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THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 2025-199036

THE SPAR GROUP LIMITED

Applicant

and

WELLINGTON PAINT AND HARDWARE

First Respondent

BUILD IT PARTNERSHIP

LIAQUET HOOISAN AHMED

Second Respondent

(Identity Number: 6[...])

Address: 1[...] G[...] H[...] Boulevard, Wellington

Marital Status: Married out of community of property to

FARYAL AHMED NÉE JAFFER

Date of Birth: 18 October 1967

FARYAL AHMED NÉE JAFFER

Third Respondent

(Identity Number: 6[...])

Address: 1[...] G[...] H[...] Boulevard, Wellington

Marital Status: Married out of community of property to

LIAQUET HOOISAN AHMED

Date of Birth: 26 April 1968

Summary: Final Sequestration – Advantage to Creditors – Discretion – Final Orders

Coram: Wille, J

Heard: 29 April 2026

Delivered: 15 May 2026

JUDGMENT

WILLE, J:

INTRODUCTION

[1] This application concerns the return day of a provisional order of sequestration having been granted against the estate of the first respondent, together with the provisional sequestration of the estates of the second and third respondents.¹

[2] For the purposes of convenience, I will refer to the first, second and third respondents as the respondents, unless otherwise indicated. The applicant seeks an order placing the respondents under final sequestration.²

[3] The respondents' opposing affidavits run into many pages and include numerous annexures. The allegations in these opposing affidavits seem to me to be a series of

¹ In accordance with, *inter alia*, section 13 of the Insolvency Act 24 of 1936 (ISA).

² A *rule nisi* having been granted on 8 December 2025.

complaints levelled against the applicant (and its agents), the valuations obtained and the sheriff of the court. No real defences are raised by the respondents.³

RELEVANT BACKGROUND

[4] The first respondent is allegedly indebted to the applicant in the amount of R24 818 902.46 in respect of stock sold and delivered on credit, as well as under a settlement agreement concluded between the applicant and the respondents.⁴

[5] The second and third respondents bound themselves as sureties in favour of the applicant for the first respondent's debts.⁵

[6] The applicant's case is that the first respondent is factually insolvent and has committed an act of insolvency in terms of section 8(g) of the ISA.⁶

[7] The respondents' case is the following:

- (a) They deny that the first respondent is factually insolvent. They say that the first respondent's assets, fairly valued, exceed the extent of its liabilities and that the first respondent is solvent.
- (b) They deny that what is relied upon as an act of insolvency by the applicant constitutes one in terms of section 8(g) of the ISA.
- (c) They dispute that there will be an advantage to creditors should a final sequestration ensue.
- (d) They say special circumstances exist that justify the court's exercise of discretion against granting a final sequestration orders.⁷

THE DEBTS ALLEGEDLY OWED BY THE FIRST RESPONDENT

³ Minister of Land Affairs and Agriculture and Others v D & F Wevell Trust and Others 2008 (2) SA 184 at 200 C

⁴ During October 2022.

⁵ This is not disputed.

⁶ It was alleged that the respondents also committed acts of insolvency in terms of s 8(c) and s 8(d) of the ISA.

⁷ The onus here rests with the respondents.

[8] The alleged debts owed by the first respondent, with the second and third respondents as sureties, are as follows: (a) a trading debt of R1 378 403.77 and the remaining portion of the ringfenced debt of R23 440 498.69 as referenced in the settlement agreement.⁸

THE ALLEGED ACT OF INSOLVENCY

[9] This concerns an email sent by the second respondent to the applicant. This email highlights an issue referred to as a cash flow 'mismatch' by the first respondent.⁹

[10] The allegation in the email is that this cash flow 'mismatch' severely reduced the first respondent's liquidity. Thus, the first respondent was unable to meet its weekly obligations to the applicant.¹⁰

