IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable

Case no: 3935/2025

In the matter between

DEON CORNELIUS MAREE	**FIRST APPLICANT**
DEON CORNELIUS MAREE JR	**SECOND APPLICANT**

and

PHATSHOANE HENNEY INC BLOEMFONTEIN	**FIRST RESPONDENT**
ELRICH RUWAYNE SMIT N.O.	**SECOND RESPONDENT**
DONOVAN THEODORE MAJIEDT N.O.	**THIRD RESPONDENT**
ELIZNA LOUWRENS N.O.	**FOURTH RESPONDENT**
THEA CHRISTINA LOUWRENS N.O.	**FIFTH RESPONDENT**
SONWABILE MABUSELA N.O.	**SIXTH RESPONDENT**
LUKE TIMOTHY FORTEIN N.O.	**SEVENTH RESPONDENT**
THE MASTER OF THE HIGH COURT BLOEMFONTEIN	**EIGHTH RESPONDENT**
THE REGISRAR OF DEEDS BLOEMFONTEIN	**NINTH RESPONDENT**
THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM	**TENTH RESPONDENT**

Neutral Citation: *D C Maree and Another v Phatshoane Henney and Others* (3935/2025) [2025] ZAFSHC 22 (22 January 2026)

Coram: Van Rhyn J

Heard: 23 October 2025

Delivered: 22 January 2026

Summary: Application for interim interdict to prevent first to seventh respondents from proceeding with transfer of immovable properties pending investigation by the Master of the High Court. Master granted trustees permission – in terms of provisions of s 18(3) read with s 80(bis) of Insolvency Act 24 of 1936 to dispose of immovable property prior to second meeting of creditors. Clear right not established.

ORDER

1 The application is dismissed with costs.

2 The applicants shall pay the costs, jointly and severally, which costs shall include the costs of counsel on Scale C.

JUDGMENT

Van Rhyn J

[1] The first and second applicants launched this application on an urgent basis seeking an in interim interdict to restrain the transfer of various immovable properties pending a formal investigation in terms of the provisions of s 152 of the Insolvency Act 24 of 1936 (the Insolvency Act). The applicants furthermore sought a final interdict to compel the trustees/liquidators to furnish certain information and documents to the applicants' attorney of record. The application is opposed by the trustees/liquidators.

[2] The first applicant is Deon Cornelius Maree, an unrehabilitated insolvent, who has *in persona,* together with Deon Conelius Maree Junior, his son, cited as the second applicant in his capacity as beneficiary of the D C Maree Trust (in sequestration), issued an urgent application on 29 July 2025 for the matter to be heard on the 7th of August 2025. In their notice of motion, the applicants sought orders: (i) interdicting the transfer of five farms situated in the district of Harrismith as described in the notice of motion (the properties) pending a formal enquiry in terms of Insolvency Act by the Master of the High Court, Bloemfontein, (the Master); (ii) an order that the Registrar of Deeds, Bloemfontein be ordered to endorse the interim interdict against the title deeds of the respective properties; and (iii) to interdict the trustees/liquidators by compelling them to provide information required to facilitate a s 152 enquiry by the Master, together with costs.

[3] The first applicant previously served as a trustee of the DC Maree Trust, which is currently under sequestration and the control of the second, third and fifth respondents

who had been appointed as trustees by the Master. The first applicant also served as a member with an interest in Goldensands 31 Trading CC, which close corporation has been placed under liquidation and the control of the second, third and fourth respondents as appointed liquidators. The first applicant and his wife have been sequestrated in their personal capacities and their insolvent estate is being managed by the second, sixth and seventh respondents as the appointed trustees.

[4] The first respondent is Phatshoane Henney Inc, a firm of attorneys in Bloemfontein; it is not opposing the application. The first respondent represents Standard Bank of South Africa (Standard Bank), a major creditor and bondholder in the amount of approximately R60 million against the combined estates. The first respondent furthermore represents Standard Bank in a pending damages claim instituted by the applicants, the first applicant's wife, the trustees of the D C Maree Trust and Goldensands 31 Trading CC in the Pretoria High Court. The first respondent, through Mr H Otto (Mr Otto), a director of the first respondent also represents the trustees/liquidators of the insolvent estates as legal advisor and as the first respondent tasked to effect the transfer of the properties, which form the subject of this application.

[5] The trustees/liquidators were appointed by the Master in the insolvent estate of the first applicant and his wife, D C and J G Maree (B103/2023), the trustees in the administration of the DC Maree Trust and the liquidators in the matter of Goldensands 31 Trading CC (B62/2024). The trustees in the insolvent estate of both D C Maree Trust and the first applicant and his wife will be referred to as the 'Trustees' and the liquidators of Goldensands 31 Trading CC as the 'Liquidators' individually and collectively as the trustees/liquidators. The eighth respondent is the Master of the High Court, Bloemfontein as represented by Mr Strauss while the ninth respondent is the Registrar of Deeds, Bloemfontein. The Master is not opposing the application and filed two reports, one dated 6 August 2025 and the second report dated the 10th of October 2025. The Registrar of Deeds filed a report dated 5 August 2025. The tenth respondent is the Department of Rural Development and Land Reform cited as an interested party who made an offer to purchase the properties. The tenth respondent filed a notice to abide by the decision of the court.

[6] The trustees/liquidators opposed the urgent application and filed their answering affidavit on the 4th of August 2025. The matter did not proceed on the 7th of August 2025 and was rolled over for hearing on the 8th of August 2025. However, on the 8th of August 2025 the trustees/liquidators provided the applicants with an undertaking that transfer of the properties will not be effected which caused the matter to be postponed to the opposed roll of 4 September 2025. On the 4th of September 2025 the undertaking not to proceed with the transfer of the properties was extended and by agreement between the parties, the matter was postponed to the 23rd of October 2025. The Master was directed to file a further report on or before the 10th of October 2025 which was duly filed. The parties were authorised to supplement their papers after receipt of the Master's report and to file further affidavits on or before the dates as specified in the order of court dated 4 September 2025. At the hearing of the matter, both Mr Naude SC (appearing with Mr Muller) for the applicants as well as Mr Zietsman SC for the trustees/liquidators, were in agreement that the issue of urgency has become moot. Accordingly, the issue of urgency will not be dealt with in this judgment.

[7] The background to the urgent application is as follows: the first applicant and his wife's estate was provisionally sequestrated on 2 August 2024 and made final on 28 November 2024. The D C Maree Trust was provisionally sequestrated on 15 August 2024 and confirmation of the provisional order was issued on 2 December 2024. Goldensands 31 Trading CC was placed under liquidation on the 15th of August 2024 and the order was made final on 2 December 2024. It is contended that the first applicant's interest lies in the fact that he has a reversionary interest in the relief sought and that the second applicant's interest in the matter is in and because of the fact that he is a beneficiary of the sequestrated D C Maree Trust, of which the first applicant is one of the trustees. Goldensands 31 Trading CC (in liquidation) and the D C Maree Trust (in sequestration) are the registered owners of the respective properties.

