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

Reportable

Case Number: 5048/2024

In the matter between:

INVESTEC BANK LIMITED

(Registration number: 1969/004763/06)

APPLICANT

and

MICHAEL NICOLAS GEORGIU

RESPONDENT

AND

Case No: 5048/2024

In the matter between:

FIRSTRAND BANK LIMITED

(Acting through its Rand Merchant Bank Division)

(Registration number: 1929/001225/06)

INTERVENING CREDITOR

In re:

INVESTEC BANK LIMITED

(Registration number: 1969/004763/06)

APPLICANT

and

MICHAEL NICOLAS GEORGIU

RESPONDENT

Neutral citation: *Investec Bank Ltd v Georgiou (FirstRand Bank Ltd Intervening) In*

Re: Investec Bank Ltd v Georgiou (5048/2024) [2026] ZAFSHC 284 (15 May 2026)

Coram: OPPERMAN J

Heard: 29 May 2025, 16, 17, 18 July 2025 & 3, 4, 5 November 2025

Order: 28 April 2026

Delivered: Reasons for judgment were handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 15 May 2026.

Summary: Insolvency – provisional sequestration – respondent opposing sequestration on grounds of solvency, absence of a liquidated claim, prescription, procedural unfairness and constitutional infringement – respondent's correspondence and acknowledgement of debt constituting unequivocal admissions of liability – prescription defence not bona fide or sustainable – evidence establishing, prima facie, factual and commercial insolvency and reason to believe sequestration would advantage creditors through investigation and orderly realization of assets – provisional sequestration granted.

ORDER

1 The estate of Michael Nicolas Georgiou (identity number: 700[...]) is placed under provisional sequestration and handed over to the Master of the High Court, Bloemfontein.

2 A *rule nisi* is hereby issued, calling upon all interested parties, if any, to appear before this Honourable Court on 10 September 2026 at 09h30 to show cause why:

2.1 A final sequestration order should not be granted; and

2.2 the costs of the applications should not be costs in the sequestration of the respondent's estate.

3 The applicant and the intervening creditor are directed to cause service of this order as required by s 11 of the Insolvency Act 24 of 1936 (as amended) on:

3.1 Every registered trade union that, as far as the applicants can reasonably ascertain, represents any of the employees of the respondent;

3.2 the respondent's employees, if any, by affixing a copy of the order to any notice board to which the employees may have access inside the premises of the respondent, or, if there is no access to the premises of the respondent, by affixing a copy of this order to the front gate of the premises and in the event of there not being a front gate to the premises, by affixing a copy of this order to the front door of the

premises from which the respondent conducts his business;

3.3 the South African Revenue Service; and

3.4 the respondent.

4 The applicant and the intervening creditor are directed to cause this order to be published in one (1) edition of the Citizen Newspaper and the Government Gazette.

5 The costs of both applications shall be the costs in the administration of the insolvent estate of the respondent.

JUDGMENT

Opperman J

Introduction

[1] This is an application for the provisional sequestration of the respondent's estate in terms of the Insolvency Act 24 of 1936 (the Act). The applicant seeks a *rule nisi* placing the estate of the respondent under provisional sequestration and calling upon interested parties to show cause on the return day why a final order of sequestration should not be granted.

[2] The application (the main application or the sequestration application) by Investec Bank Limited (Investec) was filed on 4 September 2024. The application became opposed but despite an extension granted, the respondent failed to deliver an answering affidavit timeously. The matter was set down for hearing on 7 November 2024. On this date the matter was postponed to the opposed roll of 27 February 2025. The respondent was ordered to pay the wasted costs of the day.

[3] FirstRand Bank Limited (acting through its Rand Merchant Bank Division) (RMB) delivered an application for leave to intervene in the main application. RMB seeks an order, *inter alia*, that to the extent that Investec's main application does not proceed or succeed, Mr Georgiou's estate be placed in provisional sequestration based on RMB's application.

[4] The attorneys of record for Mr Georgiou advised the attorneys of record for

RMB that they had been instructed to oppose the intervention application. But, on 27 February 2025, RMB was granted leave to intervene in the main application, *by agreement between the parties*. The main application and the intervention application were postponed for hearing on the opposed motion roll of 29 May 2025. The matter was thereafter postponed to 16-18 July 2025 and 3-5 November 2025 for further arguments.

[5] Counsel for the respondent aptly described the case during his argument at the hearing as one with a morass of information. The assessment is correct. The matter is characterised by a substantial and complex body of information. Care must therefore be taken to avoid the judgment becoming unnecessarily burdened by excessive detail. It was suggested by counsel for the respondent that the solution lies in the simple application of the Law of Insolvency on the facts. The submission is correct; the law is established and the common cause facts as presented by the parties are clear and straightforward.

[6] The respondent did not initially disclose the full extent of his creditors and assets. It was only during the final stages of the hearing that a further affidavit was delivered addressing aspects of his financial position and related litigation. The affidavit, however, did not fully clarify the extent of the respondent's financial affairs or liabilities.

[7] The respondent describes himself as 'a well-known businessman' who 'controls (directly and indirectly) a vast empire of property assets worth billions of rands.' The matter therefore does not concern an unsophisticated litigant unfamiliar with complex commercial transactions. The respondent was represented throughout by a highly experienced legal team.

Preliminary Observations Regarding Insolvency Law

[8] The issues in the matter evolved during the course of the proceedings. Similar matters¹ involving overlapping parties and defences were simultaneously

¹ *Investec Bank Limited v Fourways Precinct Proprietary Limited* (5901/2024) [2026] ZAFSHC 93 (11 March 2026); *First Rand Bank Ltd and Another v Azrapart (Pty) Ltd and Another* (4437/2024) [2025] ZAFSHC 263 (27 August 2025); *Investec Bank Limited v Fourways Precinct Proprietary*

pending in this and other divisions. Mr Georgio maintains, adamantly so, that he is an extraordinarily affluent man that can honour the debt involved here. The fact remains that he just does not pay the debt. The sentiment that failing to pay debts is evidence of insolvency, was famously stated by Innes CJ in the South African case *De Waard v Andrew & Thienhaus Ltd*² (De Waard). The court noted: '[In] my mind the best proof of solvency is that a man should pay his debts; and therefore, I always examine in a critical spirit the case of a man who does not pay what he owes'.

[9] Insolvency law occupies a central position in the legal system, regulating the consequences that follow when a debtor is no longer able to meet his financial obligations. Its significance lies in a number of interrelated functions. Ponnan JA³ noted that the Court, when called upon to do so, *merely applies the law to a given situation*. In summary, Ponnan JA offered the following observations regarding the Law of Insolvency:

- a) First, it ensures the orderly and equitable distribution of a debtor's estate among creditors. In the absence of a collective process, creditors would resort to individual enforcement, resulting in a disorderly 'race to execution' in which the most expedient or powerful creditors are disproportionately advantaged. Insolvency law replaces this with a structured system of distribution in accordance with established priorities.
- b) Second, it prevents disorder and abuse by placing the debtor's estate under the control of an independent functionary, such as a trustee or liquidator. This halts piecemeal attachments and preserves the integrity of the estate for the benefit of the body of creditors as a whole.
- c) Third, it strikes a balance between the competing interests of creditors and debtors. While it serves to protect creditors' rights, it also recognises that financial failure is not invariably the product of misconduct. Accordingly, it affords the honest but unfortunate debtor an opportunity for relief and, ultimately, a financial 'fresh start'.