[11] The second respondent (on behalf of the first respondent) requested that the applicant lift the stop-supply order so as to allow the first respondent and others more time to make financial arrangements to pay the debts owing to the applicant.¹¹

[12] The first respondent advances the view that the subject email did not (and does not) demonstrate an inability to pay the debts owed to the applicant, but merely demonstrates an unwillingness to pay them due to a cash-flow 'mismatch' at the time.¹²

[13] Self-evidently, the first respondent admits it is in arrears with its agreed payments to the applicant (which accumulated arrears it cannot pay) but still contends that the subject email does not evidence an inability to pay on its part.¹³

[14] It cannot be disputed that the applicant is a creditor of the first respondent. The applicant has a liquidated claim against the first respondent (with the second and third respondents as sureties) of not less than R100,00.¹⁴

⁸ The respondents do not deny entering into the settlement agreement ringfencing a portion of the debt.

⁹ I sought clarity on the meaning of a cash flow "mismatch" and no clarity was provided by the respondents.

¹⁰ The first respondent says it was able to pay but "unwilling" to pay.

¹¹ The first respondent requested more credit for the supply of goods from the applicant.

¹² This remains challenging to understand.

¹³ But rather an alleged unwillingness to pay.

¹⁴ Section 8(g) of the ISA.

[15] The applicant enjoys a reservation of ownership over the stock that it sold to the first respondent. By way of a court order, the applicant perfected its security over the movable assets of the first respondent, which perfection was effected by the sheriff of the court.¹⁵

[16] The respondents now say that (under the theme of advantage to creditors) the applicant failed to make proper disclosure regarding the full extent of the security it holds for the indebtedness by the first respondent.¹⁶

[17] This complaint by the respondents is not a defence to the act of insolvency contended for by the applicant because:

‘...A creditor (or his agent) who has a liquidated claim for not less than £50 [R100.00] ... against a debtor who has committed an act of insolvency, or is insolvent, may petition the Court for the sequestration of the estate of the debtor...’¹⁷

THE LIQUIDATED CLAIMS BY THE APPLICANT

[18] The applicant and the first respondent concluded a credit agreement in terms of which the applicant supplied building materials and rendered ancillary services to the first respondent’s hardware store. The second and third respondents were partners of the first respondent and operated the hardware store.¹⁸

[19] The credit agreement provided that a certificate of indebtedness, under the hand of any director or manager of the applicant, would be *prima facie* proof of the facts set out for the purposes of legal proceedings.¹⁹

[20] The first respondent breached the terms of the credit agreement with the applicant by failing to make payment for the goods and services supplied to it in accordance with the agreed terms. There is no dispute raised by either respondent to the effect that the terms of the credit agreement were breached and that the first respondent failed to make payments to

¹⁵ The applicant perfected its “General Notarial Bond” over the stock supplied to the first respondent.

¹⁶ This issue will be dealt with later in this judgment.

¹⁷ Section 9 of the ISA.

¹⁸ They were the partners in first respondent’s business.

¹⁹ This is not disputed.

the applicant in accordance with its terms. Because of this, the respondents agreed to enter into a settlement agreement with the applicant in order to remedy and regularize the breaches of the credit agreement.²⁰

[21] In summary, the provisions of the settlement agreement were the following:

- (a) The respondents were recorded as being indebted to the applicant in the agreed sum of R25 367 979,00 together with agreed interest.
- (b) The respondents were not in a financial position to repay the debt and were prepared to enter into an arrangement with the applicant to repay the debt.
- (c) The respondents acknowledged that they were indebted to the applicant and acknowledged that the debt was due, owing and payable to the applicant.
- (d) A related development entity undertook to execute a guarantee and a cession of claims in terms of which it agreed (together with the respondents) to cede an amount of at least R400 000.00 of the total proceeds realised on transfer of each of certain development units in order to settle the respondents' indebtedness to the applicant. The entire debt under the settlement agreement was repayable by the respondents (together with the development entity) in full by 30 September 2024.²¹

[22] The respondents adhered to the terms of the settlement agreement for some time, but then defaulted. The last payment to the applicants under the agreement, cession, and guarantee was made nearly two years ago.²²

[23] In an attempt to regularise the default situation with the applicant, the second respondent advised the applicant that yet another, completely unrelated third-party entity had expressed interest in investing in the first respondent's business. Negotiations in this connection lasted for about a year, after which these negotiations failed.²³

²⁰ This is common cause.