[8] The first applicant contends that since 6 August 2024 he has been negotiating with the tenth respondent to purchase the properties, five farms as described in the notice of motion and which form the subject of this application. However, no written agreement of sale had been concluded with the tenth respondent prior to the public auction which was held on the 20th and the 21st of May 2025 at the behest of the trustees/liquidators. It is common cause that the properties were put up for public auction to be held by Park Village

Auctions at the Farm Werda, the property of Goldensands 31 Trading CC (in liquidation). At the auction, certain bidders placed bids on the properties and it is common cause that a 14-day confirmation period was attached to the sale in auction within which period higher offers could still be submitted to the trustees/liquidators for consideration. The applicants' attorney, Mr Visser, attended the auction when the respective bidders made a combined offer of R43 542 907.40 for the properties.

[9] On the 5th of June 2025, having regard to the fact that the confirmation period of 14 days expires on the 9th of June 2025, Mr Visser addressed a letter via email to the trustees/liquidators informing them that he holds instructions to submit a further offer to purchase the properties in the amount of R64 037 897. On 6 June 2025, the auctioneer, on instructions of the second respondent, replied to Mr Visser's email and provided Mr Visser with fully prepared deeds of sale in respect of the properties and, in terms of the rules of auction and the conditions applicable to the auction, informed Mr Visser that the deposit payable is not refundable in the event of failure to deliver the necessary bank guarantee(s) and that the deposit is to reflect in the auctioneer's bank account at the latest on Monday, the 9th of June 2025. Confirmation of the auctioneer's banking details was appended to the said email. Mr Visser was furthermore requested to submit the signed deeds of sale by 13h00 on Monday the 9th of June 2025 to provide enough time for reaction from the highest bidders of the respective properties.

[10] On Monday, 9 June 2025 at 07h08, Mr Visser was alerted to the fact that the offers received at the auction have not yet been confirmed and that the anticipated offer is to be completed on the auctioneer's conditions of sale and that same must be submitted before 13h00 on even date. The higher offer submitted by Mr Visser will be presented to the highest bidders for consideration. Once more Mr Visser was informed that the signed offer and proof of payment into the auctioneer's trust account of the deposit is required as per the conditions of sale. At 12h38 on the 9th of June 2025, Mr Visser sent an email to the trustees/liquidators to which he appended two offers to purchase the properties. The tenth respondent, represented by Luleka Nonyonga, the Chief Director, Free State: Department Rural Development and Land Reform is reflected as the purchaser of the properties.

[11] After receiving the higher offer from Mr Visser, Mr Otto, on the 9th of June 2025 at 15h19 requested Mr Visser, to provide proof that the Chief Director of the tenth respondent was authorised to make the offer to purchase the properties on behalf of the tenth respondent. Again, Mr Visser was informed that any higher offer received within the confirmation period must comply with the same terms and conditions of the auction notwithstanding the fact that the offer was made subsequent to the date of the auction. Due to the fact that the offers received did not comply with the same terms and conditions applicable to the auction, failure to make payment of the deposit and commission payable and due to the failure to provide the necessary proof of authorisation to make the offer on behalf of the tenth respondent, the further offers to purchase the properties submitted by the tenth respondent could not be considered by the trustees/liquidators. Mr Visser was duly notified.

[12] At 16h54 on the 9th of June 2025 Mr Visser replied to Mr Otto's email and indicated that he has requested the required authorisation from the Department of Rural Development and Land Reform and that he will forward the same as soon as possible. He furthermore indicated that the two offers to purchase the properties are substantially in accordance with the terms and conditions provided by the auctioneers and that his client is not bound by the rules of auction as it has not registered to purchase at the auction. He also argued that '. . . the seller or auctioneer may not charge or receive any money in respect of the sale of immovable property until the purchaser and seller have signed the written agreement. This is obviously applicable to both the auctioneer and the agent who introduced the purchaser.'

[13] On the same day at 18h02, Mr Otto responded to the aforesaid email that no authorisation has been provided from the tenth respondent as requested and that the trustees/liquidators, his clients, are compelled to follow the correct procedure in instances of a public auction. Therefore, no undertaking can be provided that the offers received at the auction from the highest bidders will not be confirmed. On the basis that the higher offer made by the tenth respondent would have benefited not only the insolvent estates, the trustees/liquidators (as far as their remuneration is concerned) and also the auctioneer, confirmation of the highest bidders' offers was kept in abeyance for as long as possible by the trustees/liquidators. Only at 21h43 on the 9th of June 2025, the trustees/liquidators confirmed the highest bidders' offers subsequent to receiving the

secured creditor's (Standard Bank) permission. On 10 June 2025, Mr Visser was duly informed that the highest offers made at the auction were indeed confirmed.

[14] Mr Visser responded and indicated that according to his calculations and having regard to the substantial higher offer of approximately R20 million more than the highest bidders at the auction, it is likely that the first applicant and his wife as well as the D C Maree Trust are not insolvent and that an estimated surplus of R29 700 000 may be available. Mr Visser opined that the trustees/liquidators acted hastily in accepting the lower offers made at the auction and thus harming the first applicant and his wife as well as the beneficiaries of the D C Maree Trust. He requested cogent reasons why the offers made by the tenth respondent were not acceptable and why accepting the lower offers made at the auction would benefit the estates. He informed the trustees/liquidators that he received instructions to seek damages from them as well as their attorneys in the event of the sale of the properties at the prices offered at the auction.

[15] On the 13th of June 2025, Mr Visser again voiced his concerns regarding, *inter alia*, the fiduciary duty resting upon the trustees/liquidators to act impartially and to maximise the estate's value. He requested an undertaking from the trustees/liquidators that no steps will be taken to finalise or approve the lower offers until the Master intervenes to investigate the rejection of the higher offer for the properties. Should no satisfactory response be received by the 17th of June 2025, urgent judicial intervention will be sought, including an application to compel transparency, the setting aside of the rejection of the tenth respondent's offer, and an interdict to stay the transfer of the properties (amongst other relief). In response, Mr Otto reiterated that no authorisation has been provided by the tenth respondent to authorise the signatory to make the offer to purchase. The offers received from the successful bidders at the auction complied with and were made in terms of the rules of auction and according to the applicable terms and conditions of sale. As a result, the trustees/ liquidators are compelled to follow the correct procedure in instances of a public auction held and therefore an undertaking to keep the matter in abeyance cannot be provided as requested.

[16] On 17 June 2025, eight days after confirmation of the offers made by the highest bidders at the auction, confirmation of Ms Nonyongo as employee and Chief Director of the tenth respondent (being the only senior manager in the Free State Province to present

or accept an offer to purchase immovable property on behalf of the tenth respondent) was provided to Mr Otto. On the 19th of June 2025 Mr Visser again requested a formal undertaking not to proceed with the transfer of the various properties sold at the auction and that the request is made pending the Master's investigation of the rejected higher offer for the properties. The trustees/liquidators were informed that the relevant correspondence has been submitted to Mr Strauss at the Master's office, who telephonically confirmed that he is addressing the matter. In the event that the required undertaking is not provided, an urgent court application to obtain an interim interdict to prevent the transfer of the various properties will be sought. Mr Otto was furthermore informed that if a report from the Master is not received, an order of court will be sought directing the Master to investigate the issues raised and to provide a report to the court regarding the Master's findings.