Limited (5901/2024) [2025] ZAFSHC 258 (22 August 2025); *FirstRand Bank Limited v Macrospace Trading Proprietary Limited*, Case Number 2025-008682, delivered 3 November 2025; Western Cape Division of the High Court) and *FirstRand Bank Limited v Khumonetix Proprietary Limited* (unreported judgment under case no 7114/2024, Free State Division of the High Court).

² *De Waard v Andrew & Thienhaus Ltd* 1907 TS 727 at 733.

³ SAJEI - Thursday, 4 July 2024. <https://www.supremecourtofappeal.org.za/index.php/speeches-and-conferences/category/14-conference-papers?download=107:insolvency-law>.

- d) Fourth, a coherent insolvency regime promotes economic stability and confidence in the credit market. Creditors are more inclined to extend credit where there exists a predictable legal framework governing recovery in the event of default.
- e) Fifth, insolvency law provides mechanisms to interrogate the conduct of the debtor prior to insolvency. Through provisions dealing with impeachable dispositions and voidable preferences, it discourages fraud and the improper dissipation of assets, thereby safeguarding the collective interests of creditors.
- f) Sixth, it facilitates the orderly resolution of financial distress. By providing structured procedures such as sequestration and liquidation, it mitigates the broader economic disruption that might otherwise follow from unregulated financial collapse.
- g) *Finally, insolvency law serves the public interest by reinforcing commercial morality. It underscores the principle that obligations must be honoured, while at the same time acknowledging that insolvency is sometimes inevitable and must be managed in a manner that is fair, transparent, and just.*

Right of Access to Court Under Section 34 of the Constitution

[10] The litigation was extensive. Numerous sets of heads of argument and statements were filed, both late and timeously, and as the hearing happened. Oral arguments lasted about seven days with full and fair opportunity granted to the respondent to make his case. Numerous affidavits were filed, even as late as on 3 November 2025, at the end of the hearing. It is necessary to record at this juncture that condonation is granted for the filing of all further and supplementary affidavits, as well as the supplementary heads of argument, in the interests of the proper ventilation of the issues and the completeness of the record before court. No prejudice arising therefrom was alleged by any of the parties. During argument issues on condonation and admission were, in any event, not seriously pursued.⁴ To echo

⁴ *Absa Bank Ltd v Rhebokskloof (Pty) Ltd and Others* 1993 (4) SA 436 (C) 438 (*Rhebokskloof*): 'It was an unusual feature of these proceedings that the affidavits delivered by the various parties were not confined to the usual three sets contemplated in application proceedings, i.e. the founding papers, the opposing or answering papers and the replying papers. The delivery of a fourth set or further sets of affidavits is not generally countenanced and is usually permitted in specified and restricted circumstances only. The instant matters were however unique in one respect, in that it was understandable that, where Key was concerned, leave to deliver further affidavits would be sought as he was labouring under an unusual disability... Once Key was permitted such indulgence, considerations of fairness and equity (and a desire to have all relevant information before the Court) required, indeed compelled, the Court to extend the same latitude to ABSA and to allow for the delivery of further affidavits. The result was a virtual flood of affidavits, as if, to adopt the colloquialism, affidavits were going out of fashion, with ABSA delivering an affidavit at what amounted

the remarks made by counsel for the respondent, the primary factors continue to be the Law of Insolvency and the facts.

Investec, RMB and Michael Nicolas Georgio

[11] Investec and RMB are substantial commercial financial institutions. The respondent is a private individual who appears to have established a highly successful business enterprise. The relationship between financial institutions and high-net-worth clients is often characterised by complex and bespoke financial arrangements, including significant credit facilities and sophisticated security structures. Such relationships are not in themselves objectionable. They may, however, carry heightened commercial risks for both lender and borrower. The relationship between a bank and its customer has been described by Moseneke AJ as:

‘...an inherently and conspicuously complex collection of juristic relationships. That complexity is often amplified in matters involving substantial commercial lending arrangements and sophisticated financial structures.’⁵

[12] In certain circumstances, the commercial incentives inherent in these relationships may result in increased tolerance for risk on the part of financial institutions, particularly where substantial and longstanding banking relationships are involved. Equally, borrowers may assume that their commercial standing or relationship with the institution will secure continued accommodation in times of financial difficulty. The use of leveraged structures and sophisticated financial instruments may further amplify the parties’ exposure, particularly in adverse market conditions.

metaphorically to one minute to midnight at the very close of argument. In addition to all this, there were a number of applications to strike out matter from the affidavits delivered on behalf of ABSA on the grounds that such matter constituted what is known as ‘new’ matter, or on the grounds of hearsay or general inadmissibility. Each of these applications was accompanied by an affidavit designed, *ex abundanti cautela*, to constitute in effect a form of ‘pleading over’ in respect of the matter objected to. *In the event, no harm was done to nor prejudice suffered by the parties as a result of all this.* Indeed, there is much to be said for having the additional affidavits delivered and having fuller (if not the fullest) information placed before the Court. *If counsel were inconvenienced in the presentation of their arguments by the delivery of further affidavits in the course of such presentation, their considerable experience more than adequately hid this from the Court. At the very least, the plethora of affidavits, annexures and the like must assuredly afford some comfort to the paper-making and photocopying industries in our recession-ridden country.*’ (Accentuation added.)

⁵ *Standard Bank of SA Ltd v ABSA Bank Ltd and another* [1995] All SA 535 (T), 1995 (2) SA 740 (T) 746G–747E.

[13] These considerations assume particular significance in insolvency proceedings, where the true extent of the parties' financial exposure and the commercial consequences of their arrangements are frequently brought into sharp focus. The relationship between banks and wealthy clients must therefore be evaluated within the broader framework of insolvency law and financial regulation, both of which serve to promote commercial discipline, accountability, and the protection of creditors.

[14] On the facts of this matter, there is no indication of reckless credit or exploitation. The evidence shows that the parties knowingly and deliberately entered into the financial arrangements, fully aware of the risks involved.

The Contract

[15] This matter illustrates the tension that sometimes arises between contractual autonomy and the broader demands of justice. The litigants here did not resolve their disputes in terms of the contracts. An acknowledgment of debt was not complied with and numerous issues in many cases of a similar nature causes concern. Eksteen JA in *Basson v Chilwan and Others*⁶ remarked that:

'In Roffey's case supra Didcott J refers to the dictum of *Jessel MR in Printing and Numerical Registering Co v Sampson* (1875) LR 19 Eq 462 with approval, where the learned Judge said at 465:

"If there is one thing that more than another public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider that you are not lightly to interfere with this freedom of contract."

In weighing up the public interest involved in the principle of freedom of trade against the sanctity of contracts, Didcott J concluded that it is grounded therefore not only in law but also in morality.⁷ It speaks to the preservation of a civilized democratic society. Justice Ackermann in *Ferreira v Levin NO; Vryenhoek v Powell NO*⁸ described equal protection under the law in these circumstances as: 'a central consideration in a

⁶ *Basson v Chilwan and Others* 1993 (3) SA 742 (A).

⁷ *Ibid* at 761G-762A.

⁸ *Ferreira v Levin NO; Vryenhoek v Powell NO* [1995] ZACC 13; 1996 (1) SA 984 (CC).

constitutional state...'.⁹ These statements aim for reasonable certainty, so that parties can go about their business knowing the rules of the game; constitutional economic integrity is vital.

