THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 2025 - 038507

In the matter between:

INVESTEC BANK LTD **APPLICANT**

And

IZAK PETRUS VAN ZYL **RESPONDENT**

Coram: **YAKE AJ**

Argument: **28 January 2026**

Delivered: **Electronically on 17 February 2026**

Summary: Provisional sequestration – compliance with section 8 and 9(1) of the Insolvency Act 24 of 1936 – o*nus* rest on Investec to satisfy the court that the statutory requirements have been met.

Sections 80 (1) (a)-(b) and 81 (2) of the National Credit Act 34 of 2005 – (reckless credit and affordability assessment) are not applicable, as a sequestration application does not constitute debt-enforcement proceedings.

JUDGMENT

YAKE AJ

Introduction

[1] In this application, Investec Bank Ltd **("Investec")** seeks an order for provisional sequestration against the respondent. The application is predicated on the respondent's indebtedness to Investec in the amount of R2 601 609.86 together with interest calculated at a prime rate of 11% per annum calculated daily and compounded monthly in arrears from 18 March 2025 to date of final payment. The application is strenuously opposed by the respondent. Investec filed a certificate of balance purported to confirm the debt owed.

<u>Background</u>

[2] On 7 May 2021, the respondent applied for a Private Bank Account **("PBA")** with Investec, which was approved on 21 May 2021. Following approval, the parties concluded a credit agreement in terms of which the respondent was issued with PBA card and advanced with an initial credit limit of R50 000. Both parties signed terms and conditions governing the credit agreement facility.

[3] Some of the salient features of the PBA terms and conditions are that; the credit limit means the maximum amount that may be outstanding at any time; the respondent undertook not to effect transactions in excess of the credit limit, certain purchases may be processed without pre-authorisation from Investec and the respondent understood that the credit limit may be exceeded as a result of such transactions, but agreed to be liable thereto; and any transaction which results in the credit limit being exceeded would not render Investec liable for any such excess and would not be construed as the exercise by Investec of its discretion to extend and or increase the credit limit and or as a waiver of any of Investec's right.

[4] On 1 February 2025, the respondent submitted a written application to Investec requesting an increase of his credit limit which stood at R150 000 at the time. Investec declined the request on 4 February 2025.

[5] On 5 February 2025, Investec implemented a change into its credit card 400 System (internal system). This deployment disabled the balance-check function for tokenised transactions, allowing transactions to be processed through a token rather than directly using card details. As a result, on the evening of 5 February 2025,

Investec made an error of successfully processing all its client tokenised transactions regardless of whether the client has a sufficient balance or has a limit on their account.

[6] Upon realising this error, the respondent took advantage of the situation by making multiple online betting transactions on Hollywood platform for the period between 5 and 11 February 2025. These transactions resulted in an outstanding balance of R2 601 609.86 on his PBA. Each time a transaction was processed, Investec sent SMS notification to the respondent alerting him of the transactions.

[7] On 13 February 2025, Investec instructed its attorneys to place the respondent in default and demand immediate payment of the full outstanding balance into his PBA, in order to bring the facility within its approved credit limit of R150 000.

[8] On 14 February 2025, the respondent did not dispute the debt, instead he informed Investec's attorneys that he was unable to comply with the demanded payment and sent two written proposal letters dated 18 February 2025 and 6 March 2025, requesting Investec to allow him to pay a portion of his debt and settle it by 1 April 2028. Investec rejected both proposals.

[9] Following these rejections, Investec launched the present application based on the respondent's alleged insolvency and the commission of acts of insolvency. Upon receipt of the application, the respondent instructed his attorney to file opposing papers. In his opposition, he denied being indebted to Investec and raised a defence under the **National Credit Act 34 of 2005** ("**NCA**"), contending that the dispute concerns a credit agreement and that Investec failed to comply with the provisions of the NCA governing such credit agreements.