[17] On 2 July 2025, Mr Visser addressed a letter to the Master, trustees/liquidators of the insolvent estates and to Mr Otto 'demanding' that the Master invoke both s 71 and s 152 of the Insolvency Act to address the maladministration of the insolvent estates, to prevent prejudice and a hastened sale and transfer of the properties. In addition the Master was called upon to demand delivery, by no later than the 8th of July 2025, in terms of s 152(1) of the Insolvency Act, of numerous documents and records including, *inter alia*, the bidders record, vendors roll, offers on all assets, confirmation or acceptance of offers, records of creditors paid in full or partially and a list of all the creditors who have proved claims against the various estates as well as communications between Mr Otto, trustees/liquidators, Standard Bank and the auctioneer relating to the sale of the properties. A demand was contained in the said letter that summonses/notices be issued for the trustees/liquidators, Mr Otto (as the attorney acting on behalf of Standard Bank and the trustees/liquidators) and the auctioneer to address the rejection of the tenth respondent's offer, Standard Bank's influence in the sale of the properties and Mr Otto's dual representation of both Standard Bank and the trustees/liquidators.

[18] The Master was informed that Mr Otto provided evasive responses and the trustees/liquidators failed to provide a detailed debatement, substantive reasons for rejecting the offer from the tenth respondent or clarity on the damages claim in the amount of R35 million instituted against Standard Bank. A further demand was made that:

(a) in terms of the provisions of s 152(4) of the Insolvency Act, the legal team acting on behalf of Mr Visser's clients participate in the interrogation to probe the issues mentioned in the letter. The Master was tasked to provide direction for an interim undertaking by the 8th of July 2025 from the trustees/liquidators not to transfer the properties pending finalisation of the interrogation and investigations;
(b) an investigation in terms of the provisions of s 60*(b)* and *(e)* into the conduct of the trustees/liquidators for failing to perform their duties, their unsuitability as well as Mr Otto's conflict of interest with reference to rule 58.8 of the Legal Practice Council's Code of Conduct; and
(c) clarification of the status of the damages claim instituted against Standard Bank, with a directive to pursue or release it from the relevant estate.

[19] On 8 July 2025, the Master requested Mr Visser to provide him with complete sets of applications for interrogations in the three insolvent estates to enable him to consider permission to investigate the affairs of the estates. The liquidators were requested not to proceed with the transfer of the properties until the 1st of August 2025. Unfortunately, Mr Otto did not perceive the Master's request as a directive but merely as a request not to proceed with the transfer of the properties and replied that only a court of law may interdict the transfer of the properties. On 23 July 2025, Mr Otto indicated that the estate records will be made available to the Master upon confirmation of the entitlement of the first applicant and his wife thereof and such a directive being issued by the Master. On behalf of the trustees/liquidators, Mr Otto however, confirmed that full cooperation will be provided to the Master and that no need exists for a s 152 enquiry into the actions taken by the trustees/liquidators or himself in respect of the estates. Neither the trustees/liquidators nor Mr Otto will subject themselves to a formal interrogation on the basis that all the issues have been addressed and that the allegations of maladministration and breach of fiduciary duty are without legal basis or substance and are rejected by the trustees/liquidators. Thereafter the urgent application was issued on the 29th of July 2025.

[20] The applicants argue that up-front payments are not required under the regulations of the Consumer Protection Act 68 of 2008 and are, in fact, prohibited. There are no provisions in any agreements or terms and conditions that require authority to act before offers may be considered. In any event, none of the grievances raised by Mr Otto were

so substantial as to warrant an outright rejection of the offers made by the tenth respondent. The applicants contend that the difference between the offers for the properties amount to R20 494 989.60 and, notwithstanding the tenth respondent's written confirmation that it remains willing and able to proceed with its offer to purchase the properties, the trustees/liquidators of the insolvent estates have advised that the lower of the two offers was accepted.

[21] The applicants contend that the Master will establish the facts pertaining to the proposed s 152 enquiry and that it is not necessary for the court to investigate the alleged maladministration pertaining to the three estates. The applicants contend that they have a prima facie right to the fair administration of the estates which includes the safeguards provided by the Master's oversight over the administration process. The beneficiaries of the D C Maree Trust have a vested and reversionary right which may be prejudiced due to the *mala fide* actions and dealings of the trustees/liquidators. Taking cognisance also of the free residue that might be realised, as a result of the higher offer received from the tenth respondent, it is contended that the applicants have a prima facie right to prevent the transfer of the properties and a clear right of access to the information requested in terms of s 71 of the Insolvency Act.

[22] A formal request in terms of s 71 of the Insolvency Act was submitted to provide the book of all receipts, including monies, goods, books, accounts and other documents received by the trustees on behalf of the three estates. Notwithstanding the Masters email dated 9 July 2025 requesting the trustees/liquidators to provide the applicants with the record book of each of the respective estates in terms of s 71 of the Insolvency Act and s 393 of the Companies Act 61 of 1973 (the Companies Act) for inspection on or before 12h00 on the 23rd of July 2025, no such information had been made available when the founding affidavit was deposed to on the 29th of July 2025.

[23] The applicants argue that they will suffer irreparable harm on the basis that the Master issued a directive not to proceed with the transfer of the properties. However, the stance of the trustees/liquidators is that they will take the necessary steps too effect transfer of the properties. No other remedy is available to the applicants to bar the trustees/liquidators from transferring the properties. It is furthermore argued that the constitutional rights of the applicants will be infringed if the interdict is not granted. No

inconvenience is alleged by the bidders of the properties. The inconvenience caused in the event of finalising the investigation pertaining to the maladministration of the estates by the trustees/liquidators is tolerable having regard to the duties of such officials.

[24] The following points *in limine* were raised by the trustees/liquidators:

(a) The non-joinder of the highest bidders at the auction with whom contracts were concluded between the trustees/liquidators regarding the properties. This issue was addressed on the basis that the trustees'/liquidators' attorney gave notice of the application to the purchasers at the auction and had informed them that they have a right to join in the application if they so wished. None of the purchasers gave notice of their intention to join in the application and this point has therefore become moot.

(b) The relief sought by the applicants is untenable. Firstly, in respect of the interim interdict, the same cannot be granted pending some or other investigation by an administrative body. An interim interdict can only be granted pending a decision by a court of law. Secondly, with reference to the final interdict, what the applicants move for falls within the four corners of the jurisdiction of the Master – it is only the Master who can convene a s 152 interrogation in terms of the Insolvency Act and only the Master may decide upon providing the requested information/documentation to the insolvent(s) attorney.