[16] The principle that agreements should be honored remains foundational to commercial law and legal certainty. Bowden¹⁰ discussed this dichotomy to be managed in a democracy:

'R.G. Collingwood has outlined three aspects of civilization: economic, social, and legal. Economic civilization is marked not simply by the pursuit of riches—which might actually be inimical to economic civilization—but by “*the civilized pursuit of wealth.*” . . .’ (Accentuation added.)

The Cases of *Barkhuizen*¹¹ and *Orestisolve*¹²

[17] Two decisions are of particular significance to the determination of the present matter against Mr Georgio and the constitutional imperative that must be complied with. They are *Barkhuizen v Napier (Barkhuizen)* and *Orestisolve (Pty) Ltd T/A Essa Investments v NDFT Investments Holdings (Pty) Ltd and Another (Orestisolve)*.

[18] *Barkhuizen*, though not an insolvency case per se, significantly influences insolvency law by providing the constitutional and contractual lens through which courts evaluate the enforceability of contractual provisions frequently encountered in insolvency proceedings. First, *Barkhuizen* made clear that contract terms are not automatically enforceable; they must align with public policy, now grounded in constitutional values like fairness and access to justice. This is crucial in insolvency cases, where strict contractual mechanisms can have serious consequences for financially distressed parties. Second, the decision reaffirmed *pacta sunt servanda* (the sanctity of contracts), but clarified that it is not absolute. Courts may decline enforcement if a term is unreasonable or against public policy as informed by

⁹ Ibid para 26.

¹⁰ Brett Bowden (2016), 'Civilization and Its Consequences' *The Oxford Handbook of the History of Political Philosophy*. Oxford University Press; RG Collingwood (1992). *The New Leviathan*, (D Boucher ed). Oxford: Clarendon Press.

¹¹ *Barkhuizen v Napier* 2007(5) SA 323 (CC).

¹² *Orestisolve (Pty) Ltd T/A Essa Investments v NDFT Investments Holdings (Pty) Ltd and Another* (18414/14) [2015] ZAWCHC 71; 2015 (4) SA 449 (WCC) (28 May 2015) paras 7-13.

constitutional norms, an issue often arising when debtors challenge creditor claims during insolvency. Third, *Barkhuizen* established a two-stage test: (1) Is the clause objectively unreasonable? (2) Even if not, would enforcement be unfair in the specific case? This approach is especially useful in insolvency disputes over provisions like acceleration clauses or admission of debt contracts.

[19] In essence, *Barkhuizen* is central to insolvency-related litigation because it sets the standard for assessing the validity of contractual claims within insolvency proceedings, supporting creditor rights generally but preserving judicial oversight to prevent unfair or unconstitutional outcomes.

[20] This brings me to the second case. At this stage, the court is not called upon to finally determine the disputes raised by the respondent. The question is whether the applicants have established, on a *prima facie* constitutional basis, the jurisdictional requirements contemplated in s 10 of the Act to justify the grant of a provisional sequestration order. *Orestisolve* ruled on the evolvment of the test:

[7] *In an opposed application for provisional liquidation the applicant must establish its entitlement to an order on a prima facie basis*, meaning that the applicant must show that the balance of probabilities on the affidavits is in its favour (*Kalil v Decotex (Pty) Ltd* 1988 (1) SA 932 (A) at 975J-979F)...

[8] *Even if the applicant establishes its claim on a prima facie basis, a court will ordinarily refuse the application if the claim is bona fide disputed on reasonable grounds.* The rule that winding-up proceedings should not be resorted to as a means of enforcing payment of a debt, the existence of which is bona fide disputed on reasonable grounds is part of the broader principle that the court's processes should not be abused. In the context of liquidation proceedings, *the rule is generally known as the Badenhorst rule* from the leading eponymous case on the subject, *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 347H-348C... and is generally now treated as an independent rule not dependent on proof of actual abuse of process (*Blackman et al Commentary on the Companies Act* Vol 3 at 14-82–14-83). *A distinction must thus be drawn between factual disputes relating to the respondent's liability to the applicant and disputes relating to the other requirements for liquidation. At the provisional stage, the other requirements must be satisfied on a balance of probabilities with reference to the affidavits.* In relation to the applicant's claim, however, the court must consider not only where the balance of probabilities lies on the papers but also whether the claim is bona fide disputed

on reasonable grounds; a court may reach this conclusion even though on a balance of probabilities (based on the papers) the applicant's claim has been made out (*Payslip Investment Holdings CC v Y2K Tec Ltd* 2001 (4) SA 781 (C) at 783G-I). However, where the applicant at the provisional stage shows that the debt prima facie exists, the onus is on the company to show that it is bona fide disputed on reasonable grounds (*Hülse-Reutter & Another v HEG Consulting Enterprises (Pty) Ltd* 1998 (2) SA 208 (C) at 218D-219C).

[9] The test for a final order of liquidation is different. The applicant must establish its case on a balance of probabilities. Where the facts are disputed, the court is not permitted to determine the balance of probabilities on the affidavits but must instead apply the Plascon-Evans rule (*Paarwater v South Sahara Investments (Pty) Ltd* [2005] 4 All SA 185 (SCA) para 4; *Golden Mile Financial Solution CC v Amagen Development (Pty) Ltd* [2010] ZAWCHC 339 paras 8-10; *Badge & Others NNO v Midnight Storm Investments 265 Pty Ltd & Another* 2012 (2) SA 28 (GSJ) para 14).

[10] *The difference in approach to factual disputes at the provisional and final stages appears to me to have implications for the Badenhorst rule.* If there are genuine disputes of fact regarding the existence of the applicant's claim at the final stage, the applicant will fail on ordinary principles unless it can persuade the court to refer the matter to oral evidence. The court cannot, at the final stage, cast an onus on the respondent of proving that the debt is bona fide disputed on reasonable grounds merely because the balance of probabilities on the affidavits favours the applicant. *At the final stage, therefore, the Badenhorst rule is likely to find its main field of operation where the applicant, faced with a genuine dispute of fact, seeks a referral to oral evidence...*

[11] If, on the other hand, and with due regard to the application of the Plascon-Evans rule, the court is satisfied at the final stage that there is no genuine factual dispute regarding the existence of the applicant's claim, there seems to be limited scope for finding that the debt is nevertheless bona fide disputed on reasonable grounds. *It is thus unsurprising to find that the reported judgments where the Badenhorst rule has been relevant to the outcome have been cases of applications for provisional liquidation rather than final liquidation.*

[12] Even where the facts are undisputed, there may be a genuine and reasonable argument whether in law those facts give rise to a claim. *I have not found any case in which the Badenhorst rule has been applied, either at the provisional or final stage, to purely legal disputes.* If the Badenhorst rule's foundation is abuse of process, it might be said that it is as much an abuse to resort to liquidation where there is a genuine legal dispute as where there is a genuine factual dispute. *But if the Badenhorst rule extends to purely legal disputes, I venture to suggest that the rule, which is not inflexible, would not generally be an obstacle to liquidation if the court felt no real difficulty in deciding the legal point...*