Submissions by the parties

[10] Counsel for Investec submitted that all formalities and requirements of **section 8 (e) and (g)**; **section 9 (1)** of the Insolvency Act 24 of 1936 **("The Insolvency Act")** have been complied with. It was further asserted on Investec 's

behalf that they have the necessary *locus standi* to bring this application as the respondent's debt is not less than R100. It was strongly contended that Investec has made out a *prima facie* case that the respondent's estate is insolvent as his liabilities exceeds his assets, the respondent committed acts of insolvency by acknowledging being indebted to Investec and making payment arrangements. Investec contended that they have established a *prima facie* case and the respondent's dispute of the debt is not *bona fide* and on reasonable grounds.

[11] In resisting the application, the respondent denies that he is insolvent or has committed acts of insolvency. He contends that Investec's claim falls within the ambit of the NCA and Investec's extension of his credit limit was reckless. On this basis, the respondent submits that this constitutes a *bona fide* defence to Investec's claim and that the application ought to be dismissed.

Requirements for Provisional Sequestration Application

[12] To obtain an order for provisional sequestration, the court must be satisfied that Investec has *prima facie* established that:

(a) they have a liquidated claim that exceeds the required threshold of R100 - **section 9 (1)**.

(b) the respondent is factually insolvent or has committed an act of insolvency – **section 8(e) and (g)**; and

(c) there is reason to believe that sequestration will be to the advantage of creditors. **section 10 (c).**

[13] It is important to remind ourselves that sequestration proceedings are not civil proceedings for the enforcement of a debt. Such an application may not be used to enforce payment where the debt is disputed *bona fide* and on reasonable grounds.[1] In the matter before me, although the debt is founded on a credit agreement, Investec does not seek payment of outstanding monies but a sequestration order.

[1] This is the so-called 'Badenhorst Rule'. See in this regard Badenhorst v Northern Construction Enterprise (Pty) Ltd 1956 (2) SA 346 (T).

Accordingly, the provisions of the NCA[2] do not, at first glance, apply. I will address the relevant provisions of NCA that have been referred to in the papers later in this judgment.

[14] **Section 9(2)** of the Insolvency Act provides that a liquidated claim need not be due and payable at the time of the hearing, confirming that a claim remains valid for these proceedings even if it is not yet enforceable.

[15] In ***Collet v Priest***[3], De Villiers CJ stated the following very significant statement on the nature of sequestration proceedings:

> *"The order placing a person's estate under sequestration cannot fittingly be described as an order for a debt due by the debtor to the creditor. Sequestration proceedings are instituted by a creditor against a debtor not for the purpose of claiming something from the latter, but for the purpose of setting the machinery of the law in motion to have the debtor declared insolvent. No order in the nature of a declaration of rights or of giving or doing something is given against the debtor. The order sequestrating his estate affects the civil status of the debtor and results in vesting his estate in the Master. No doubt before an order so serious in its consequences to the debtor is given, the court satisfies itself as to the correctness of the allegations in the petition. It may for example have to determine whether the debtor owes the money as alleged in the petition. But while the court has to determine whether the allegations are correct, there is no claim by the creditor against the debtor to pay him what is due nor is the court asked to give any judgment, decree or order against the debtor upon any such claim."*

[16] De Villiers' views *supra* were shared by Mc Ewan J in ***Prudential Shippers SA Limited v Tempest Clothing Co. (PTY) Limited*** [4] where he held that an application for the winding up of a debtor's estate did not constitute proceedings 'for the recovery of a debt'. It is against this background that I turn to evaluate the above requirements.

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[2] National Credit Act
[3] Collett v Priest[3] 1931 AD 290 at 299
[4] 1976 (2) SA 856 (W) at 863D- 865A.

[17] I now turn to consider whether Investec has established a proper basis for the court to grant the relief sought.

Locus Standi

[18] The respondent is challenging Investec's right to bring this application. His challenge is three-fold, *firstly*: the respondent disputes that he is liable to pay R2 601 609.86 and contends that the authorised credit limit of R150 000 is not yet due under the credit agreement, as such Investec lacks *locus standi* to bring this application. *Secondly,* the respondent denies being insolvent or having committed any act of insolvency and *thirdly,* he asserts that there is no reason to believe that sequestration will be beneficial to creditors.