(c) concerning *locus standi*, the trustees/liquidators contend that the first applicant has a reversionary interest in his own insolvent estate, but so too does his wife who has not been cited as a party in this application. It is denied that any of the beneficiaries of the D C Maree Family Trust have any reversionary right in the sequestration of the said trust. The only persons that have such an interest are the trustees (or former trustees). Both the first applicant and his wife have been sequestrated and Mr Piet Uys is an independent trustee who has not been cited as an applicant in this urgent application. The said Mr Piet Uys is thus the only trustee vested with a reversionary interest in the insolvency of the said trust.

[25] Subsequent to the request made on behalf of the applicants to be provided with information pertaining to the records of the three estates, the trustees/liquidators denied the insolvents' entitlement to the information requested. Subsequent to the issuing of the urgent application, the trustees/liquidators, most probably on advice from and with the assistance of Mr Zietsman SC, provided a full set of all the records in the three insolvent

estates to the Master, as requested by Mr Strauss, and therefore the relief claimed in this regard has become moot. On behalf of the trustees/liquidators, Mr Zietsman SC argued that the relief sought by the applicants in respect of the interim interdict to prohibit the transfer of the properties pending an investigation by the Master, as set out in prayer 2 of the notice of motion, is untenable. The applicants have not applied for the amendment of the notice of motion and have merely handed up a draft order at the hearing of the matter in an endeavour to address the shortcomings in the relief sought, which had already been pointed out by the trustees/liquidators in their answering affidavit filed on 5 August 2025.

[26] The trustees/liquidators contend that no case has been made out by the applicants that the properties were sold wrongly. In terms of the provisions of the Consumer Protection Act and the regulations thereto, the trustees/liquidators were legally obliged to request the further information from Mr Visser regarding the offer made by the tenth respondent and due to the non-compliance with the requirements, they proceeded to confirm the offers received from the highest bidders at the auction. If the Master intended to proceed with an enquiry, as proposed by the applicants, the Master had ample time to indicate such intention to the parties. As to the order sought to provide the insolvents with the information requested, the Master may decide to provide the applicants with the requested information and there is no obligation on the trustees/liquidators to provide the applicants with such information. No clear right has been made out in this regard and as a result, the trustees/liquidators move for the dismissal of the application with costs.

[27] At the hearing, the applicants sought a *rule nisi* and an interim interdict returnable on 5 February 2026 following the Master's investigation in terms of s 152 of the Insolvency Act in terms whereof the trustees/liquidators are interdicted and restrained from proceeding with the transfer or registration of the properties. The relief sought by the applicants is set out in a draft order handed up by Mr Naude SC. Mr Naude SC conceded that the relief sought by the applicants, as formulated in the notice of motion, is untenable and therefore seeks the relief as per the draft order.

[28] Apart from the interlocutory interdict pertaining to the transfer of the properties and investigation and report by the Master, the applicants furthermore seek an order in terms whereof the ninth respondent is ordered to endorse the interim interdict against the title deeds of the properties prohibiting any transfer or registration thereof pending the return

date. An interlocutory interdict is one which is granted *pendente lite* – there must be legal proceedings pending between the parties.[1] It is a provisional order designed to protect the rights of the complaining party pending an action or application to be brought by him to establish the respective rights of the parties. The requirements which an applicant for an interlocutory interdict has to satisfy are the following:[2]

(a) a prima facie right;

(b) a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;

(c) a balance of convenience in favour of the granting of the interim relief; and

(d) the absence of any other satisfactory remedy.

[29] Section 152 of the Insolvency Act provides as follows:

'The Master may direct trustee to deliver documents or property or call upon any person to furnish certain information:

(1) The Master may at any time direct a trustee to deliver to him any book or document relating or any property belonging to the insolvent estate of which he is trustee.

(2) If at any time after the sequestration of the estate of a debtor and before his rehabilitation, the Master is of the opinion that the insolvent or the trustee of that estate or any other person is able to give any information which the Master considers desirable to obtain, concerning the insolvent, or concerning his estate or the administration of the estate or concerning any claim or demand made against the estate, he may by notice in writing delivered to the insolvent or the trustee or such other person summon him to appear before the Master or before a magistrate or an officer in the public service mentioned in such notice, at the place and on the date and hour stated in such notice, and· to furnish the Master or other officer before whom he is summoned to appear with all the information within his knowledge concerning the insolvent or concerning the insolvent's estate or the administration of the estate.'

[30] Whether an applicant has a right is a matter of substantive law. An interim interdict will be granted if the court is satisfied that the applicant has a right established upon a balance of probabilities and that the respondent has invaded it or threatens to do so. It is common cause that the offers to purchase the properties submitted by Mr Visser on behalf of the tenth respondent were not contained in the *pro forma* offers sent by the auctioneer

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[1] *Botha v Maree* 1964 (1) SA 168 (O).

[2] *Setlogelo v Setlogelo* 1914 AD 221 at 227.

to Mr Visser, notwithstanding the fact that it was made clear to him that the conditions of sale and rules of auction require that offers received within the confirmation period are required to comply with the same terms and conditions of auction. Although Mr Visser was advised, on numerous occasions, that a deposit and/or commission were payable to the auctioneers in terms of the rules of auction, no payment of the required deposit and commission had been received within the confirmation period. In fact, it was specifically denied that the auctioneer is entitled to any payment in this regard. The authorisation to purchase the properties on behalf of the tenth respondent was not provided to Mr Otto within the confirmation period.

[31] Section 82 of the Insolvency Act provides as follows:

'82. Sale of property after second meeting and manner of sale

(1) Subject to the provisions of sections *eighty-three* and *ninety* the trustee of an insolvent estate shall, as soon as he is authorised to do so at the second meeting of the creditors of that estate, sell all the property in that estate in such manner and upon such conditions as the creditors may direct: Provided that if any rights acquired from the State under a lease, licence, purchase, or allotment of land is an asset in that estate, the trustee shall, in his administration of the estate, act in accordance with those provisions (if any) which by the law under which the rights were acquired, are expressed to apply in the event of the sequestration of the estate of the person who acquired those rights: Provided that if the creditors have not prior to the final closing of the second meeting of creditors of that estate given any directions the trustee shall sell the property by public auction or public tender. A sale by public auction or public tender shall be after notice in the *Gazette* and after such other notices as the Master may direct and in the absence of directions from creditors as to the conditions of upon such conditions as the Master may direct.'

[32] In the Master's report dated 6 August 2025 9 (the first report) it is, *inter alia*, noted as follows:

'1. the Applicants' Notice of Motion (Urgent Application), founding affidavit and annexures were served on me.

2. I am not going to oppose the relief sought.

3. I have requested the liquidators on 8 July 2025 not to go ahead with the transfer of the farms by 1 August 2025. I considered a request and a directive as the same.

4. Section 152 of the Insolvency Act, Act 24 of 1936, as amended, is necessary to address complaints of maladministration and to investigate the administration of the estates.