[13] I have used the expression 'bona fide disputed on reasonable grounds' in describing the Badenhorst rule. The South African cases, including Badenhorst itself, are formulated in such a way as to indicate two requirements, namely bona fides and reasonable grounds. *The view that the rule comprises two distinct components was expressly articulated in Hülse-Reutter v HEG Consulting Enterprises (Pty) Ltd 1998 (2) SA 208 (C) at 218F-220C, quoted with approval in Porterstraat 69 Eiendomme (Pty) Ltd v PA Venter Worcester (Pty) Ltd 2000 (4) SA 598 at 606B-607E. In the more recent of the two English authorities cited in Badenhorst, namely Re Welsh Brick Industries Ltd [1946] 2 All ER 197 (CA), Lord Greene MR said he did not think there was any difference between 'bona fide disputed' and 'disputed on some substantial ground' and that the one was just another way of saying the other' (at 198E-F)... Including or excluding bona fides as a distinct requirement is unlikely in practice to lead to different results because bona fides (genuineness) is on any reckoning not on its own sufficient and because a finding that the claim is disputed on substantial (i.e. reasonable) grounds could rarely co-exist with a finding that the company is not bona fide in disputing the claim.'* (Accentuation added)

The Opposed Motion

[21] Bare assertions in the face of extensive evidence presented by the applicants are not enough. The applicant is adamant that the respondent does not raise a genuine dispute as to the existence of indebtedness. His defences are largely technical. On the issue of dispute of fact, reference may be made to the judgment delivered by Daffue, J in *Afriforum NPC v Ngwathe Local Municipality and 14 Others*:¹³

'[22] As mentioned, the papers are voluminous, consisting of over 1200 pages. The heads of argument of counsel are in excess of 120 pages. I do not intend to deal with all the allegations and counter-allegations in respect of factual issues or legal aspects relied upon by the parties as I do not intend to write a 100-page judgment. Many of the facts before the court cannot really be denied convincingly. Bearing in mind that factual disputes have been raised by the respondents, it is appropriate to consider the test as enunciated in *Plascon-Evans* to be applied in opposed motion procedure. I also appreciate as the Supreme Court of Appeal stated in *National Director of Public Prosecutions v Zuma* that opposed motion procedure is not suited to resolve factual disputes. *However, respondents often forget that they have a duty to present their opposition clearly and unequivocally and fail to heed the warning in Wightman t/a JW Construction v Headfour (Pty) Ltd and Another. I shall show*

¹³ *Afriforum NPC v Ngwathe Local Municipality and 14 Others* (2264/2024) [2025] ZAFSHC 184; 2025 (6) SA 566 (FB) (20 June 2025).

herein that the respondents who tried to deal with the facts deposed to by the applicant in an attempt to raise disputes of fact did not seriously and unambiguously address the issues they intend to dispute. They failed to properly engage with the facts they dispute and to reflect the disputes fully and accurately in the answering affidavits.' (Accentuation added)

This brings the judgment to the more detailed facts.

Statement of Facts Provided by Investec

[22] Both Investec and RMB are companies and financial institutions incorporated in accordance with the company and banking laws of the Republic of South Africa, carrying on business as registered commercial banks. I will deal with the matter concerning Investec only.

[23] The respondent is Michael Nicolas Georgiou an adult male, having his residential address in Bloemfontein within the jurisdiction of this Court. The respondent is married out of community of property. The presence of immovable property within this Court's jurisdiction establishes the basis for this Court to consider the application in accordance with the provisions of the Act.

[24] On the papers, the following facts appear prima facie to have been established. The respondent's defences will be considered in due course.

a) Michael Georgiou is indebted to Investec in an amount exceeding R323 402 383.00, together with further interest and costs, arising from guarantees and suretyships executed by him in favour of Investec as security for the indebtedness of the Michael Family Trust (MFT) and Anchor Park Investments 56 (Pty) Ltd (Anchor Park).

b) His liability arises from a suite of security instruments executed over time, namely: an unlimited suretyship in favour of Investec during March 2010 in respect of MFT's indebtedness; a guarantee and indemnity executed during March 2018 limited to R200 million; a further guarantee and indemnity executed during August 2018 limited to R75 million; a limited suretyship executed during August 2007 limited to R8.8 million; a joint guarantee and indemnity executed in December 2013 by Mr Georgiou and Fourways Precinct (Pty) Ltd, limited to R205 million; and a further suretyship executed in December 2009 in respect of Anchor Park's indebtedness to Investec. Collectively, these instruments constitute the contractual basis upon which

Investec seeks to hold Mr Georgiou liable.

c) The principal indebtedness secured by Mr Georgiou's guarantees arises from a series of loan agreements concluded between MFT and Investec, namely the Deal 44, Deal 46, Deal 47, Deal 48 and Deal 43 loan agreements, concluded between 2016 and 2020 and amended from time to time. In addition, the indebtedness secured by the Anchor suretyship arises from a loan agreement concluded between Anchor Park and Investec during December 2009. Although Mr Georgiou disputes the validity of certain amendments to the MFT loan agreements, those challenges are not supported by cogent evidence and do not, in the papers, constitute a bona fide or sustainable defence. I will deal with this later.

d) Of particular significance is the acknowledgement of debt (AOD) concluded on 23 August 2023 by Mr Georgiou and MFT in favour of Investec. In the AOD, Mr Georgiou and MFT expressly acknowledged that Investec had advanced monies to MFT under the Deal 44, Deal 46, Deal 47 and Deal 48 loan agreements; that Mr Georgiou had executed the relevant guarantees as security for MFT's indebtedness; and that the full indebtedness under those agreements was due, owing and payable to Investec.

e) The AOD recorded the indebtedness, as of 25 July 2023, in the aggregate amount of R327 582 143.42; comprising R160 614 733.84 in respect of Deal 44, R110 147 071.49 in respect of Deal 46, R42 453 595.06 in respect of Deal 47, and R14 366 743.03 in respect of Deal 48, together with legal costs and further interest.

f) Mr Georgiou and MFT undertook to pay at least R100 million by 15 December 2023 and the balance by 31 March 2024. They further acknowledged that MFT was in default of the loan agreements and that Mr Georgiou was liable to Investec pursuant to the guarantees. They also agreed that, in the event of default and failure to remedy same within seven days of written demand, Investec would be entitled to claim immediate payment of the full outstanding indebtedness from Mr Georgiou, together with attorney and client costs.

g) The due date for payment of the initial R100 million instalment was extended on several occasions at Mr Georgiou's request, ultimately to 30 March 2024. Despite these indulgences, neither Mr Georgiou nor MFT paid the R100 million instalment, nor the balance of indebtedness.