[19] It is well established that a court may grant the sequestration order if it is satisfied that the applicant has proved a claim as contemplated in **section 9(1)** of the Insolvency Act, that the debtor is insolvent or has committed an act of insolvency and demonstrated reason to believe that it will be to the advantage of the creditors that the debtor's estate is sequestrated.[5]

[20] For Investec to establish *locus standi* in these proceedings, it must demonstrate to the court that the debt owed by the respondent is not less than R100. In this regard, it is immaterial whether the debt is due and payable at the time the application is heard.[6] Once Investec shows that the liquidated claim exceeds the statutory threshold of R100, it possesses the necessary *locus standi* to bring these proceedings.

[21] In this matter, as previously mentioned, Investec asserts that the total debt owed is R2 601 609.86. Therefore, it [the debt] comfortably exceeds the statutory threshold of R100 required by the Insolvency Act. This figure [R2 601 609.86] comprises a R150 000 authorised credit limit alongside roughly R2.4 million in

[5] See section 12(1) of the Insolvency Act
[6] Section 9 (2) of the Insolvency Act 24 of 1936

unauthorised charges. As such, Investec has established the necessary *locus standi* to institute these proceedings.

[22] Even if I were to accept that the respondent is not liable for the disputed amount of R2 601 609.86, he remains liable for the authorised credit limit of R150 000. His argument that this amount of R150 000 is not yet due under the credit agreement is untenable under **section 9 (2).** **Section 9 (2)** clearly does not preclude Investec from instituting these proceedings. Accordingly, I am satisfied that Investec has *prima facie* established that it has the *locus standi* to bring this application as its liquidated claim exceeds the statutory threshold.

Factual Insolvency

[23] Investec submits that the respondent is factually insolvent as his liabilities exceed his assets. Investec alleges that the respondent's outstanding debt is R2 601, 609.86 while his assets amount to R468 342.10. Accordingly, Investec argues that this demonstrates the respondent's factual insolvency.

[24] The respondent disputes his alleged insolvency and contends that his authorised credit limit of R150 000 does not render him insolvent, as the amount is not yet due under the credit agreement. He further states that he sold his immovable property in May 2025, generating the net proceeds of approximately R503 525, which amount exceeds the authorised credit limit.

[25] The *onus* is on Investec to satisfy the court that the respondent's estate is insolvent, the respondent has no *onus* to disprove any element of the claim. Once Investec demonstrates that the debt *prima facie* exists, the reverse *onus* lies on the respondent to show that he is not insolvent, and that the debt is disputed *bona fide* on reasonable grounds. Put differently, to resist sequestration, the respondent is required to show that the debt on which Investec relies is *bona fide* disputed on reasonable ground.

[26] To establish the respondent's factual insolvency, Investec must demonstrate on a balance of probabilities, that the respondent's liabilities exceed his assets.

Investec argues that, even after the sale of the respondent's immovable property, the proceeds thereof remained insufficient to discharge the total debt owed.

[27] As pointed out before, I take cognisance of the fact that the respondent disputes being indebted to Investec in the amount of R2 601, 608, and maintains that his debt is limited to R150 000. He asserts that he would be able to settle this amount from the proceeds of the sale of the immovable property. I have already addressed the question of debt not yet due under **section 9 (2)** above and will not repeat those requirements here.

[28] It is common cause that Investec granted the respondent an authorised credit limit of R150 000. It is also undisputed that Investec actioned a letter of demand dated 13 February 2025 demanding payment of the full outstanding balance of R2 601 608.86. In response, the respondent sent an email dated 14 February 2025, indicating willingness to resolve the matter and requesting confirmation of his arrears. This was followed by a proposed payment plan, which Investec subsequently rejected.

[29] Counsel for the respondent argued that because the respondent was not legally represented at the time he made these arrangements, the court should disregard them. While I acknowledge that the exchange of correspondence preceded the court application, and the respondent was not legally represented at the time, they nonetheless demonstrate that he had knowledge of the debt and failed to dispute it. Had he genuinely been unaware of the liability, he would presumably have stated so from the outset. Instead, he went to the length of promising to settle the amount using the proceeds from the sale of his immovable property. This is clearly not the conduct of a person who is unaware of a debt. After all, the respondent is a financial adviser by profession; he is expected to have vast knowledge regarding financial matters and his financial obligations, as this is not a field foreign to him. Based on the facts presented, I am persuaded and satisfied that the respondent is indeed factually insolvent, as his liabilities exceed his assets.