5. The trustees submitted the first liquidation and distribution account in the insolvent estate of D C Maree and J G Maree B103/2023 on 1 August 2025. The account is not examined and approved yet. The trustees scheduled the second meeting of creditors for 31 July 2025 at Magistrate Harrismith, just one day before submission of the first account. I am not sure whether the creditors adopted the resolutions. I will therefore not be able to approve the liquidation and distribution account. The minutes of the second meeting of creditors and the accompanying trustees' report and resolutions are not submitted to me yet. I received an application in terms of section 80(bis) of the Insolvency Act Act 24 of 1936, as amended, to dispose of the immovable property and the movable property, which application I granted on the on 20 March 2025. The Trustees went ahead to advertise the liquidation and distribution account to lie for inspection on 1 August 2025 before the Mater could examine and approve the account. No query sheet is issued yet.

6. The trustees scheduled the second meeting of creditors in the matter of D C Maree Trust IT 1195/95 at the Magistrate Harrismith on 31 July 2025 at 10h00. The minutes of the second meeting of creditors with the trustees' report and resolutions were not yet submitted to me. I am not sure whether the creditors adopted the resolutions. . . . I granted the trustees permission per second application on 12 December 2024 in terms of section18(3) read with section 80(bis) of the said Act to dispose of the immovable property prior to the second meeting of creditors.'

And further:

'I received the first liquidation and distribution account on 4 August 2025. The liquidation and distribution account was advertised to lie open for inspection on 1 August 2025 before the Master could examine and approve the liquidation and distribution account and before the minutes of the second meeting of creditors and the trustees' report with resolutions were submitted. Therefore, no query sheet is issued.

7. I have received a recommendation from the liquidators in terms of section 386(2A) of the Companies Act, Act 61 or 1973, as amended, read with s 66(1) of the Close Corporations Act, Act 69 of 1984, as amended, on 12 December 2024 in the matter of Goldensands 31 Trading CC B62/2024 to sell immovable property by private treaty. I granted permission on 12 December 2025 in terms of section 386(2B) of the Companies Act, Act 61 of 1973, as amended, read with section 66 of the Close Corporations Act, Act 69 of 1984, as amended, to sell the immovable property by private treaty. On 18 March 2025 I granted permission to sell the immovable property with a second recommendation from the liquidators dated 11 February 2025. The two permissions were granted before the first and second meeting of creditors. The Liquidators' report was accepted, and the creditors adopted the resolutions. No Liquidation and distribution was received in the matter of Goldensands CC in liquidation.

8. I confirm that I have requested the trustees and liquidators, respectively, to comply with section 71 of the Insolvency Act, Act 24 of 1936, as amended and section 393 of the companies Act, act 61 of 1973, as amended, by 23 July 2025 at 12h00.'

[33] The Master, *inter alia*, reported the following aspects in the supplementary report dated 10 October 2025:

'2. Mrs J G Maree, with whom the first Applicant is married in community of property, is not cited as second Applicant.

3.I confirm that access to section 80(bis) applications by the trustees was allowed by email to Mr Visser, the Applicants' attorney, on 5 August 2025.

4. I cannot confirm that financial misconduct exists and therefore I could not report the trustees and liquidators to the authorities as required in terms of section 34(1) of the Prevention and Combating of Corrupt Activities Act, 12 of 2024 (Precca), as amended. The trustees and liquidators did not reflect the proceeds of the farms in any liquidation and distribution account yet but only movable assets.'

And further:

'There is no first liquidation and distribution account submitted in Goldensands 31 Trading CC. The first liquidation and distribution account is due. The liquidators did not file an application for extension of time to submit the first account and a final reminder to collect the first account is ready to be issued.

5. The trustees and liquidators complied with section 71 of the said Insolvency Act and section 393 of the Companies Act, Act 63 of 1971, as amended, on 18 August 2025. Mr Visser had access to those records.'

[34] From the contents of the second report and with reference to case law, the Master raised the issue that he became aware of the fact that the trustees advertised the first liquidation and distribution accounts to lie open for inspection before the Master was afforded the opportunity to examine and approve the accounts. According to the Master, the trustees advertised two liquidation and distribution accounts to lie open for inspection without authority. No objections were received pertaining to these accounts and the Master continued to confirm the two accounts in terms of s 112 of the Insolvency Act. Reference is made to the fact that the first and second creditors' meetings in all three of the entities were held before the Magistrate at Harrismith and the said magistrate therefore considered the meetings as being valid. According to the Master the trustees/liquidators provided sufficient information about the details of the first and second

meetings to the parties interested in the 'litigation papers'. The liquidators scheduled the first and second meeting of creditors in Goldensands 31 Trading CC in the Government Gazette. The trustees/liquidators scheduled a second meeting of creditors in terms of the provisions of s 40(3)*(a)* and *(b)* of the Insolvency Act and all the trustees'/liquidators' reports were accepted and resolutions adopted at the second meeting of creditors. The Master reported that:

'The liquidators scheduled the first and second meeting of creditors in Goldensands 31 Trading CC in the Government Gazette. The Master issued a notice having the details of the first meeting in terms of the Master's codes of estates and sent it to the trustees and the Magistrate's offices for their attention. The trustees and liquidators scheduled a second meeting of creditors in terms of section 40(3)(a) and (b) of the said Insolvency Act. All the trustees' reports and liquidators' reports were accepted and the resolutions were adopted at the second meeting of creditors conducted by Magistrate Harrismith.'

[35] For purposes of this application it is necessary to consider the auction rules, read with the advertisement of the auction, the auction conditions of sale and the requirements under the Consumer Protection Act read with the relevant regulations.[3]. The auction was advertised in the *Landbouweekblad*, the *Farmers' Weekly* and various other social media forums. The advertisements pertaining to the auction held on 20 and 21 May 2025 specifically provided for a R10 000 refundable registration deposit payable and R50 000 refundable registration deposit payable when bidding on immovable property. Buyers commission at 6% plus VAT is payable on immovable property and a 13% deposit payable on the fall of the hammer. For the balance of the purchase price, the purchaser must provide a bank guarantee 30 days after confirmation. A further condition was that all arear rates, taxes and levies were payable by the buyer. Occupation of the properties would be on registration in the name of the purchaser. A 14-day confirmation period is applicable on the sale of immovable property. The same conditions of auction were advertised in the *Government Gazette*.

[36] In terms of clause 12 of the rules of auction, all prospective bidders must register his or her identity in the bidders record prior to the commencement of the auction. The rules of auction specifically provide that a bid taken from an unregistered person is invalid. Copies of the rules of auction provided by Park Village Auctions and the pro forma terms

[3] Government Gazette No 34180, 1 April 2011.

and conditions of sale of immovable properties by public auction is attached to the answering affidavit. These rules were read out at the commencement of the auction. Paragraph 23 of the rules of auction provides as follows: 'The purchaser's bid/offer shall remain open for acceptance by the seller or by the auctioneer on behalf of the seller until expiry of the confirmation period. The purchaser and the auctioneer acknowledge and agree that this provision is for the benefit of the seller. Negotiations between the highest bidder and the seller may arise during such confirmation period and should any subsequent bid be received during such confirmation period, the new bidder will be required to register in terms of these rules of auction and will have one opportunity to submit a higher bid and the highest bidder of the first instance shall have the right to equal or better such subsequent bid.'