²¹ The related party entity was identified as "Springdeals CC" (Springdeals).

²² During July 2024.

²³ The unrelated third party entity was identified as "Unipalm (Pty) Ltd" (Unipalm).

[24] The applicant once again attempted to negotiate an acceptable payment plan with the first respondent for the repayment of the agreed indebtedness, which was due, owing and payable by the respondents.²⁴

[25] The suggestion was made that the parties attempt to resolve the position by concluding an addendum to the settlement agreement, with a renegotiation of the terms of payment of the debt, which was due, owing, and payable.²⁵

[26] Regrettably, the parties were unable to reach an agreement and conclude an addendum to the settlement agreement.²⁶

[27] Ultimately, the first respondent remained in breach of the settlement agreement and of the credit agreement by failing to make payment on its current trading account.²⁷

CONSIDERATION

FACTUAL INSOLVENCY

[28] Apart from relying on the commission of an act of insolvency by the first respondent, the applicant makes out a case that the first respondent's estate is actually insolvent in that its liabilities exceed its assets.²⁸

[29] It is trite that all that needs to be done to meet this threshold is that enough facts need to be proved from which the inference of insolvency is fairly and properly deducible.²⁹

[30] In this case the first respondent says that it cannot pay its debts. Rather the allegation is that it is unwilling to pay its debts to the applicant at this time. It must be so that the failure to pay is itself of significance.³⁰

[31] Also, the first respondent avers that the primary contention is that its assets, when fairly valued, exceed its liabilities, and that the partnership is solvent. Finally, they say that

²⁴ The indebtedness was reduced to the sum of R23 440 498.69.

²⁵ This was recorded in a letter dated 26 February 2025.

²⁶ In terms of section 12(1)(b) of the ISA.

²⁷ R1 378 403.77 remained due, owing and payable in connection with the trading account.

²⁸ The case for factual insolvency or commercial insolvency.

²⁹ Absa Bank Ltd v Rhebokskloof (Pty) Ltd 1993 (4) SA 436 (C).

³⁰ Langston v Lambert 1948 (4) SA 392 (W).

the quantum of the debt (under the settlement agreement) is in dispute and that the value attributed to the first respondent's stock is understated.³¹

[32] Insofar as the movable assets are concerned, the first respondent relies on the insurance schedule. Apart from the inherent difficulties with this schedule, some of the amounts referenced in it relate to assets not owned by the first respondent.³²

[33] The applicant in turn relies on values provided by a sworn appraiser. An open-market valuation (provided by a reputable appraiser) of the movable assets (excluding the vehicles) amounted to R2 370 500.00.³³

[34] As far as the stock dispute is concerned, the following:

- (a) The first respondent says its stock is valued at R20 129 824.28.
- (b) The applicant states that the stock value is R16 472 808.00.
- (c) The first respondent's valuation includes alleged and so-called 'fictitious sales' in the amount of R3 411 744.98.³⁴

SPRINGDEALS CC

[35] As alluded to earlier, the first respondent's core argument under this theme concerns an alleged loan claim of R28 978 709.78. The first respondent contends that this loan arose from the first respondent's payment to the creditors of this discrete entity. The recoverability of the loan is highly speculative, as it is predicated on projected future income.³⁵

OTHER LIABILITIES

[36] The first respondent has liabilities of approximately R64 000 000.00. The report by the provisional trustees records that the first, second and third respondents have bound

³¹ This remained challenging to understand.