Acts of Insolvency

[30] **Section 8** of the Insolvency Act defines what constitutes acts of insolvency. For purposes of this application, the applicable subsections relied upon by Investec are **subsections 8 (e) and (g**). These provisions state that a debtor commits an act of insolvency if he/she makes or offers to make any arrangements with a creditor to be released wholly or partially from his/her debts, or if he or she gives notice in writing to a creditor of his / her inability to pay any of his or her debts. Furthermore, the court has discretion to grant an application for the sequestration of a debtor's estate if it is satisfied that the requirements in subsections (e) and (g) have been met.

[31] Investec argues that the respondent's conduct constitutes acts of insolvency as contemplated in the Insolvency Act. Specifically, Investec relies on the respondent's correspondence dated 18 February 2025 and 6 March 2025, in which the respondent acknowledged his inability to satisfy the demanded amount and proposed a repayment plan. Such written admissions, it is argued, fall squarely within the ambit of **Section 8**.

[32] The respondent disputes liability for the R2.4 million exceeding his authorised credit limit of R150 000, contending that these excess amounts arose from the incorrectly authorised transactions. He relies on **Sections 80(1) and 81(2)** of the NCA, alleging that Investec acted recklessly by failing to conduct a proper assessment or take reasonable steps to evaluate his financial position before granting the additional funds. Consequently, he maintains that he has a *bona fide* defence to the claim. He further contends that, as this arises from a credit agreement, the matter should be resolved through action proceedings rather than by way of this application.

[33] **Sections 80(1)(a) and (b)** of the NCA characterise a credit agreement as reckless where the credit provider either fails to conduct the statutory – mandated assessment contemplated in **section 81(2),** or having conducted such assessment, nonetheless elects to approve an increased credit limit in circumstances where the available information indicates that the consumer does not adequately understands the risks, costs or obligations arising from the agreement.

[34] If the court finds that the credit provider failed to comply with **section 80 (1) (a) or (b)**, it may set aside all or part of the consumer's rights and obligations under the agreement, as it deems just and reasonable in the circumstances. Alternatively, the court may suspend the operation of the credit agreement in which case the provisions of **section 83(3(b)(i)** will apply.

[35] I am baffled by the respondent's reliance on the above NCA provisions. I say this because such reliance is both misplaced and internally inconsistent. In paragraph 21 of his answering affidavit, the respondent states that he relied on an agreement with Investec that his account would not be overdrawn beyond the R150 000 limit. This suggests that, at all material times, he was aware that Investec had not authorised any credit in excess of the agreed credit limit.

[36] At paragraph 22, he went further to state that, *"it appears that even though Mrs Van Zyl had cottoned onto the fact that the credit limit was not being enforced by Investec, and unbeknown to me charged approximately R2.4 million to my account during this time."*

[37] Further at paragraph 24, the respondent claims:

> *"In respect of the charges to my account, I was at all material times assured that Mrs Van Zyl's (my wife's) gambling activities could not result in any charges exceeding the R150 000 limit, which was enforced by the applicant."*

[38] Notably, these papers were prepared by his legal representatives. It appears that even after obtaining legal counsel, the respondent remained aware that his credit limit was capped at R150 000. By his own admission, his wife took advantage of the error, knowing that it was not authorised by Investec. His contention that the excess amounts were authorised by Investec appears to be just a ploy to delay the inevitable. Thus, it is meant to be a mere dilatory tactic. While he portrays himself as being unaware of these transactions; shifting blame to his wife; he overlooks the fact that his denial of knowledge regarding an extension of credit implies that no such agreement ever existed between him and Investec. Had there been an extension of credit, he would undoubtedly have been aware of it. Moreover, he was alerted to

these transactions through numerous messages, yet he failed to dispute them at the time, which was expected from an innocent person. His attempt to characterise the excess transactions as authorised credit under the NCA is therefore contradictory and unsustainable.