[37] Regulation 24*(b)* issued in terms of the Consumer Protection Act, determines that an auctioneer may not charge or receive any fee or commission in respect of the sale of immovable property until the purchaser and the seller have signed a written agreement in respect of the sale of such immovable property. Regulation 24*(c)* provides that an auctioneer may not charge or receive any fee or commission from the purchaser if the seller defaults or where such fee or commission has already been paid by the purchaser to the auctioneer, the auctioneer shall immediately refund the purchaser the amount paid, including deposit. Regulation 24*(d)* provides that the auctioneer may not charge or receive any fee or commission from the purchaser, if the purchaser defaults, exceeding 10% of the purchase price or the total costs of advertising and conducting an auction and such additional costs as may be been reasonably incurred in accordance with regulation 21(2)*(l)*, whichever is the lesser.

[38] The applicants place reliance upon the existence of the 14-day confirmation period as provided for in the rules of auction in the sense that it is contended that Mr Visser submitted the offer per email on the last day of the confirmation period being the 9th of June 2025. However, it appears as if the other conditions and rules should not be applicable on the basis that the tenth respondent did not attend the auction. On behalf of the applicants, it is argued that there is no obligation upon the trustees/liquidators to accept any offer made at the auction or, for that matter subsequent to the auction, on the basis that a trustee or liquidator occupies a position of trust not only towards creditors but also towards the insolvent estates. The trustees/liquidators must therefore have regard to the best interest of the insolvent estates where these interests are not in conflict with

the interests of creditors.[4] On behalf of the applicants it is contended that the trustees/liquidators acted hastily, and without consideration of what would be to the benefit of the estates, pushing for the sale of the properties in an endeavour to finalise the process to enable them to obtain payment of their fees.

[39] It is competent for the Master, on receiving a recommendation and reasons from the trustees/liquidators that any immovable property should be sold prior to the second meeting of creditors,[5] to authorise the sale thereof, which in fact occurred in *casu*. After consideration of the trustees'/liquidators' reports and documents submitted therewith, it is competent for creditors to give directions to the trustees/liquidators as to the future administration of the estates.[6] If no directions have been given by the creditors and there is no proposed resolution or direction for the Master to approve, the Master may give directions relating to any matter as to the administration or realisation of the estate(s), as he thinks fit.[7] A direction given by the Master and any proposed resolution or direction thus approved, is binding on the trustees/liquidators.[8] Subject to all the provisions referred to, every resolution of creditors as declared and recorded in the minutes of the meeting is binding upon the trustees/liquidators in as far as it is a direction to such trustee/liquidator[9] and a trustee/liquidator who acts contrary to any such resolution may be interdicted from so doing unless it is illegal by reasons of being in conflict with either the letter or spirit of the insolvency laws.

[40] The realisation of the estate assets is one of the most important duties of a trustee. After the second meeting of creditors all such assets must be sold by him/her (or as required) and the obligation imposed upon a trustee in terms of the provisions of s 82 of the Insolvency Act presupposes that the sale of the estate property is not unlawful or prohibited.[10] It is not the case of the applicants that the sale of the properties by the trustees/liquidators occurred unlawfully or not in terms of the directions of creditors or contra the authorisation of the Master. In this regard the argument raised on behalf of the

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[4] *Dippenaar N.O. and Others v Noordman N.O.* [2922] ZAFSHC 181 para 25; *Jacobs v Hessels* 1984 (3) SA 601 (T) at 605G.
[5] Section 80(bis) of the Insolvency Act 24 of 1936.
[6] Section 81(3)*(a)* of the Insolvency Act.
[7] Section 81(3)*(c)* of the Insolvency Act.
[8] Section 81(3)(d) of the Insolvency Act 24 of 1936
[9] Section 53(3) of the Insolvency Act 24 of 1936; *Thorne v The Master* 1964 (3) SA 38 (N).
[10] *Oertel NO v Director of Local Government* 1981 (4) SA 491 (T) at 508H.

applicants is merely that Mr Otto obviously only obtained the permission of Standard Bank to confirm the sale of the properties to the highest bidders subsequent to the expiry of the confirmation period as is evident from the emails appended to the answering affidavit, and did not consult with any of the other creditors who are being bypassed.

[41] Section 53(5) of the Insolvency Act provides that the majority of creditors (reckoned in number and in value) may direct the trustee to employ or not to employ a particular attorney or auctioneer in connection with the administration of the estate and if the trustee has reason to believe that it will not be in the interests of the estate to carry out such direction, he may submit the matter to the Master, whose decision, after considering any representations in writing by the trustee and the creditors, shall be final. To sell or abandon the assets of the estate, the creditors may also give directions as to the time, place, manner of sale and the conditions of sale. The scheme of the Insolvency Act is that creditors are ultimately in charge of the winding-up of an insolvent debtor' estate. In *Mookrey v Smith NO and Another*[11] the court held as follows:

'It seems to me that no matter how sincerely a purchaser believes that a sale to him by the trustee is to the benefit of the estate, that belief cannot save a transaction which, to the knowledge of the buyer, the trustee had no authority to conclude. I find fortification for this view in the provisions of s 82(7) of the Act.'[12]

A sale out of hand is not *ipso facto* invalid in that creditors may authorise such a sale. In the absence of such authority, however, the trustee should sell by public auction otherwise he will be liable for any damages caused to the estate of the insolvent by the fact that the sale was underhand.[13]

[42] The decision as to the realisation of assets rests with creditors and not with the insolvent.[14] In *Kruger v Symington N.O. en Andere*[15] it was held that no objection can be made to the sale of assets in an insolvent estate in good faith and in the prescribed manner merely on the ground that it has been sold below its real value unless reliance can be placed on some impropriety or irregularity in connection with the sale. Mr Naude SC contended that the trustees/liquidators failed to have regard to the fact that the

[11] *Mookrey v Smith NO and Another* 1989 (2) SA 707 (CPD).
[12] Ibid at 714E.
[13] *Mears v Pretoria Estate & Market Co. Ltd* 1906 (5) TS 291.
[14] *Jordaan v Richter* 1981 (1) SA 490 (O) at 496E-F.
[15] *Kruger v Symington N.O. en Andere* 1958 (2) SA (OPD).

valuations obtained in respect of the properties were approximately R2 million more that the highest offers received at the auction and that the offer made by the tenth respondent would have been to the benefit of the estates.

[43] In this regard it is noteworthy that the first applicant had been negotiating with the tenth respondent for a prolonged period of time regarding the purchase of the properties, yet no offer was received prior to the 9th of June 2025. It is also of significance that a representative of the tenth respondent attended the auction where this person introduced herself/himself to Mr Visser who was also in attendance. It is stated by the applicants that the representative however left the auction prior to its commencement. No explanation was however provided by the applicants, nor by the tenth respondent why, if the tenth respondent seriously contemplated purchasing the properties, failed to take the necessary precautions and steps to make an offer to purchase the properties while attending the auction. If the tenth respondent had indeed resolved to purchase the properties, no reasonable explanation has been given why it failed to register as a bidder, pay the commission and registration fee and make a bid to purchase the properties in accordance with the rules of auction and the applicable legislation.