- h) On 4 April 2024, Investec's attorneys demanded payment of the full outstanding debt within seven days. Mr Georgiou and MFT did not comply, after which Investec enforced its security rights.
- i) On 17 May 2024, Investec appropriated pledged shares and allocated a value of R63 408 938.86 in reduction of the indebtedness. A further amount of R7 294 637.02, being surplus proceeds from the sale of Erf 1003 Knysna, was apparently likewise applied in reduction of the debt.
- j) After giving credit for these amounts, the outstanding balance of indebtedness under the AOD remained approximately R315 330 339.50, together with further interest, as reflected in the certificate of balance. In addition, MFT remained indebted to Investec in respect of the Deal 43 loan agreement in the sum of R7 390 911.49, for which Mr Georgiou is liable under the guarantees. Mr Georgiou is further indebted in the amount of R681 131.97 in respect of the Anchor suretyship.
- k) Although Mr Georgiou contends that the Deal 43 loan was repaid and that nothing remains owing under the Anchor suretyship, these contentions are unsupported by primary facts and do not raise a genuine dispute.
- l) On the papers, Mr Georgiou's indebtedness to Investec and related creditors is substantial and established prima facie. Investec quantifies Mr Georgiou's liabilities at R478 238 054.90, comprising the outstanding balance under the AOD, the Deal 43 indebtedness, the Anchor suretyship indebtedness, and a further sum of R154 835 671.89 owed by Mr Georgiou to Sawindu 12 (RF) (Pty) Ltd (Security SPV).
- m) In addition, the evidence discloses that Mr Georgiou is indebted to RMB in an amount of R1 billion pursuant to a guarantee executed in July 2018, a liability which Mr Georgiou failed to disclose in his answering affidavit. RMB further alleges, in its intervention application, an additional liability of R2 494 144 108.82 owed by Mr Georgiou to RMB and Investec. These undisclosed liabilities materially undermine the completeness and credibility of Mr Georgiou's financial disclosures.
- n) Mr Georgiou's disclosure of his assets is equally unsatisfactory when he alleges that his assets exceed his liabilities and identifies fixed property, movable assets, and an alleged investment in First Million Development CC (First Million), which he values at R507 million. However, in his own version, his directly owned assets consist only of a Lakeview property in Bloemfontein, valued by him at R8 574 520.00, and movable assets valued at R380 961.00. These valuations are unsupported by sworn evidence.

- o) His principal contention is that his membership interest in First Million has substantial value because First Million holds interests in two properties, namely Black Mountain Resort and Conference Centre and the KFC Building in Bloemfontein. The contention is, at least on the present papers, insufficiently substantiated. The valuation relied upon in respect of Black Mountain is a valuation of the resort property itself and not of Mr Georgiou's actual interest therein. The applicant showed that Mr Georgiou does not own the land or improvements comprising Black Mountain. Those are owned by the State. At best, First Million holds a leasehold interest, the terms and duration of which are not disclosed, and which itself has not been valued.
- p) The valuation accordingly does not establish the value of Mr Georgiou's membership interest in First Million. The KFC Building, although valued at R33 320 000.00 in December 2022, is bonded in the amount of R8 632 000.00. No annual financial statements for First Million were produced, and no reliable basis is laid for Mr Georgiou's assertion that his interest in First Million is worth R507 million.
- q) On the evidence before Court, Mr Georgiou has failed to make full and frank disclosure of his financial position. His liabilities, even on the conservative figures advanced by Investec, substantially exceed his proven assets. Taking into account the liabilities disclosed in the main application and the intervention application and even accepting Mr Georgiou's asset valuations at face value, his liabilities exceed his assets by at least R3 143 360 663.24. The papers accordingly establish, at least prima facie, that Mr Georgiou is factually insolvent. On any proper assessment of the evidence, Investec has established the requisite standing and has made out a prima facie case for the provisional sequestration of Mr Georgiou's estate.
- r) In sum, Investec has established, on a prima facie basis, that Mr Georgiou is indebted to it in substantial amounts arising from various financial facilities and surety obligations, with his total indebtedness exceeding R478 million, while his assets, comprising movable and immovable property, are estimated at approximately R3.7 million, leaving a material shortfall in excess of R474 million. On the papers, his liabilities thus far exceed his assets. Investec maintains that they have shown reason to believe that sequestration will be to the advantage of creditors, as Mr Georgiou's estate includes realisable, movable and immovable assets and warrants investigation by a trustee.
- s) Investec emphasised that this is not a friendly sequestration but arises from arm's-length commercial transactions concluded between Investec and Mr Georgiou,

a businessman who exercised control over his family trust and numerous corporate entities holding extensive property assets, including interests in significant immovable property portfolios. The evidence further suggests that Mr Georgiou does not clearly distinguish between his personal estate and that of his family trust, thereby justifying an investigation by a trustee into the true ownership of assets and the extent to which he may have personally benefitted from the trust and associated companies. In these circumstances, Investec maintains that they have established jurisdictional facts for provisional sequestration, and absent special circumstances to the contrary, a provisional sequestration order is warranted.

[25] It stands undisputed that the monies were advanced by the applicant. Notwithstanding a long history of debt there was not a single dispute of the debt until the answering affidavit. It is crucial to, *inter alia*, quote two letters written and signed by Mr Georgio and addressed to the applicant. This shows beyond any doubt the clear acknowledgement of his debt and his commitment to honour those obligations. I will also depict the affidavit dated 3 November 2025 later that shows his dilemma. This is the 6 December 2023 – letter:

‘WITHOUT PREJUDICE

06 December 2023

Investec Bank Limited

Dear Geeta and Stuart

1. I refer to our recent telephone discussions.
2. I am working feverishly to pay you the 100 million due on the 15th in terms of the Acknowledgment of Debt signed on 1 August 2023.¹⁴
3. There is also however given the time of the year that what I am working on at the moment may not close in time to pay this R100 million. I am certainly not doing nothing. On the contrary I know my commitments and am doing everything humanly possible to honour them. I am involved in many transactions on various levels and in meetings all day every day to try and close on as many of them as is possible. This time of the year is also not ideal for closing deals, Notwithstanding, I am still busy with these deals and hope to close on many of them.
4. I attach a schedule of the transactions I am working on now. Please treat this as highly confidential. I am disclosing it to you to be transparent, frank and I am taking you into my confidence and certainty don't want this information shared with anybody else.

¹⁴ The AOD was signed on 1 and 23 August 2023.

5. If you have regard to the attached schedule, you will see that of the deals I am working on, the first approximate R1.2 billion will go to RMB. This is unfortunately a function of the deal structure we signed with RMB when raising the funding to do the Fourways Mall project, Geeta, I like most of the world. did not anticipate Covid which forced the closure of Fourways three month post opening. Covid had and continues to have an effect on the economy of 8A.

6. Geeta no bank has lost a cent with me and never will and in fact we have assisted Investec on numerous occasions with problem properties Investec has had over the last 37-*year relationship I have had with Investec*. I want the bank to understand I have not been passive and that at present I am not passive.

When I realised, I needed to raise cash I didn't delay. I immediately started selling the MFT /Khumonetix portfolio (a large and extensive portfolio as you know) and the first parcel of R720 million transferred In April this year. As stated, due to the structure of the funding with RMB the total amount covered by the first bonds needs to settle before my equity is released to me to settle my exposure to you on the share cover. Also, and over above these sales we are in the process of refinancing Loch Logan Shopping Centre. This will release a further approximately R300 million of cash. There will then be approximately R700 million of cash which I will utilise to settle you (per the Acknowledgment of Debt) roughly at the end of March 2024 (R250 million if I pay the R100 million due on 15 December 2023 and R350 million If you agree as a precaution to extend this date per my request below). I will also pay out of this R700 million a sum of R75 million to the MFT Bridge Facility (Loan 49); R75 million for RMB (also Bridge Facility on MFT); a further R105 million to Investec (for the share cover on Fourways) and R107 million to RMB (for their share cover also on Fourways). In (an effort to fast-track sales Galetti was mandated to do combination of auction and sealed bid sales which unfortunately has proved to be a failure in that we did not receive any offers close to the true and market values of the properties. I personally have been proactive ever since in order to conclude the sales referred to in the attachment. Had I not waited for the two proposals by both RMB and Investec on a solution (Project Crocodile an Investec proposal and Project Rhino a RMB proposal) which was not accepted by the either bank delays would have been avoided. Be it as it may and as you can see, I intend to continue with my relationship with your bank and given a reasonable amount of time we can revert to doing business for our mutual benefit. *I would at the very least given my relationship with Investec and the length of our relationship hope that in times like this you bring out the umbrella and not a summons*. As I have stated Investec has not and will never lose a cent on me. All I am asking for in case I can't pay you on the 15th is time to do so. I ask for nothing more.