[39] The respondent was fully aware that in order to get any increase in his PBA, he should submit a formal request to the bank. This is evident in his email dated 1 February 2025, where he requested an increase. If he was under the impression that the bank would automatically adjust his credit, he would not have submitted this request. Similarly, it is illogical to suggest that Investec, having declined his request on 4 February 2025, would then unilaterally extend his credit limit without any restrictions - two days later (6 February 2025).

[40] Regarding clauses 2.8 and 2.11 of the PBA, terms and conditions, the respondent contends that the amounts exceeding his credit limit were authorised by Investec and therefore constitutes extension under the NCA. Clause 2.8 and 2.11 of the PBA terms and conditions read as follows:

> *"[2.8] Certain purchases may be processed without pre-authorisation from Investec. The client understands that the credit limit / guaranteed account limit /spending limit may be exceeded as a result of such transaction and agrees to be liable."*
>
> *"[2.11] Any transaction which results in the credit limit, guaranteed account credit limit or spending being exceeded shall not render Investec liable for any such excess and shall not be construed as the exercise by Investec of its discretion to extend and /or increase limit, guaranteed account credit limit and/or spending limit and/or as a waiver of any Investec rights."*

[41] The respondent contends that Investec acted in terms of clause 2.8 and 2.11 in advancing the credit to him without conducting the required assessment. This according to the respondent constitutes reckless credit as defined in **section 80 (1)** of the NCA. However, the respondent fails to disclose the terms and conditions applicable to the alleged extended credit agreement. He also failed to dispute

Investec's averments that whenever he initiated transactions with his PBA card, they were declined due to insufficient funds. Had Investec authorised the tokenised transactions, the respondent would have been able to access funds in his PBA card. In any event, his reliance on these clauses' is further contradicted by his own assertion in paragraph 21 and 22 of his answering affidavit.

[42] Investec had already considered and declined the respondent's request for a credit increase on 4 February 2025. It is therefore unclear what "further assessment" the respondent suggests was required. Moreover, Investec could not have granted credit that was never applied for. I could not find anything that suggest that Investec authorised any amounts exceeding the agreed credit limit; and no extended credit agreement was ever entered upon between Investec and the respondent. Consequently, **sections 80 (1)** and **81 (2)** of the NCA finds no application here. The respondent's reliance on these provisions is entirely misplaced.

[43] In the result, I find Investec has satisfied the requirements of **section 8** of the Insolvency Act in that the respondent committed acts of insolvency by informing Investec in writing that he was unable to pay his debt and proposing payment arrangement.

Advantage to Creditors

[44] I now turn to consider the question of whether the granting of a provisional sequestration order would be to the advantage of creditors. In addressing this requirement, it is incumbent upon Investec to demonstrate that there is "reason to believe" that sequestration will benefit creditors. The court must therefore consider the facts and surrounding circumstances placed before it. If it is satisfied, on a balance of probabilities, that there is a reason to believe that creditors will benefit, the court will be inclined to grant the provisional order of sequestration.

[45] Investec contends that there is reason to believe that sequestration will benefit creditors. The respondent, however, contends that, even if an order is granted, sequestration will yield no advantage to Investec. The respondent maintains that there is little to no value to be gained from sequestration and that it is highly

probable that Investec will receive no benefit from it. His argument, on a plain reading, amounts to an acknowledgment that he possesses no assets.

[46] The Constitutional Court in ***Stratford v Investec***[7] warned that the term "***advantage"*** should not be rigidified as it is broad. *Stratford* referred with approval to the *dicta* of Friedman, where it was held:

> *"In my opinion, the facts put before the Court must satisfy it that there is a reasonable prospect – not necessarily a likelihood, but a prospect which is not too remote – that some pecuniary benefit will result to creditors. It is not necessary to prove that the insolvent has any assets. Even if there are none at all, but there are reasons for thinking that as a result of enquiry under the Act some may be revealed or recovered for the benefits of creditors, that is sufficient."*

[47] Roper J at 558 in ***Meskin v Friedman***[8] in considering the meaning of the phrase "reason to believe" stated:

> *"The phrase "reason to believe", used as it is in both these sections, indicates that it is not necessary, either at the first or at the final hearing, for the creditor to induce in the mind of the court a positive view that sequestration will be to the financial advantage of creditors. At the final hearing, though the court must be "satisfied", it is not satisfied that sequestration will be to the advantage of creditors, but only that there is reason to believe that it will be so."*

