

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

Case no: 2023-125823

[1] REPORTABLE: NO
[2] OF INTEREST TO OTHER JUDGES: NO
[3] REVISED: NO

SL Shangisa AJ 08/12/2025

In the matter between

INVESTEC BANK LIMITED

Applicant

(Registration Number: 1969/004763/36)

and

MPHARI BOETMAN PAGE WAGNER

Respondent

(Identity Number: 8[...])

JUDGMENT

Shangisa AJ

Introduction

1. The present matter concerns an application for the final sequestration of the respondent. On 21 May 2024 Bhengu AJ granted an order placing the respondent's estate under provisional sequestration. Following the granting of

the provisional sequestration order, Richard Keay Pollock and two others were appointed as the joint provisional trustees.

2. The respondent opposes the final sequestration and has filed an answering affidavit and a supplementary affidavit in which he set out his liabilities and assets. In turn, the applicant filed a replying affidavit which refuted some of the claims made by the respondent in his supplementary affidavit. There was some debate between the parties concerning the admissibility of the respondent's supplementary affidavit. However, suffice to mention that nothing turns on the dispute concerning the admissibility of the respondent's supplementary affidavit, in my view, I am prepared to admit all affidavits and consider their contents.
3. At this stage, the factual background to the matter is merited. On 4 February 2022 and at Sandton the respondent applied to Investec for an Investec Private Bank Account ("PBA") and credit facility. The application was successful and the respondent was granted a credit facility with the limit of R50, 000.00. The terms and conditions as well as the quotation constituted the "cardholder's agreement". The terms of the cardholder's agreement are not in dispute.
4. On 28 February 2022 the applicant and respondent concluded the written loan agreement (the "loan agreement"). In terms of the loan agreement, the applicant issued a loan to the respondent in the amount of R3,105,750. 00. The terms of the loan agreement are not in dispute.

5. On 12 February 2023 the applicant and respondent concluded the written instalment sale agreement (the “instalment sale agreement”) in terms of which the applicant financed the respondent’s purchase of a 2018 Jaguar XF 2.0D Sport in the amount of R499,950.00. The terms of the instalment sale agreement are not in dispute.
6. On 13 July 2022 and as security for the respondent’s indebtedness to the applicant, the respondent registered a mortgage bond over an immovable property. The respondent declared himself indebted to the applicant in the amount of R3,2million together with the additional sum of R620,000.00.

Applicant’s Case

7. It is common cause between the parties that the respondent breached the cardholder’s agreement by failing to make payment of the monthly minimum instalments and by exceeding the credit facility which resulted in the PBA being called up and the credit facility being reduced to the nominal R1.00.
8. As at 31 October 2023 the respondent was in excess of his credit limit in the amount of R57, 421.00. It is also not in dispute that the respondent breached the terms of the loan agreement by failing to make payment of the monthly instalments due. On 1 November 2023 the respondent was in arrears in the amount of R253,939.29

9. The respondent also breached the terms of the instalment sale agreement by failing to make payment of the monthly instalments. In that regard, on 1 November 2023 the respondent was in arrears in the amount of R90, 435.37.

10. By 20 November 2023:

10.1 the loan and instalment sale agreements had been in arrears for 8 months;

10.2 the arrears in respect of the loan agreement had accrued to R253,939.29;

10.3 the arrears in respect of the cardholder's agreement had accumulated to R90,435.37; and

10.4 the outstanding balance in respect of the cardholder's agreement was R57,421.00.

11. On 20 November 2023 the applicant's attorney addressed a termination notice to the respondent in terms of section 123 of the National Credit Act. At the time the application was launched, the respondent was indebted to the applicant in the following amounts:

11.1 R57,421.00 together with interest at the rate of 11.75% per annum in terms of the cardholder's agreement;

11.2 R3,357,510.72 together with interest at the rate of 11% per annum in terms of the loan agreement;

11.3 R532,368.39 together with interest at the rate of 11.4% in terms of the instalment sale agreement for the purchase of the jaguar XF.

12. The respondent has made minor payments towards the debts owed to the applicant. In that regard, the respondent has paid the total amount of R75,512.56. Despite the latter payments, the respondent remains indebted to the applicant in the following amounts:

12.1 R63,906.48 together with the interest at the rate of prime 11.5% per annum in respect to the cardholder's agreement;

12.2 R3,647,797.92 together with interest at the rate of 11.5% per annum in respect to the loan agreement; and

12.3 R580,202.72 together with interest at the rate of 11.5% per annum in respect to the instalment sale agreement.

The Respondent's Defence

13. For its part, the respondent does not dispute that he has committed an act of insolvency because he wrote to the applicant and informed it that he could not meet his monthly repayment obligations to the applicant. At the time of his admission to being insolvent, the respondent had accounts with the applicant and other third parties.

14. The respondent also challenged the applicant's authority to institute the present legal proceedings. He contended that the applicant's board of directors had not authorised the issuing of the application.

The Law

15. In my view, there is no merit in the respondent's contention. It is common cause that the respondent failed to challenge the applicant's authority by issuing the notice in terms of rule 7 of the Uniform Rules of Court calling upon the applicant's attorneys to produce their power of attorney. In ***Ganes and Another v Telecom Namibia Ltd*** 2004 (3) SA 615 (SCA), the SCA made it plain that a deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to the affidavit. On the contrary, it is the institution of the proceedings by the applicant's law firm of attorneys that be authorised. This is fatal to the respondent's defence.
16. The fact remains that the respondent readily admits to have committed an act of insolvency as contemplated in section 8 (e) and section 8 (g) of the Insolvency Act, 24 of 1936. In my view, the applicant has an undisputed liquidated claim. Consequently, other than the aforementioned unmeritorious defences, there are no genuine and bona fide disputes of fact that have the effect of stopping the applicant from obtaining its claim.
17. In ***Goldblatt's Wholesale (Pty) Ltd v Damalis*** 1953 (3) SA 730 (O) at 732 the court held that a letter such as the one that the respondent wrote and sent to the applicant amounts to an admission that he cannot pay his debts in the ordinary course and that he is insolvent. The legal effect of the letter that the

respondent admits to have written to the applicant is that he committed an act of insolvency in terms of section 8 (g) of the Act.

Conclusion

18. The applicant has established that it is a creditor of the respondent in an amount far more than the required R100.00 for the sequestration of the respondent.

19. The preceding being the case, the provisional sequestration order granted by Bhengu AJ is consequently confirmed.

20. In the result the following order is granted:

1. The respondent's estate is finally sequestrated;
2. The costs of the sequestration application are to be costs in the sequestration.

S.L SHANGISA

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION OF THE HIGH COURT, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on2025.

DATE OF HEARING:2025

DATE OF JUDGMENT:2025

APPEARANCES:

COUNSEL FOR APPLICANT: Adv. C. Gibson

ATTORNEY FOR APPLICANT: WERKMANS ATTORNEYS

COUNSEL FOR RESPONDENT: Mr D Lebethe

Attorney with a right of appearance