³² The amount of R8 349 000.00 is included for improvements made to the premises of the second respondent.

³³ Mr. Powell.

³⁴ This forms the subject of a dispute on the papers.

³⁵ Sprindeals is itself facing two discrete liquidation applications.

themselves jointly and severally, as guarantors, to Sanlam Investment Management (Pty) Ltd, for the debts of Springdeals.³⁶

[37] The first respondent also remains indebted to Capitec for a property loan for a not insignificant amount. This debt is disregarded by the first respondent on the basis that it is secured by a mortgage bond registered over the business premises, which is owned by the second respondent. It is self-evident that this loan amount remains a liability of the first respondent irrespective.³⁷

[38] Thus, on a reasonable basis, it seems abundantly clear to me that, on these papers, even with a conservative approach to the benefit of the first respondent, the first respondent is factually insolvent to the sum of over R100 million.³⁸

ALLEGED INCORRECT CALCULATIONS

[39] The first respondent avers that it is due rebates from the applicant on its trading account and debt. Even if these amounts were taken into account (I make no finding in this connection), it makes no significant difference to the solvency of the first respondent.³⁹

[40] The first respondent also, for the first time, raises a dispute regarding the interest calculations in respect of the agreed debt as set out in the settlement agreement. Again, even if these interest disputes are correct (I doubt that they are), nothing turns on this as the first respondent is factually insolvent.⁴⁰

THE FICTITIOUS SALES

[41] The operating system used by the first respondent was unknown to the applicant. When the stock take was completed, the applicant's operations team requested that the first respondent's employees assist with it. No stock was removed from the premises, and all

³⁶ In the sum of R34 669 905.00.

³⁷ To the sum of R39 899 440.00.

³⁸ The first respondent was unable to deal with this allegation on the papers.

³⁹ These alleged discrepancies are relatively insignificant.

⁴⁰ Again, these alleged discrepancies are relatively insignificant.

pending deliveries to customers were honoured after the perfection order was effected. This was before the stock take commenced.⁴¹

[42] It was explained that during a full stock take, the trading system is deactivated, and a separate stock take module is activated to capture stock take information. Where variances are noted by the first respondent's employees during a stock take, they arise from incorrect counts or capture of stock during the process, and those specific items are then recounted, with adjustments made to correct the variances in the first respondent's system.⁴²

[43] It is against this background that the respondents alleged that the stock inventory was manipulated to reflect an understated value of the in-store stock and that fictitious sales were created, thereby reducing the stock's value. Again, even if this did occur (the probabilities are overwhelmingly against it), it would make no significant difference to the first respondent's insolvency position.⁴³

THE SECOND AND THIRD RESPONDENTS

[44] By way of legislative intervention, the position of the second and third respondents is as follows:

*'...If the Court sequestrates the estate of a partnership (whether provisionally or finally or on acceptance of surrender), it shall simultaneously sequester the estate of every member of that partnership other than a partner "en commandite" or a special partner as defined in the Special Partnerships' Limited Liability Act, 1861 (Act 24 of 1861) of the Cape of Good Hope or in Law No. 1 of 1865 of Natal...'*⁴⁴

[45] The second and third respondents did not provide any evidence to suggest they were able to escape the provisions of section 13 of the ISA. To the contrary, they sought to rely on their own assets to support the position for the solvency of the first respondent. In addition, no legal argument was advanced on behalf of either the second or third respondent

⁴¹ The actual invoice operating procedure was completely unknown to the applicant.

⁴² The chances of resolving this issue in the respondents' favour are indeed slim.

⁴³ These amounts were relatively insignificant to the solvency of the first respondent.

