on all interested parties to appear and to show cause on 10 February 2026 why the first respondent's estate should not be placed under final sequestration.

[13.4] The costs of this application are costs in the sequestration of the first respondent's estate.

**SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA**

² Meskin & Co v Friedman 1948 (2) SA 555 (W)

Counsel for the applicant:

Adv. L Hollander

Instructed by:

Assheton-Smith Ginsberg Inc.

Counsel for the respondent:

Adv R van Schalkwyk

Instructed by:

Van Breda & Herbst Inc

Hearing on:

18 November 2025

Judgment on:

20 November 2025