[48] In the present matter, the number of the respondent's creditors is unclear. However, upon careful studying of papers filed by both parties, one can deduce that Investec may likely be the only creditor disclosed by the respondent. This conclusion

[7] Stratford v Investec Bank Ltd 2015 (3) SA 1 (CC) at para 44 and 45
[8] Meskin & Co v Friedman 1948(2) SA 555 (W) at 559

is supported by paragraph 28 of the respondent's answering affidavit, where he states that the proceeds from the sale of his immovable property amounted to R503 525, less a R156 00 shortfall on his motor vehicle, leaving net proceeds of R347 525. These proceeds suggest that the motor vehicle has been settled, leaving Investec as the sole creditor. Save for the debt of Investec, nothing in the respondent's papers indicates the existence of any further creditors. In fact, his counsel argued that reference to "*creditors"* in his papers should be read as meaning "*creditor".* Once more, this is a confirmation that Investec is the sole creditor.

[49] Proceeding on the assumption that Investec is the respondent's sole creditor, the question that must be answered is whether granting a sequestration order would benefit them. From what has been presented before me, there is nothing to suggest that the respondent intends to settle his debt. Despite admitting in his papers that he received proceeds from the sale of his immovable property, there is nothing that suggests that he had made any attempt to pay his debt or any evidence that he has made any attempt to apply those funds toward his indebtedness. While he initially expressed willingness to make payment arrangements, he has since changed course and demonstrated an unwillingness to pay.

[50] The respondent failed to disclose to this court whether he has other assets. In fact, he could not even explain what he did with the proceeds of the sale of the immovable property. While I note his statement that the transfer was intended to take place as far back as April 2025, the respondent has provided no evidence as to whether this occurred. He has failed to take this court into his confidence.

[51] The respondent seems to be more concerned about his employment than trying to solve the matter at hand. He argued that if this court were to grant provisional sequestration, his employer might terminate his employment. He relies on Determination of Fit and Proper Requirements 2017 Act. He however fails to explain how this will affect him as nothing in the Act refers to termination of

employment if a sequestration order is granted. Clearly, this is a matter that warrants an investigation into the respondent's financial affairs.

[52] Considering all the above, I am satisfied that Investec has demonstrated reasonable grounds for concluding that, upon a proper investigation of the debtor's affairs by a trustee, assets may be discovered and realised for the benefit of creditors. See *Dunlop Tyres (Pty) Ltd v Brewitt*[9].

Discretion

[53] **Section 10** of the Act provides that if the court is of the opinion that *prima facie,* the applicant has established against the debtor a claim mentioned under sub- **section 9(1)**, the debtor has committed an act of insolvency or is insolvent and there is reason to believe that it will be to the advantage of creditors of the debtor's estate that the estate be sequestrated, and the court may make an order sequestrating the estate of the debtor provisionally.

[54] The court's discretion to grant provisional sequestration is primarily informed by whether it will be to the advantage of creditors. This is because advantage of creditors is central to the court's exercise of its discretion. Even if I am satisfied that the aforesaid requirements have been established, I am still not automatically bound to grant an order for sequestration. I still have a discretion that must be exercised judicially and upon a consideration of all the relevant circumstances, taking into account the requirement of **Section 12(1)(c)**.

[9] Dunlop Tyres (Pty) Ltd v Brewitt 1999(2) SA 580 (W) at 583.

[55] In ***FirstRand Bank Ltd v Evans***[10] the court observed that there was little authority on how the court's discretion should be exercised, *'which perhaps indicates that it is unusual for a court to exercise it in favour of the debtor*'. In *Evans* the court declined to exercise its discretion in favour of the debtor.

[56] I note that the *Evans* matter is distinguishable from ours. There, the debtor did not dispute the creditor's claim or that sequestration would benefit creditors, he merely denied committing an act of insolvency. The court nonetheless found that he had admitted in writing his inability to pay his debts. As a result, the court made a finding that certain matters needed to be investigated.