⁴⁴ Section 13 of the ISA.

as to why the provisions of section 13 of the ISA should not apply to their respective estates.⁴⁵

ADVANTAGE TO CREDITORS

[46] An advantage to creditors, for the purposes of a final sequestration, will be shown where facts come to light suggesting that a respondent might have assets that could become available for distribution to creditors.⁴⁶

[47] There is, *inter alia*, reason to believe that it would be to the advantage of the first respondent's general body of creditors should its estate be sequestrated, and a trustee be appointed to properly investigate the financial position of the first respondent.⁴⁷

[48] In meeting the requirement of establishing an advantage to creditors, evidence is usually provided to show that the property of a respondent can be realised and that there is a reasonable prospect of payment of a dividend to the creditors who submit claims for proof.⁴⁸

[49] In this connection, the respondents have a complaint rather than any defence. The complaint is that the applicant failed to make proper disclosure of its security and further refers to the interests of the unsecured creditors. The applicant's answers to these complaints are these:

- (a) The applicant disclosed that it held security for its claim against the first respondent by way of a reservation of ownership over the stock which it sold to the first respondent on credit. In addition, the applicant holds security for its claim in the form of the now-perfected notarial bond.
- (b) The applicant's claim against the first respondent is also secured by a mortgage bond registered over certain immovable properties in the 'Springdeals' development.

⁴⁵ The provisions of this section apply by way of operation of law.

⁴⁶ *Dunlop Tyres (Pty) Ltd* 1999 CLR (W).

⁴⁷ The first respondent says it has trade debts owing to it in the sum of about R10 million,

⁴⁸ *Nel v Lubbe* 1999 (3) SA 109 (W) at 112 B.

- (c) The applicant has a cession in *securitatem debiti* executed by 'Springdeals' in favour of the applicant. This security does not constitute real security for the applicant's claim against the first respondent.⁴⁹

DISCRETION

[50] During this time, communication confirmed that the financial affairs of the first respondent were being restructured. Significantly, it recorded that the respondents' access to their bank account had been removed and a proxy had been appointed to administer the account.⁵⁰

[51] Moreover, certain fixed and movable assets of the second and third respondents were being disposed of. The respondents did not engage with these developments, and the applicant submitted that these acts constituted further acts of insolvency. They say this because the respondents made, or attempted to make, a disposition of their property that would have the effect of prejudicing their creditors, or removed, or attempted to remove, any of their property with intent to prejudice their creditors.⁵¹

[52] Following this theme, the respondents submit that special circumstances exist that justify the court's exercise of discretion against the granting of final sequestration orders. The onus of establishing such special circumstances on a balance of probabilities rests with the respondents.⁵²

[53] As a matter of pure logic, there is therefore a very small likelihood that the first respondent will be in a position to continue its trading activities because perfection placed the applicant in a position to sell the attached goods to the public. The applicant has also stopped all credit supplies of stock to the first respondent, and the only manner in which the first respondent's business can be sold is through a sale in sequestration.⁵³

⁴⁹ Section 2 of the ISA.

⁵⁰ Unipalm.

⁵¹ Sections 8(c) and 8(d) of the ISA.

⁵² Millward v Glaser 1950(3) SA 547 (W) at 553.

⁵³ The first respondent simply cannot continue to trade.

[54] Thus, there are no special or unusual circumstances in this case, and the respondents provided no explanation for their failure to pay the applicant other than their unwillingness to do so, which, on any reasonable interpretation, amounts to an inability to pay.⁵⁴

CONCLUSION

[55] For all these reasons, a proper case for a final sequestration of the first respondent has been made out, together with a proper case for the final sequestration of the estates of the second and third respondents.⁵⁵

ORDER

[56] The following order is granted:

1. The *rule nisi* issued on 8 December 2025 is hereby made absolute, and the respondents' estates are placed under a final sequestration order.
2. The costs of an incidental to the application shall be costs in the finally sequestrated estates on the scale as between party and party (as taxed or agreed), together with costs of two counsel on Scale C.

E. D WILLE
(Cape Town)

⁵⁴ This onus rested on the first respondent and was not discharged.

⁵⁵ The applicant's case for final sequestration orders was unassailable.