[44] It appears as if the tenth respondent's representative who went to the farm where the auction was to be held did not have the necessary authorisation to make an offer because such authorisation was only made available on the 17th of July 2025, subsequent to numerous requests made to Mr Visser to provide the trustees/liquidators with the required authorisation. In any event, the representative, if he/she took the time to stay at the auction, would have gained knowledge of the highest offers made in respect of the respective properties and would have been able to provide these facts to the financial decision makers of the tenth respondent. Even though Mr Naude SC argued that the fact that the tenth respondent is willing to pay R20 million more than the highest offers received at the auction for the properties is indicative of its determination to obtain ownership of these properties, the obvious question remain: Why would the tenth respondent be prepared to pay R20 million more but decline to register as a bidder, pay a deposit and commission and comply with the rules of auction?

[45] The tenth respondent is furthermore unwilling to pay the outstanding municipal taxes, rates and levies in respect of the properties in accordance with one of the special

conditions of sale at the auction. In the matter at hand, the auctioneers agreed in writing that the commissions and fees payable will be refunded if the offer is not accepted by the seller. Furthermore, the offer to purchase received from Mr Visser included a clause that commission on the transaction was payable to a different person/entity than what was stipulated in the rules of auction, read with the conditions of sale, namely the commission payable to the auctioneers. A price which would be to the benefit of the creditors and the insolvent estates, remain prejudicial to all involved if it is not paid. As Mr Zietsman SC quite correctly contends, the trustees/liquidators would have undoubtedly preferred to conclude sale agreements in respect of the properties with the tenth respondent and in accordance with the offer submitted by Mr Visser as it would have benefitted the estates, the creditors and the trustees/liquidators.

[46] The Master authorised the sale of the immovable properties subsequent to the application(s) made by the trustees/liquidators and the auction proceeded as advertised and in terms of the rules of auction and applicable conditions. However, the offer made by the tenth respondent did not comply with the rules of auction. It therefore appears as if validly concluded deeds of sale, to which the trustees are bound in law, had indeed been concluded with the highest bidders at the auction.

[47] On behalf of the applicants it is argued that numerous irregularities have occurred regarding the conduct of the trustees/liquidators in that, *inter alia*, the first and second meeting of creditors in the Goldensands 31 Trading CC estate was held some seven months after the final liquidation order was granted, Mr Otto's association with Standard Bank creates a conflict of interest and the best interest of the estates have not been taken into account as it is evident that 'Standard Bank's interest ultimately drive the decisions'. A claim has been instituted against Standard Bank and the trustees/liquidators have failed to proceed with such claim. In this regard, Mr Visser has ascertained that no further steps have been taken to diligently advance the said action. It is furthermore contended that if there is a free residue, that would negatively affect the claim against Standard Bank, however, if there is no free residue then the applicants claim against Standard Bank becomes increasingly difficult. Therefore, so the argument goes, Standard Bank does not seem to prioritise the best interest of the estates and would simply be content if it obtained its claim. The trustees/liquidators did not mention the action by the estates against Standard Bank, as required in terms of s 81(1)*(g)* of the Insolvency Act at the creditors'

meetings. Furthermore, Standard Bank is also providing expert valuations pertaining to the properties.

[48] In respect of Goldensands 31 Trading CC, as to the failure of the liquidators to comply with the provisions of s 78 of the Close Corporations Act 69 of 1984, it is argued that the liquidators arranged for a first meeting of creditors to take place as soon as they were able to do so. On 19 March 2025, the Master enquired from the liquidators when the first meeting of creditors will be convened. It was reported to the Master that the first meeting of creditors in the said estate will be held on the 9th of June 2025, a date arranged according to the availability of the Magistrate from Harrismith. The liquidators contend that in practice, and if the Master did not consent to the arrangement of the first meeting of creditors, they would have been informed that such arrangement is not acceptable and that consent to hold the meeting as arranged with the Magistrate of Harrismith is denied, which did not happen. In any event the issue regarding the date arranged for the first meeting of creditors was only raised in reply and no relief is sought pertaining to this issue. Even if the issue of the first meeting of creditors and other complaints are raised to bolster the applicant's arguments regarding possible maladministration of the estates, it remains within the discretion of the Master to investigate these aspects. The Master has an unfettered discretion to order an enquiry in terms of s 152 of the Insolvency Act and the parties are *ad idem* that it is not necessary for the court to decide upon any of these issues because the Master will establish the facts.

[49] Rule 58.8 of the Legal Practice council's Code of conduct provides as follows:

'A legal practitioner who has accepted a brief from a liquidator or from a trustee of an insolvent estate shall not at any time accept a brief to act in any capacity for any interested party in subsequent proceedings in the liquidation or insolvency'.

Subsequent to the issue of a conflict of interest being raised by Mr Visser, Mr Otto, on 17 June 2025 indicated that no such conflict of interest exists and should a conflict of interest arise going forward, he will reconsider his position. Mr Otto confirmed that the current instructions are limited to the issue relating to the sale of the immovable assets and nothing else. Attorneys and their counsel are subject to ethical rules and professional conduct guidelines that explicitly address conflict of interest for them to identify and manage conflicts. It is clear from the contents of the numerous emails that Mr Otto was made aware of a possible conflict of interest in acting on behalf of the trustees/liquidators and that he engaged with Mr Visser in this regard.

[50] In *Kellerman v Legal Practice Council Western Cape and Others*[16] the court held that the clause is not a blanket prohibition on a legal practitioner accepting a second or further brief from a liquidator or insolvency trustee. Instead, it is a prohibition that regulates the acceptance of a further brief that is one in subsequent proceedings, giving rise to a conflict of interest. There is no prohibition against a legal practitioner accepting a second or further brief from the liquidator or trustee or any interested party in other proceedings, because the practitioner then acts for and is paid by a different client (the liquidator or trustee). A conflict of interest is a situation in which a person has competing interests or loyalties that could compromise their ability to act impartially or in the best interest of their clients. Legal practitioners have a fiduciary duty to act in the best interest of their clients and to avoid any conflict that could compromise their ability to do so. Due to role as legal advisor, a conflict of interest may readily arise when acting on behalf of liquidators or trustees. Mr Otto was not instructed by the trustees/liquidators to act on their behalf relating to the action instituted in the Gauteng Division of the High Court against Standard Bank. I agree with the contention by the trustees/liquidators that the only instance at this stage where Mr Otto may have a conflict of interest is if he acts for Standard Bank against the trustees or for the trustees against Standard Bank.

