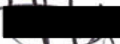


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023-044353

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED: YES
5 December 2025	
DATE	SIGNATURE

In the matter between:

A AND Q ATTEST SERVICES INCORPORATED
(REGISTRATION NUMBER: 2018/308451/21)

Applicant

and

ANGELA CHRISTINE DICK

Respondent

This judgment is handed down electronically by circulation to the applicant's legal representatives and the respondents by email, publication on Case Lines. The date for the handing down is deemed 5 December 2025

Insolvency - Provisional sequestration - Application for the compulsory sequestration of the respondent's estate - *Onus* - Insolvency Act 24 of 1936, s 10 - Sequestration procedure not there to settle disputes about a claim.

Held- that the respondent's denials of the applicant's allegations regarding the existence of the debt could not be characterised as ungrounded and that it had to be regarded as a *bona fide* dispute- application dismissed.

JUDGMENT

Mudau, J

- [1] This matter comes before this Court as an application for the provisional sequestration of the respondent's estate, instituted in terms of section 10 of the Insolvency Act¹ ("the Act"). The applicant, A and Q Attest Services Incorporated, asserts itself as a creditor of the respondent, Ms. Angela Christine Dick, in the substantial sum of R2,700,000.00. This amount is alleged to constitute a personal loan extended to her.
- [2] The respondent mounts a formidable opposition, anchored principally on the contention that the debt is *bona fide* and reasonably disputed, as the loan was, in truth and in fact, advanced to her corporate vehicle, Dynamic Outsourced Solutions (Pty) Ltd ("DOS"), and not to her in her personal capacity.
- [3] The crisp and defining issue for this Court's determination at this provisional stage is whether the applicant has successfully laid the necessary foundation for a sequestration order, or whether the respondent has convincingly demonstrated the existence of a genuine and reasonable dispute concerning the very existence of the debt upon which the application is predicated. This case exemplifies the tension between a creditor's recourse to the powerful machinery of the Insolvency Act and a debtor's right not to be subjected to its drastic consequences where the underlying liability is genuinely contested.

The Legal Framework for Provisional Sequestration

- [4] The jurisdictional prerequisites for the grant of a provisional sequestration order are meticulously outlined in section 10 of the Act. For this application to succeed, the applicant must establish, on a *prima facie* basis: firstly, pursuant to section 10 (a), that it has a claim against the respondent, as contemplated in section 9 (1) of the Act. Secondly, that the respondent has committed an act of insolvency or is in fact insolvent (section 10 (b)). Thirdly, there is reason to believe that it will be to the advantage of the creditors of the respondent if her estate is sequestrated (section 10 (c)). The court, however, retains a residual discretion to refuse a sequestration order.

¹ Act 24 of 1936.

- [5] It is trite that at the provisional sequestration stage, the court is not engaged in a final determination of the issues. However, this inquiry is circumscribed by a cardinal and long-standing principle of our insolvency law: a court will not grant a sequestration order, even at a provisional stage, where the debt upon which the application is founded is the subject of a *bona fide* dispute on reasonable grounds. This is the esteemed *Badenhorst* rule.²
- [6] The philosophical and practical underpinnings of this rule were eloquently articulated in *Investec Bank Ltd v Lewis*³ and received authoritative reaffirmation from the Supreme Court of Appeal in *Exploitatie-en Beleggingsmaatschappij Argonauten 11 BV and Another v Honig*,⁴ where the Court held:
- “Consequently, where there is a genuine and bona fide dispute as to whether a respondent in sequestration proceedings is indebted to the applicant..., the court should as a general rule dismiss the application. This is the so-called ‘*Badenhorst rule*’... It is a rule of long standing and good sense...”
- [7] Sequestration is not intended to provide a lever to a single creditor for the enforcement of a claim that is genuinely disputed by the debtor. The machinery of sequestration is designed to ensure an orderly and equitable distribution of a debtor’s assets where they are insufficient to meet the claims of all creditors; it is not a procedure for resolving disputes as to the existence or otherwise of a claim.
- [8] The incidence of onus in such matters follows a clear path. The initial burden rests upon the applicant to demonstrate, through its founding papers, that it is a creditor of the respondent. Once this *prima facie* case of indebtedness is established, the evidentiary burden shifts to the respondent to show that the debt is disputed on grounds that are both *bona fide* (in good faith) and reasonable.⁵ It is crucial to emphasise that the respondent is not required to prove her defence on a balance of probabilities at this interlocutory stage. She

² *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 347H-348C.

³ 2002 (2) SA 111 (C) at 116C – F.

⁴ 2012 (1) SA 247 (SCA); [2012] 2 All SA 22 (SCA) at [11].

⁵ *Imperial Logistics Advance (Pty) Ltd v Remnant Wealth Holdings (Pty) Ltd* [2022] ZASCA 119 at [34].

is merely obliged to allege facts which, if ultimately proven at trial, would constitute a legally valid defence. Her version must not be “bald” or lacking in particularity, but it need not comprise the full evidential arsenal she might deploy in a trial.⁶ The inquiry is directed at the quality of the dispute, not the certainty of its outcome. All that the respondent must satisfy me of is that the grounds which are advanced for her disputing this claim are not unreasonable.