7 If you look at the key to the colour coding on the attached you will have an updated progress report regarding these various sales and at what stage they are at today. I am happy to sit and go through it with you in detail but will summarise for you briefly for ease of reference. The green colour coded cells refer to signed deeds of totalling approximately R712 million of sales for which we have R200million worth of guarantees, cash at conveyancers and proof of funds. (light blue cells). The dark blue cells reflect letters of funding of R160 million for Radisson and R93 million for Ingersol. The orange cells reflect the amount of R52 million approved by the Housing Development Agency which will reflect in our conveyancers account prior to the close of business this year and will be only subject to subsequent transfer. The light grey cells reflect the deeds of sale negotiated and out to purchasers for signature. In many cases there is more than one deed of sale. Please note that I am more than happy to sit with both of you once a week to take you through the schedule as updated and to provide you with progress reports that you may require. I am also happy to work with you and your clients to buy any of the properties I haven't sold yet. There are opportunities for Investec here including to finance the purchasers who may be clients of Investec or may not be. This is clearly to our mutual benefit, and this is how we should work together in our mutual interests.

8. Thus, to ensure that I don't fall foul of the R100 million payment next week and to take into account the risk however small that I may not have R100 million to pay in time, as discussed, I ask that you extend the date of 15 December 2023 (to pay the R100 million) to 30 March 2024.

9. Obviously, interest will continue to run so there is no prejudice to Investec.

10. As I have said I attach in anticipation of your agreeing to extend the date an addendum

11. Remember I am only doing all of this as a precaution and *to avoid falling foul of the commitment in the Acknowledgment of Debt*. Obviously if I can and do pay the R100 million in time the extension will be of no force and effect. It will only be used if I don't come up with the R100 million in time.

12. I look forward to hearing from you urgently.

Kind regards,

MICHAEL GEORGIU

TRUSTEE'

(Accentuation added)

[26] The 26 March 2024 – letter:

'26 March 2024
CONFIDENTIAL

PRIVATE

&

Dear Geeta and Stuart,

PROGRESS REPORT ON SALES PER PARAGRAPH 4 OF YOUR ATTORNEY'S LETTER
DATED 18 JANUARY 2024

1. As I have been discussing with Stuart I have been working extremely hard on putting together a number of deals which cumulatively would have placed me in sufficient funds to settle the *full amount of the Acknowledgment of Debt on due date which on my calculation would be on Tuesday, 2 April 2024, being the first business day after 31 March 2024* (see paragraph 1.2.5).
2. Essentially, I am working on four deals. They are not dependent on each other and are for different assets and they could all close together or at closely connected different times, that's how close I am to concluding them.
3. In the first deal I should receive on Thursday (4 April 2024) from Nashua (per their letter attached hereto) R85 million. As soon as I receive this payment it will go to you. You will note from the attached letter that we should be closing the deal on Tuesday and I am asking you to allow me two more days for the funds to flow.
4. In addition, I am busy finalising agreements which in effect will work as follows:
 - 4.1 for approximately R250 million (or hopefully more), *I have a property investor who will take over the balance of your position on the Acknowledgment of Debt*. This means they will take cession and assignment from you of whatever claims you have under the Acknowledgment of Debt and your security, i.e. all of MFT's shares in Accelerate (roughly 112 million shares) and a surety from MFT;
 - 4.2 this equity investor is keen to develop residential units on some of the properties I directly or indirectly own. They either will do this in a joint venture with me or buy these properties outright from me;
 - 4.3 these property investors are keen and I am busy negotiating and hopefully about to sign agreements with them;
 - 4.4 given the confidentiality involved in this transaction, I can't disclose the identity of this developer (as much as I would like to) as yet, but they certainly have sufficient liquid capital to acquire your position on the Acknowledgment of Debts. I have been satisfied by them of this;
5. The third potential deal I am working on should also realise for me on the sale of my two casinos, R350 million. I attach hereto two draft agreements I have just received from these purchasers. Would you kindly keep the contents strictly confidential as the purchaser is

very sensitive as to me sharing details of this deal with anyone and I am afraid that if it gets out that I have shared this with you, it may put the deal closing at high risk. The purchasers are very keen to close on these agreements, and I am proceeding to do so.

6. There are certain points I wish to make, some of which are obvious and which I would like you to carefully consider and they are the following:

6.1 *I have not been sitting on my hands. I take my obligations very seriously, especially the one to you including the one in the Acknowledgment of Debt;*

6.2 I have been working extremely hard on selling properties (as you are aware) and on a number of other transactions, some of which are recorded above and in closing deals such as the one enclosed;

6.3 deals of this size do not close easily and certainly not overnight;

6.4 the properties I own are not in areas where there are lots of purchasers and where as in a good market I could achieve high prices for them. Notwithstanding, I am selling these properties for the best possible prices I can get. This has not been easy for me. I have given you details of these sales and I have also regularly, as I committed to do, have provided you with my weekly progress reports;

6.5 RMB have recently rejected certain of the values of clearance certificates I have received for certain of my sales and this has delayed the sales. This again was beyond my control, but my conveyancers are dealing with this as quickly as expeditiously as possible and hopefully these accounts will be sorted out soon;

6.6 also, luck is not always on my side. Some people I want to sit down with this week to finalise agreements with I have just learnt are away and of course as I have already stated and you are aware, RMB are challenging values on clearance certificates.

7. I am definitely not running away from or avoiding any of my obligations. As I have told you and as I again will reassure you, Investec will not lose any money on me. *I had and still have every intention to settle the Acknowledgment of Debt in full and for fear of being repetitive, I have been working full time and flat out to do so.*

8. Unfortunately, the Accelerate shares are at a very low value. If you were to sell them you wouldn't raise much in this market. You are well aware that there are plans under way which will ultimately lead to the enhancement of these shares values. It wouldn't be advisable at this time also to foreclose on any other securities. Prices are just not right, not there and we will all lose and we will all be prejudiced.

9. The best outcome for me, MFT and Investec is to afford me a little bit more time within which to close on all the deals I am negotiating. They are close to finalising. Agreements are about to be signed and funds will flow shortly thereafter.

10. I am thus asking for two things:

10.1 that I be given an extension of time to pay the Acknowledgment of Debt in full.

Firstly, I will use the proceeds of the Nashua payment of R85 million to pay to you on Thursday. This is an extension of two days. I am hopeful that I will have the funds by then. These funds are going nowhere else other than to you. If it looks like I won't be paid on Thursday but on Friday I will let you know so I can get a further short extension just to facilitate the payment. Kindly accept my word and my bona fides that this R85million is committed to you;

10.2 an extension of sixty days, i.e. to the end of May 2024 (31 May 2024 to be precise) within which to secure by way of guarantee and to pay to you the balance on the Acknowledgments of Debt.

11. *I have tried and am still trying my hardest to make sure that you are paid in full on the Acknowledgment of Debt.* I am almost there. I just need this extension of time to enable me to close off on all the deals, receive the funds and pay them over to you in settlement of the Acknowledgment of Debt.

12. Interest is running. There is thus no prejudice to Investec in granting me the short extension as they are earning interest on the monies, they do have the same security and given this extension of time they will be paid in full. Certainly, payment in full is in your and my interests. It will happen and I just need the extension requested above to facilitate this. Payment in full is clearly the best outcome for all of us.

