REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number:2025-076862

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

2/02/2026 [redacted]
DATE SIGNATURE

In the matter between:

MARK MORRIS FARBER	1st Applicant
HCI INNER CITY PROPERTIES (PTY) LTD	2nd Applicant
and	
THEODOR WILHELM VAN DEN HEEVER N.O.	1st Respondent
THE TRUSTEES OF THE INSOLVENT ESTATE OF MARK FARBER	2nd Respondent
THE MASTER OF THE HIGH COURT OF SOUTH AFRICA	3rd Respondent
10 FIFE AVE BEREA (PTY) LTD (reg No: 2013/086974/07)	4th Respondent
D&T TRUST (PTY) LTD LIQUIDATORS AND TRUSTEES (Reg No: 79/03034/07)	5th Respondent
TAKE SHAPE PROPERTY MANAGEMENT (PTY) LTD	6th Respondent

JUDGMENT

BOTHMA, AJ

1. The first applicant is Mr Mark Morris Farber. Mr Farber is an unrehabilitated insolvent who was finally sequestered on 14 January 2025. Mr Farber was previously a director of the second applicant and he currently describes himself as being the second applicant's general manager.

2. The second respondent is a property management company and manages the collection of rentals, management of staff, building maintenance and resident relations of Malvin Court.

3. The first and second respondents are the trustees of Mr Farber's insolvent estate. The Master is joined as the third respondent in this matter. 10 Fife Avenue Berea (Pty) Limited is joined as the fourth respondent and D&T Trust (Pty) Limited Liquidators & Trustees are joined as the fifth respondent.

4. The applicants, in broad terms, seek the removal of the first respondent as the provisional trustee of Mr Farber's estate, a mandament van spolie combined with an interdict and certain further relief in terms of the Protection of Personal Information Act 4 of 2013.

5. The first issue that needs to be decided is whether the second applicant is properly before the court. The respondents submit that the second applicant is not properly before the court and that Mr Farber has no standing to bring the application on its behalf.

6. Before the sequestration of Mr Farber's estate on the 15th of January 2025, he was the sole director of the second applicant. Mr Farber's spouse was the sole shareholder. As a fact, the first respondent is now the director of the second respondent and the records of the Companies & Intellectual Property Commission (CIPC) reflect this.

7. Mr Farber complains that within hours after the final sequestration order was granted against him on 15 January 2025, the first respondent lodged a COR39, notice of change of directors' form, with the CIPC removing him as a director of the fourth respondent. Thereafter, the first respondent, in his capacity as trustee of Mr Farber's insolvent estate, appointed himself as director of the second respondent. Mr Farber alleges that this is without any authorisation either from the shareholders of second applicant or the court.

8. In terms of section 69(8) of the Companies Act, 71 Of 2008 ("the Companies Act") a person is disqualified to be a director of a company if that person is an unrehabilitated insolvent.

9. Upon Mr Farber's insolvency, and upon the appointment of the first respondent, all the property of Mr Farber's wife as if it were the property of Mr Farber's sequestrated estate, vests in the trustees of the insolvent estate in accordance with section 21 of the Insolvency Act 24 of 1936.

10. As stated above, Mr Farber's wife held all the shareholding in the second applicant. Accordingly, the shareholding in the second applicant vested in the first respondent by operation of law when Mr Farber was sequestrated. Mrs Farber accordingly cannot have any voting rights and cannot vote on the appointment of a director.

11. Mrs Farber purported to pass a resolution to remove the first respondent as a director of HCI. Mrs Farber, not being a shareholder, is not in a position to pass any resolutions and the proposed resolution is in fact a nullity.

12. Mr Farber does not have the authority to have launched this application on behalf of the second applicant. The application, as far as the second applicant is concerned, is not authorised and the second applicant is accordingly not before court. I will approach the matter on that basis and will now deal with the case made out by Mr Farber.

<u>REMOVAL OF THE FIRST RESPONDENT AS A TRUSTEE OF MR FARBER'S INSOLVENT ESTATE</u>

13. For purposes of this application and as far as it is necessary, I grant Mr Farber leave to bring this application for the removal of the first respondent. I also accept that he has *locus standi* to do so.

14. Mr Farber makes allegations of unlawful and improper conduct on the side of the first respondent. He alleges that the first respondent's conduct has been unlawful and continues to be so. As examples of the alleged unlawfulness, Mr Farber alleges that the first respondent acted in an unlawful manner when he appointed himself as a director of the fourth respondent and he appointed himself without any shareholder's resolution, any board of directors' resolution and/or any court order.

15. Mr Farber further alleges that the first respondent violated the provisions of sections 71 and 76 of the Companies Act which requires;

16.1 due process, proper notice and an opportunity for representations;

16.2 section 22(1) of the Insolvency Act 24 of 1936 which requires a trustee to be empowered by law or a court order in order to have authority over corporate directorships;

16.3 section 13 of the Electronic Communications & Transactions Act;

16.4 the Cyber Crimes Act 19 of 2020; and

16.5 the Protection of Personal Information Act,4 of 2013.

17 Mr Farber also alleges that the first respondent failed to recognise that a trustee does not automatically get appointed as a director as a company by virtue of his/her position as a trustee. Mr Farber alleges that the first respondent needed to be appointed by the shareholders and/or the board

of directors in accordance with the Company's Memorandum of Incorporation.

18 Mr Farber has placed these complaints on record and on 7 May 2025 he reported the alleged unlawful conduct of the first respondent to the CIPC and to the Master of this court.