Analysis

The Central Question: Is the Debt Bona Fide and Reasonably Disputed?

- [9] The entire superstructure of the applicant's case rests upon the assertion that an oral loan agreement was concluded during July 2021 between its director, Mr. Christo Maritz, and the respondent in her personal capacity. The respondent's defence is a simple but profound denial: the loan was negotiated and concluded with DOS, the company she represented, and all the contemporaneous communications, conduct, and documentary trail support this characterisation.
- [10] In resolving the factual disputes inherent in motion proceedings, this Court is guided by the venerable principle in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*.⁷ Where a genuine dispute of fact arises on the papers, the respondent's version must be accepted, provided it is not so far-fetched, untenable, or palpably implausible that it can be safely rejected on the papers alone.
- [11] The applicant's case leans heavily on the accounting treatment of the loan in DOS's internal financial records. The fact that the R2.7 million is reflected as a “shareholder's loan” from the respondent to DOS is presented as conclusive, almost irrefutable, proof that she received the funds personally and subsequently injected them into the company.
- [12] The respondent, however, provides a detailed and coherent explanation for this accounting entry. She avers that Mr. Maritz, acting in his dual capacity as the applicant's director and her trusted auditor and financial advisor, instructed her

⁶ *GAP Merchant Recycling CC v Goal Reach Trading* 55 CC 2016 (1) SA 261 (WCC) at [21].

⁷ [1984] ZASCA 51; 1984 (3) SA 623 (A) at 634E-635C.

to record the transaction in this specific manner. The purported reason was to conceal what he allegedly knew to be an unethical transaction: a substantial loan from an auditor (the applicant) to its own audit client (DOS), potentially constituting a serious breach of the IRBA Code of Professional Conduct and creating an impermissible self-interest threat.

- [13] Whether this explanation will withstand the rigours of cross-examination in a trial is not for this Court to decide at this juncture. What is material is that the explanation is plausible, coherent, and not so fanciful as to be disregarded. It provides a legitimate, alternative narrative for the accounting entries upon which the applicant so strongly relies.
- [14] More significantly, and most damaging to the applicant's case, the respondent has adduced compelling contemporaneous documentary evidence emanating from the applicant itself that directly corroborates her version and fundamentally undermines the applicant's present stance. This evidence includes an email from Mr. Maritz himself, dated 9 December 2021, which explicitly refers to "the monies advanced to your business". This language is naturally and ordinarily construed as a reference to a corporate entity, not a personal loan.
- [15] Also, an email from the applicant's another director, Mr. Amrish Dhulam, dated 10 December 2021, which is devastatingly unambiguous. It states: "We lent Dynamic Outsourced Solutions (Pty) Ltd... R2,500,000.00" and further clarifies that "the advances made/undertaken... were all made to Dynamic Outsourced Solutions (Pty) Ltd." (Emphasis added) It is difficult to conceive of more direct evidence supporting the respondent's version.
- [16] In addition, the draft Acknowledgement of Debt ("AOD"), prepared by the applicant's own attorneys and sent to the respondent for signature, formally and correctly identified DOS as the "Debtor" and another of her companies as the "Surety". Crucially, the respondent was not cited as a personal debtor or surety in this document. The AOD represents a formal, attorney-drafted reflection of the parties' understanding at that time, and it squarely contradicts the applicant's current allegation of a personal loan.

- [17] The applicant's attempts to explain away these damning communications – characterising them as mere slips of the tongue, administrative errors, or references to the respondent's "business venture" in a metaphorical sense – are, with respect, unconvincing and ex post facto rationalisations. They do not negate the reasonableness of the respondent's reliance on these clear and contemporaneous statements from the applicant's principals.
- [18] A court faced with this conflicting evidence in a trial would be required to engage in a meticulous factual analysis, including an assessment of the credibility of witnesses like Mr. Maritz and Mr. Dhulam, to determine the true nature of the oral agreement. This is precisely the kind of disputed factual issue that the sequestration process is ill-equipped to resolve.
- [19] Consequently, I am satisfied that the respondent has comfortably discharged the onus of demonstrating that the debt is disputed on grounds that are both *bona fide* and reasonable. The dispute is not a recent contrivance but is firmly anchored in the applicant's own contemporaneous documentation. This finding is, in itself, dispositive of the application. The authority of *Kalli v Decotex (Pty) Ltd and Another*⁸ is clear: if the debt is disputed on reasonable grounds, the sequestration application must be dismissed, irrespective of whether the respondent might otherwise be found to be insolvent.

The Remaining Sequestration Requirements: A Brief Consideration

- [20] Although my primary finding on the disputed debt is sufficient to dispose of this application, I will briefly consider the other statutory requirements for the sake of comprehensiveness and to provide guidance, should this matter proceed further.