[51] On behalf of the trustees/liquidators it is furthermore argued that the first applicant as insolvent himself failed to furnish the trustees/liquidators with a statement of affairs or a CM100 in the case of a close corporation, failed to attend meetings of creditors (notwithstanding proper advertisement in the *Government Gazette*) and failed to give his/their co-operation in any way whatsoever regarding the administration of the estates. After the sequestration of his/her estate it is the duty of the insolvent to keep the trustee informed of his/her address for delivery of notices if necessary. The insolvent must, under pain of punishment in criminal proceedings, within seven days of service of the final order of sequestration lodge with the Master a statement of affairs as at the date of the

[16] *Kellerman v Legal Practice Council Western Cape and Others* [2024] ZAWCHC 81.

sequestration order.[17] As in the matter at hand, when the insolvent is married in community of property it is incumbent upon both spouses to file such a statement.[18]

[52] The insolvent should ascertain from an inspection from the *Government Gazette* or from inquiry at the Master's office the respective dates on which the first and second meeting of creditors in his/her estate will be held. The first applicant and his wife are bound to attend such meetings and any and every adjournment thereof, unless he/she has previously obtained written permission from the presiding officer thereat to absent himself/herself.[19] If the insolvent fails to attend a meeting when legally obliged to do so, the presiding magistrate/officer may grant a warrant authorising his/her arrest and bring the insolvent before such presiding officer, who may commit him/her to prison until the next meeting of creditors. Within 14 days of the trustee's appointment the insolvent should inform the latter of the existence and whereabouts of any assets not under his/her control which are not fully disclosed in the statement of affairs and which are not already in the trustees' possession, as well as of the existence or whereabouts of any book or document, paper or writing not already in the trustee's possession.

[53] Appended to the answering affidavit is a letter dispatched per email by the second respondent (dated 1 October 2024) addressed to the first applicant explaining the obligation upon the first applicant and his wife to provide the certain information, *inter alia*, completed statement of affairs, copies of identity documents and information pertaining to their assets, list of creditors, and other information (set out in the letter) to the second respondent within a period of seven days. The first applicant and his wife were advised as to the procedures to be followed with regards to the insolvency '. . . and what they should do or not do.' Notwithstanding the meticulous way in which the provisions of the Insolvency Act and procedures were explained to the first applicant, the first applicant did not comply with the requirements.

[54] During argument Mr Naude SC initially argued that the Master has clearly indicated in his first report that he intends proceeding with a s 152 enquiry. However, when asked why he interprets the contents of the first report by the Master as being indicative that

[17] Section 16(2) of the Insolvency Act.
[18] *Greub v The Master* 1999 (1) SA 746 (C).
[19] Section 64(1) of the Insolvency Act 24 of 1936.

such an enquiry will certainly follow, he responded that the failure of the Master to commit to the requested enquiry has caused some frustration on the part of the applicants' legal representatives. Notwithstanding numerous enquiries by Mr Visser as to specific dates for the said enquiry, no response from Master has been forthcoming. In this regard I agree with the contention by Mr Zietsman SC that the mere reference as to the purpose of a s 152 enquiry, as quoted from the Master's first report, cannot be understood or construed as a clear indication that the Master had definitely decided that such a process will be embarked upon. In any event, the Master has the prerogative to proceed with a s 152 enquiry whenever such a need exists.

[55] Having been informed of the numerous and extensive complaints raised by the applicants during June/July 2025 regarding the alleged misconduct and maladministration by the trustees/liquidators, the Master requested an opportunity until the 1st of August 2025 to investigate the sale of the properties and indicated that the transfer of the properties should not be registered prior to the said date. Up until the hearing of this matter on the 23rd of October 2025, no enquiry by the Master has commenced as yet. I am of the view that if the Master decided to commence with such investigation and enquiry, it would have been clear from either the first or the second report filed by the Master or the court would had have been advised by counsel that such an enquiry has been embarked upon. This does not mean that such an enquiry may still follow, even subsequent to the delivery of this judgment.

[56] Regarding the contention by the trustees/liquidators that the first applicant does not have *locus standi* to bring the application, the first applicant only has *locus standi* insofar as his own insolvent estate is concerned with reference to his reversionary right thereto. The first applicant does not have a reversionary interest in the estate of D C Maree Trust, nor does he have a reversionary right in the estate of Goldensands Trading 31 CC (in liquidation). As far as the last two estates are concerned, what reversionary interest the first applicant has in those two estates, falls within his and his wife's personal insolvent estates. Thus, in the hands of the trustees of his personal insolvent estate. The first applicant's wife has not been cited as an applicant. In light of the order made, I do not deem it necessary to go into detail about the lack of *locus standi* of the first applicant, the second applicant and the failure to cite the first applicant's wife and the remaining trustee as applicants in this application.

[57] A further aspect raised on behalf of the trustees/liquidators is the filing of further affidavits by the applicants in contravention of the court order dated 4 September 2025, in terms whereof the parties were afforded leave to supplement their papers and to respond to the second report of the Master. Where an affidavit is tendered in motion proceedings both late and out of its ordinary sequence, the party tendering it is seeking, not a right, but an indulgence from the court. The applicants did not apply for leave to file further affidavits and did not advance any explanation why, having regard to the circumstances of the matter, same nevertheless be received by the court. It is in the interest of administration of justice that the well-established rules regarding the number of sets and proper sequence of affidavits in motion proceedings and, as in this matter, as provided for by the court, be observed.[20] Therefore the further affidavits filed by the applicants are regarded as *pro non scripto*.

[58] As to the degree of proof required in an application for an interim interdict, the applicant's right need not be shown by a balance of probabilities. It is sufficient if such right is *prima facie* established, though open to some doubt. The proper manner of approach, as set out in *Gool v Minister of Justice and Another,*[21] is to take the facts as set out by the applicant together with any facts set out by the respondent, which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant should (not could) on those facts obtain final relief at a trial. The facts set up in contradiction by the respondent should then be considered, and if serious doubt is thrown upon the case of the applicant, he could not succeed. In exercising its discretion, a court weighs, *inter alia*, the prejudice to the applicant if the interdict is withheld against the prejudice to the respondent if it is granted (the balance of convenience). Having considered the contents of the affidavits as a whole and the applicable considerations, I conclude that the applicants have not illustrated any legal right to any of the relief sought in the notice of motion, or for that matter, in the draft order. It follows that the application must fail. There is no reason to deviate from the normal principle that costs follow the result.

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[20] *James Brown & Hamer (Pty) Ltd v Simmons N.O.* 1963 (4) SA (AD) at 660D-H.

[21] *Gool v Minister of Justice and Another* 1955 (2) SA 682 (CPD) at 688D-E.

[59] In the result the following order is issued:

1 The application is dismissed.

2 The applicants shall pay the costs of the application, jointly and severally, such costs to include the costs of counsel on scale C.

[redacted]

I VAN RHYN

JUDGE OF THE HIGH COURT

Appearances

For the applicants:	G Naude SC
	N Muller
Instructed by:	Visser Attorneys
	Bloemfontein
For the first respondent:	No appearance
For the second to seventh respondents:	P Zietsman SC
For the eight to tenth respondents:	No appearance
Instructed by:	Phatshoane Henney Attorneys
	Bloemfontein