13. *I remind you of the good relationship we have enjoyed over many years and the deals we have done together in regard to which you have never lost any monies from me. On the contrary, you have made good monies as I have and for which I am grateful.*

14. Would you please consider my request, call me any time for any meetings you may wish to have to get more details or information and let me have your answer before close of business tomorrow. Apologies for putting you under this pressure but I am sure you will understand.

15. I also apologise for causing you any inconvenience. It certainly isn't intentional. It is and has always been my intention to pay Investec in full and I will do so out of the proceeds of the deals attached if given the short extension of time I have asked for.

Yours faithfully,

pp Michael Georgiou'
(Accentuation added)

[27] On 6 November 2024, Mr Georgio deposed to his answering affidavit. This is where and when the defences were raised. The following was placed into evidence under oath. I quote again:

'I, the undersigned

MICHAEL NICOLAS GEORGIU

do hereby make oath and say that:

1. I am the respondent in this matter. I oppose this application, and depose to this affidavit, in my personal capacity.
2. The facts set out in this affidavit are, unless otherwise stated or the contrary appears from the context, within my personal knowledge and are both true and correct.
3. All legal submissions are made on the advice of my legal representatives, which I believe to be correct.
4. I depose to this affidavit in answer to the founding affidavit deposed to by Geetaben Bhagwandas on behalf of the applicant, Investec Bank Limited ("Investec").
5. This affidavit consists of the following nine parts:
 - 5.1 First, I provide an introduction and overview of Investec's defective case.
 - 5.2 Second, I raise a point in limine concerning Investec's failure to comply with Rule 41A(2)(a) of the Uniform Rules by serving a notice indicating whether it agrees to or opposes referral of the dispute to mediation.
 - 5.3 Third, I demonstrate that Investec has not established a liquidated claim against me.
 - 5.4 Fourth, I show that I am not insolvent.
 - 5.5 Fifth, I explain that Investec has failed to establish any reason to believe that it will be to the advantage of creditors for my estate to be sequestrated.
 - 5.6 Sixth, I set out why, in any event and to the extent necessary, this Court should exercise its discretion not to sequester my estate.
 - 5.7 Seventh, I establish that this application is an abuse.
 - 5.8 Eighth, to the extent necessary, I apply for condonation for the late filing of this answering affidavit and for the postponement of this matter.
 - 5.9 Ninth, I answer, on a paragraph-by-paragraph basis, those allegations in Investec's founding affidavit that require a response.'

[28] Investec maintains that it is the case of Mr Georgio that he can pay all his yet unidentified creditors with his yet unidentified assets. Contrary to this it is not in dispute that there is no full and frank disclosure by Mr Georgio of his debtors and assets. His answering affidavit is a hundred-and-eighty-degree turnaround on the letters and causes confusion in his version. In his answering affidavit he maintained that:

'107. It follows that Investec has failed to establish that I have any liabilities, let alone establish the quantum of such liabilities.

108. In any event, out of an abundance of caution, I explain below that I have substantial assets which exceed the aggregate liabilities of R478,238,054.90 which Investec baldly asserts I have incurred.

109. This illuminates the application's hopeless and abusive nature. As conceded by Investec in its founding affidavit, it knows that I am a "well-known businessman" who "controls (directly and indirectly) a vast empire of property assets worth billions of rands". Yet, based on pure speculation, Investec instituted, and continues to prosecute, this application in an abusive attempt to pressure me to make payment to it in respect of debts I do not owe.' (Accentuation added.)

[29] The respondent admitted unequivocally in his letters to Investec that he is unable to pay his debt as per the AOD. However, as at the institution of these proceedings, he had failed to honour the debt. The difficulty with the respondent's case is that his asserted solvency is not supported by cogent and reliable evidence. His valuations are unsupported by sworn expert evidence, outdated, or relating to assets not directly owned by him personally. In particular, the respondent relies heavily on the purported value of interests held through juristic entities without placing before the Court a full and reliable account of the value and liquidity of his personal estate.

[30] The respondent's failure to make full and frank disclosure of his financial position is material. A debtor who seeks to resist sequestration on the basis of solvency must place before the court a complete and candid account of his assets and liabilities (*uberrima fides*). That has not occurred in the present matter. The clear inconsistency between the content of the letters and the answering affidavit is a matter of serious concern, calling into question both the bona fides and the reasonableness of the defence.

Some Further Principles on the Law of Insolvency

[31] The court is entitled, in assessing insolvency, to draw inferences from the respondent's conduct, including his failure to discharge substantial admitted obligations, his non-compliance with the acknowledgment of debt, and his failure to provide a transparent and satisfactory account of his estate.

[32] On the papers before this Court, the applicant has established, at the very least, a prima facie case that the respondent is insolvent within the meaning of s 10(b) of the Insolvency Act. Under s 10,¹⁵ a Court may grant an order to provisionally sequester a debtor's estate if it is prima facie (at first glance) convinced of the following:

- a) Established Claim: The petitioning creditor has a valid liquidated claim against the debtor for at least R100.00 (or R200.00 if two or more creditors join together), as defined in s 9(1).
- b) Act of Insolvency: The debtor has either committed an act of insolvency or is factually insolvent.
- c) Advantage to Creditors: There is a reasonable belief that sequestrating the estate will be to the advantage of the creditors.

[33] At the provisional stage the applicants are not required to prove their case on a balance of probabilities. They need only establish a prima facie case for the relief sought. Where the facts set out by the applicants, together with those admitted by the respondent, justify such relief, and the respondent has not demonstrated that the applicants' claims are disputed on bona fide and reasonable grounds, a provisional order may be issued.

[34] It is trite that provisional sequestration proceedings are not designed to resolve genuine disputes of indebtedness. Equally so, provisional sequestration cannot be avoided merely by raising technical or contrived disputes where the evidence discloses substantial indebtedness and insolvency on a prima facie basis. I turn now to the defences.

The Respondent's Defences

¹⁵ Section 10 is conjunctive. It provides:

'10. Provisional sequestration. —If the court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that prima facie—

- (a) the petitioning creditor has established against the debtor a claim such as is mentioned in subsection (1) of section nine; and
- (b) the debtor has committed an act of insolvency or is insolvent; and
- (c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated, it may make an order sequestrating the estate of the debtor provisionally.'

The Liquidated Claim

[35] At the provisional stage of a compulsory sequestration application, the applicant is not required to prove its claim with mathematical exactitude or to establish the indebtedness down to the last cent. What is required is proof, on a prima facie basis, of a liquidated claim of the kind contemplated in s 9(1)¹⁶ of the Act. The enquiry at this stage is not whether the applicant has finally and exhaustively proved every cent of its claim, but whether it has shown, at first sight and on the papers, that it is a creditor with a fixed and ascertainable claim against the respondent exceeding the statutory threshold.

[36] A 'liquidated claim' for purposes of s 9(1) is one that is fixed, determined or readily ascertainable in amount, and which is due and payable. The claim must be sufficiently certain to permit the Court to conclude, prima facie, that the applicant is a creditor in a liquidated sum. This does not require proof of exactitude to the last cent. 'The fact that a portion of an applicant's claim against respondent is in dispute is no answer to the applicant's application for respondent's sequestration, as long as the undisputed portion is more than R100.00. It cannot be said that a creditor cannot enforce a due and payable debt by way of sequestration proceedings.'¹⁷

[37] It is sufficient if the claim is clearly established in substance by the founding papers and supporting documentation, such as the underlying agreements, certificates of balance, statements of account, or other admissible proof demonstrating the cause, nature and approximate quantum of indebtedness.