The Question of Insolvency

- [21] The applicant seeks to establish the respondent's insolvency by relying on her failure to pay the disputed debt and a deeds search revealing no immovable property registered in her personal name. The legal principle is well-established:

⁸ 1988 (1) SA 943 (A) at 956I-J.

a failure to pay a debt does give rise to an inference of insolvency, which the debtor is then called upon to rebut.⁹

- [22] In this instance, the respondent has filed a comprehensive supplementary affidavit, replete with supporting documentation, to rebut this inference. She presents detailed valuation reports from seemingly independent experts attesting to substantial movable assets – including an art collection, jewellery, and musical equipment – with a cumulative value exceeding R13.7 million. She further asserts a director's loan claim against DOS of over R5.3 million and demonstrates a steady annuity income that covers her stated living expenses.
- [23] While the applicant vigorously criticises the methodology of the valuations and questions the liquidity of these assets, the respondent has moved far beyond a mere “bald assertion” of solvency. She has presented a *prima facie*, substantiated case that her total assets significantly surpass her admitted liabilities, even if the disputed R2.7 million debt were to be included. At this provisional stage, and particularly in the context of a seriously disputed debt, her evidence is sufficient to rebut the initial inference of insolvency drawn from her non-payment.

Advantage to Creditors

- [24] The applicant contends that sequestration would be to the advantage of creditors because an appointed trustee would be empowered to investigate the respondent's intricate financial affairs, which include her numerous company directorships and the corporate structure through which her immovable properties are held. The applicable legal test at this stage, as articulated in *Meskin & CO v Friedman*¹⁰ and subsequently endorsed by the Constitutional Court in *Stratford v Investec Bank Ltd*,¹¹ is whether there is a “reason to believe” or a “prospect not too remote” that some pecuniary benefit will accrue to creditors.

⁹ *De Waard v Andrew & Thienhaus Ltd* 1907 TS 727 at 733; *Prudential Shippers SA Ltd v Tempest Clothing Co (Pty) Ltd and Others* 1976 (2) SA 856 (W) at 863E.

¹⁰ 1948 (2) SA 555 (W) at 559.

¹¹ [2014] ZACC 38; 2015 (3) BCLR 358 (CC); 2015 (3) SA 1 (CC) at paras [46] – [48].

[25] However, this argument carries significantly less weight where, as here, the foundational debt is the subject of a genuine and substantial dispute, and the respondent has presented credible evidence of solvency. In such circumstances, the prospect of a tangible benefit to a general body of creditors becomes highly speculative. The sequestration process risks being transformed from a collective creditor mechanism into a tactical instrument to pressure a single debtor on a contested claim.

[26] The primary purpose of the application, on the papers before me, appears to be to coerce the respondent regarding a disputed liability, rather than to rescue a truly insolvent estate for the benefit of a concursus of creditors. Therefore, even if the other requirements were met, which they are not, I am not persuaded that the applicant has convincingly established that sequestration would be to the advantage of creditors.

The Spectre of Abuse of Process

[27] Given my primary finding that the application fails due to the disputed debt, it is not strictly necessary to make a definitive finding on whether the application constitutes an abuse of process. Nonetheless, the circumstances compel me to express grave concern. The applicant has already instituted a separate, ordinary action (Case No: 2022-050141) specifically to determine the precise issue of the respondent's personal liability for this very debt. The deployment of sequestration proceedings in the face of a genuine dispute, and while parallel action proceedings are already underway, perilously skirts the boundaries of what is permissible.

[28] It risks bringing the administration of justice into disrepute by using a procedure designed for collective benefit to resolve a bilateral dispute. As noted in authorities such as *Absa Bank Ltd v Erf 1252 Marine Drive (Pty) Ltd and Another*¹² the use of sequestration as a debt-collection tactic in such circumstances can indeed constitute an abuse of process. The respondent's contention that this application is a strategic manoeuvre to exert undue pressure is, in my view, not without a substantial foundation.

¹² Unreported judgment, 23255/2010) [2012] ZAWCHC 43 (15 May 2012) at [25].

Conclusion

[29] For the reasons elaborated above, the applicant has failed to meet the threshold for obtaining a provisional sequestration order. The respondent has successfully and convincingly demonstrated that the debt upon which the application is exclusively founded is *bona fide* and reasonably disputed. The *Badenhorst* rule, a rule of “long standing and good sense”, therefore applies with full force, and it is impermissible for this Court, within the confines of these sequestration proceedings, to pre-empt the resolution of that substantive dispute.

Order

[30] In the result, the following order is made:

1. The application for the provisional sequestration of the respondent's estate is dismissed.
2. The applicant is ordered to pay the respondent's costs of suit, including costs of counsel on scale C.



T P MUDAU
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of hearing : 11 November 2025
Date of Judgment : 5 December 2025

Appearances

For the Applicant:	Adv L Hollander
Instructed by:	Levine & Freedman
For the Respondent:	Adv C Petersen
Instructed by:	Sim Attorneys Incorporated