[57] In the present matter, the respondent disputes everything; he disputes being insolvent, disputes having committed an act of insolvency and even disputes that sequestration will be to the advantage of the creditors. However, I have already made a finding pertaining to all the above. Understandably, sequestration can be viewed as a drastic measure, and the court needs to consider whether there are any alternatives other than granting an order for provisional sequestration. These may include inter alia, whether the respondent has made any payment towards the debt or has made repayment plans.

[58] Roper J stated the following in ***Millward v Glaser,***[11] regard the court discretion:

> *"So also, where a debtor cannot pay immediately, but is not insolvent, and if given time will be able to discharge the debt, the Court would be justified in exercising its discretion against sequestration. The discretion of the Court is however not to be exercised lightly, and where an act of insolvency has been proved the onus upon the debtor who wishes to avoid sequestration is a heavy one."*

[10] FirstRand Bank Ltd v Evans[10] 2011 (4) SA 597 (KZD)
[11] Millward v Glaser 1950 (3) SA 547 (W) 553F – 554A

[59] The respondent has provided no meaningful information to justify why sequestration should not be granted. In my view, the respondent has failed to disclose or establish special or unusual circumstances that warrant the exercise of this Court's discretion in his favour. *See FirstRand Bank Limited v Evans supra.*

[60] Having considered all the evidence placed before me, I am satisfied that Investec has established a *prima facie* basis for believing that it would be to the advantage of creditors if a provisional sequestration order is granted.

[61] *In* ***Mercantile Bank Limited, A Division of Capitec Bank Limited v Ross and Another***[12] Twala J held as follows in the purposive interpretation of the Act:

> *"Even if I am wrong in finding that the respondent's estate should be sequestrated on the basis of the reasons stated above, it should also be borne in mind that the purpose of the* ***Insolvency Act*** is *not only for securing the pecuniary benefit to the creditors, but to protect the general body of the public from people who behave in this manner. It would be an absurdity to interpret* ***s 12(2)*** *of the act in a way that, even if the creditor has established and met the requirements of* ***s 12*** *(a) and (b), but the debtor does not have any assets which when realised may yield a dividend to the benefit of the body of creditors, an order sequestrating the estate of the debtor should not be granted because the sequestration of the estate will not be to the advantage of the creditors. I say so because that would be a narrow and rigid interpretation of* ***s 12(2)*** *of the Act."*

Conclusion

[62] I align myself with the remarks of Twala J in Ross *supra.* Even if my findings on sequestration are incorrect, it remains significant that the purpose of the

[12] Mercantile Bank Limited, A Division of Capitec Bank Limited v Ross and Another [2023] ZAGPJHC 435 para 25.

Insolvency Act extends beyond securing a financial benefit for creditors; it also serves to protect the broader public from conduct of this nature. It is clear that the requirements for the sequestration of the respondent's estate have been met. The respondent's defence is neither *bona fide* nor sustainable. It is merely an attempt to delay and frustrate Investec. I am therefore satisfied that a provisional sequestration order is warranted.

Costs

[63] Costs be costs in the sequestration.

Order

[64] The following order is accordingly made:

[64.1] The respondent's estate is hereby placed provisionally sequestrated in the hands of the Master of the High Court Cape Town.

[64.2] A rule nisi be issued calling upon the respondent and any other interested party to appear and show cause, if any, before this court on 25 March 2026 at 10h00 or so soon thereafter as the matter may be heard as to why

(a) the Respondent's estate should not be finally sequestrated; and

(b) the cost of this application should not be costs of the administration in the sequestration.

[64.3] The Order shall be served on:

(a) The respondent at […] T[…] C[…], Sonkring, Brackenfell.

(b) The respondent's employees, if any, situated at […] T[…] C[…], Sonkring, Brackenfell.

(c) The Trade Union(s) representing the respondent's employees, if any, situated at […] T[…] C[…], Sonkring, Brackenfell.

(d) The Master of the High Court, Cape Town.

(e) The South African Revenue Services via email at **liquidations@sars.gov.za**

(f) By publication in the ***Cape Times and Die Burger*** newspaper.

S YAKE
ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant: Adv P G Louw
Instructed by: Werkmans Attorneys

For the Respondents: Adv TI Ferreira
Instructed by: Andre Kirsten Attorneys