19 The application has been brought in terms of section 60 of the Insolvency Act 24 of 1936. In argument I specifically asked counsel for the applicants on what section she relies and she very specifically stated that Mr Farber relies on section 60 of the Insolvency Act. Section 60 of the Insolvency Act, which deals with the removal of a trustee by the Master, makes provision therefor that the Master may remove a trustee from his office on certain specified grounds. Section 60 cannot find application in this matter as Mr Farber has chosen to approach the court and not the Master. Despite this, I will deal with the matter based upon the court's inherent jurisdiction to remove a trustee in an insolvent estate.

20 Mr Farber has also filed a supplementary affidavit in which he makes further allegations as to the alleged misconduct of the first respondent. I have read the affidavit and for purposes of this application take

cognisance of the contents thereof. The new facts that Mr Farber relies on are dealt with in the affidavit and fall under the headings of the Voluntary Liquidation of Companies, Disposal of Properties and Gross Undervalue, Unlawful Sale of Property in Contravention of the Insolvency Act, Request for Legal Representation, the Trustee's Conduct and Impact on the Estate and the Unlawful Liquidation of 39 Van der Merwe Street Hillbrow CC and 47 Soper Road Berea CC. I will briefly deal with each of these grounds.

21 Firstly, Mr Farber alleges that the first respondent placed the fourth respondent, 39 Van der Merwe Street Hillbrow CC and 47 Soper Road Berea CC under voluntary liquidation without lawful authority. This issue is dealt with in an answering affidavit by the first respondent countering that the fourth respondent was not viable, sustainable or generating any significant income. No income whatsoever was received by the fourth respondent and the company was hopelessly insolvent. The first respondent explanation appears reasonable and logical and the first applicants' complaint does not appear to be justified. These are complaints which should been dealt with in the context of the different entities themselves and not in the context of Mr, Farber's insolvent estate.

22 The second point is Disposal of Properties at Gross Undervalue. Mr Farber alleges that the first respondent has permitted the sale of properties owned by juristic entities which Mr Farber's estate holds at drastically undervalued amounts. The first respondent denies that he played any role in the sale of these properties and further states that he had no power to prevent the sale in execution of these properties. A company called TUHF obtained judgments against juristic entities who owned the properties referred to which were then sold in execution pursuant to valid judgments. The first respondent's explanation appears to be plausible and reasonable and the conduct does warrant any censure.

23 The third issue dealt with is the alleged Unlawful Sale of Property and Contravention of the Insolvency Act. What Mr Farber argues in this regard is that he and his wife have not been properly served with the final order of sequestration and that therefore the sale of the properties without Mr Farber and his wife's consent is a violation of the Constitution and the Insolvency Act. The first respondent deals with this issue by stating that not a single one of the properties referred to belong to the insolvent or fall within Mr. Farber's estate. The first respondent provides

proof that both the provisional as well as the final order were served upon the first applicant.

24 The third issue relates to the Request for Legal Representation where Mr Farber alleges that when attorneys have approached the first respondent seeking his cooperation to represent in matters against him, he has refused. Mr Farber alleges that this refusal is unfair. The first respondent denies the allegations and further states that the matters referred to are not matters against Mr. Farber.

25 Mr Farber then further alleges that there is conduct on the part of the first respondent which has materially contributed to the mismanagement and dissipation of assets of his insolvent estate. The first respondent denies the allegations and states that none of the complaints relate to properties in the insolvent estate.

26 Lastly, Mr Farber alleges that the first respondent unlawfully liquidated 39 Van der Merwe Hillbrow CC and 47 Soper Road Berea CC. It is alleged that the first respondent's actions are governed by the doctrine of *lis pendens* and that his conduct is consistent with his broader pattern of mismanagement, unilateral decision making and facilitating creditor

advantage at the expense of Mr. Farber. These allegations are denied by the first respondent.

27 I have considered all the allegations contained in both the founding affidavit and the supplementary affidavit. In my view the conduct of the first respondent seems to be consistent with that of a reasonable and prudent trustee or liquidator. The first respondent is seeking out assets in Mr Farber's estate and liquidating them. The first respondent is under an obligation to do so and to act in the best interests of all the creditors of Mr. Farber's insolvent estate. There is nothing improper or unlawful in any of his actions and I see no merit in any of the complaints.

28 In considering whether to remove a trustee or a liquidator, it is of cardinal importance that the court must be satisfied that the removal of the liquidator or trustee is to the general advantage of all persons concerned, see **MA-Afrika Groepbelange (Pty) Ltd & another v Millman & Powell NNO & another** 1997 (1) SA 547 (C). I am not satisfied in this matter that it is to the general advantage and benefit of all persons that the first respondent be removed as trustee in the insolvent estate of Mr Farber. To the contrary, it appears to me that such a removal will be prejudicial to the finalisation of the insolvent estate.

29 The general position is that the court does not lightly remove a liquidator or trustee and will only do so by having due regard, among other considerations, to the impact of the removal on the trustee's professional standing and reputation. The court must be satisfied that a proper and clear case is made out for the removal of the trustee, see **Hudson & Others NNO v Wilkins NO & others** 2003 (6) SA 234 (T). Applying these principles, I do not believe that any of these factors have been shown. In my view, no case is made out for the removal of the first respondent as trustee of Mr Farber's estate.

30 The prayers dealing with the Protection of Personal Information Act, 3 of 2023 were not persisted with before me and I make no order in this regard.

31 As far as the spoliation application is concerned, such an application was brought by the second applicant and as I have already found, the second applicant is not properly before court.

32 I accordingly make the following order:

32.1 The application is dismissed;

32.2 the applicants are ordered to pay the respondents' costs on scale

C.

[redacted]

H C BOTHMA
ACTING JUDGE OF THE HIGH COURT

Matter heard on 10 September 2025
Judgment given on 2 February 2026

COUNSEL FOR THE APPLICANTS: K PAMA-SHINU

COUNSEL FOR THE RESPONDENTS: P VAN DER BERGH SC