[38] Investec issued and filed certificates of balance. In insolvency proceedings, such certificates provided by a bank are typically accepted as admissible evidence and serve as prima facie proof of the outstanding amount. They are sufficient to substantiate the creditor's claim unless the debtor presents credible evidence to

¹⁶ Section 9 provides: 'Petition for sequestration of estate. —

(1) A creditor (or his agent) who has a liquidated claim for not less than fifty pounds, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than one hundred pounds 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.

[Sub-s. (1) amended by s. 6 (a) of Act No. 16 of 1943.]

(2) A liquidated claim which has accrued but which is not yet due on the date of hearing of the petition, shall be reckoned as a liquidated claim for the purposes of subsection (1).'

¹⁷ *Laeveldse Koöperasie Bpk v Joubert* 1980 (3) 1117 (T) at p1118.

challenge it before the Court. While the evidentiary value of these certificates is significant, it is not regarded as conclusive. The certificates assist in establishing proof but do not preclude the possibility of dispute or rebuttal. The Court will consider them accordingly.

[39] Section 9(1) prescribes only a modest jurisdictional threshold: a single creditor must establish a liquidated claim of not less than R100, and two or more creditors must in aggregate establish liquidated claims of not less than R200. Although the statutory minimum is slight, the jurisdictional fact remains essential. Once that threshold is crossed, however, the true enquiry is whether the applicant has shown, *prima facie*, a liquidated claim sufficient to found sequestration proceedings. The standard is thus deliberately lower than that required for a final order under s 12.

[40] Absent a bona fide dispute on reasonable grounds, minor disputes concerning the precise quantification of the claim, or objections directed at the exact rand-and-cents calculation, will not avail the debtor at the provisional stage. The final proof and ranking of claims against the insolvent estate is a matter for the subsequent insolvency process, including proof before the trustee and at meetings of creditors, and not for definitive determination at the provisional stage.

The Alleged Infringement of Constitutional Rights

[41] In paragraph 5 of their heads of argument dated 30 April 2025 and during oral argument the respondent contends that provisional sequestration is an extraordinary and invasive remedy which ought not to be employed as a substitute for ordinary debt enforcement, particularly where the underlying indebtedness is genuinely disputed. Reliance is placed on the settled principle that sequestration is not an ordinary judgment sounding in money, but a remedy with far-reaching consequences: it creates a *concursum creditorum*, divests the debtor of control over his estate, affects the rights of all creditors, and imposes legal disabilities upon the debtor. For that reason, the respondent submits, sequestration proceedings are inappropriate where the existence, enforceability, or quantum of the alleged debt

remains in bona fide dispute.

[42] Ponnan JA¹⁸ confirmed that:

‘An order of sequestration is not an ordinary judgment of the court, but is rather a species of arrest or execution, affecting not only the rights of the two litigants but also third parties, and involves the distribution of the insolvent’s property to various creditors, while restricting those creditors’ ordinary remedies and imposing disabilities on the insolvent (*Hassan v Berrange* 2012 (6) SA 329 (SCA)).’

[43] In this regard, the respondent invoked the long-established *Badenhorst*-rule,¹⁹ namely that insolvency proceedings may not be used as a means of enforcing payment of a debt which the applicant knows to be disputed on genuine and reasonable grounds. The respondent submits that the applicants seek to do precisely what the Badenhorst rule prohibits, namely, to invoke sequestration proceedings as a mechanism to compel payment of debts which are disputed and have not been established in ordinary proceedings. On that basis, the respondent contends that his constitutional rights are infringed.

[44] Ponnan JA²⁰ proceeded to state that the word ‘insolvent’ must be taken to mean that the liabilities of his debt, fairly estimated, exceed the value of his assets, fairly valued. This was the definition applied by Wessels J in *Ohlsson's Cape Breweries Ltd v Totten* 1911 TPD 48 at 50. Actual insolvency needs to be distinguished from commercial insolvency. Actual insolvency is where a debtor’s liabilities exceed his assets, whereas commercial insolvency is where a debtor is unable to pay his debts (due by way of example to a temporary cash flow problem), but his assets do indeed exceed his liabilities. The fact that someone is unable to pay his debts or that his assets exceed his liabilities may mean that he is factually insolvent, but that does not mean that he is insolvent for legal purposes. *Legally a person is only insolvent if his estate has been sequestrated by an order of court.*

[45] On the facts, the respondent contends that the claims advanced by the

¹⁸ Footnote 3 at 2.

¹⁹ Established in *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T).

²⁰ Footnote 3 at 1.

applicants are the subject of a real and substantive dispute. He denies that he is indebted to the applicants in the amounts alleged, and further disputes that the alleged debts are due, owing, and payable. The respondent accordingly submits that the indebtedness relied upon by the applicants is disputed on bona fide and reasonable grounds, with the result that the application falls to be dismissed in accordance with the *Badenhorst* rule.

[46] To reiterate, the evidence shows that the respondent's reliance on the value of First Million is misplaced. The valuation relied upon relates to underlying properties, including a leasehold interest, and not to the respondent's actual member's interest. No reliable financial statements or valuation of the respondent's actual interest have been provided. Moreover, material liabilities, including substantial indebtedness to other creditors, were not disclosed in the answering affidavit. The respondent has therefore failed to present a full and frank account of his financial position. As held in *De Waard*, the failure to pay debts is a strong indicator of insolvency. Similarly, in *Rhebokskloof* it was recognised that insolvency may be established inferentially. The respondent has failed to pay substantial debts despite demand and formal undertakings to do so. On the totality of the evidence, both direct and inferential, factually and commercially, the applicant has established, at the very least, a prima facie case, for provisional sequestration. The respondent has failed to establish any infringement of his constitutional rights.

Procedural Unfairness

[47] Advocate Sive on behalf of the respondent filed supplementary heads of argument on 14 July 2025, and during oral argument, strongly promoted several defences. The first argument is that Investec's case is said to be procedurally defective because it departs from its pleaded case. A central theme is that Investec's sequestration case is attacked not only on the merits, but at the level of pleading. The respondent repeatedly contends that Investec seeks to advance a materially different case in reply and in argument from the one pleaded in its founding affidavit. The respondent's position is that Investec must stand or fall by its founding papers and may not cure defects by introducing new factual allegations in reply. This theme is

framed as one of procedural fairness, prejudice, and legal certainty in motion proceedings.

[48] The criticism is difficult to sustain in light of the respondent's own conduct in the litigation. The respondent's criticism is misplaced. Earlier in this judgment I dealt with the unusual course of litigation adopted by the parties. They are, in material respects, the architects of the procedure they themselves fashioned. As indicated above, I am unable to discern any prejudice occasioned to any party by that process, nor was any such prejudice alleged at the time.

[49] The respondent seeks to justify the filing of the further affidavit on the basis that Investec purportedly advanced a 'new case' in reply. That contention is without substance. The respondent does not identify, with any particularity, which portions of the replying affidavit are said to constitute a new case. The allegation is thus left at the level of generality and is unsupported by proper substantiation. In any event, the greater part of the further affidavit is directed at the issue of prescription, a defence raised by the respondent for the first time in the answering affidavit. In those circumstances, the filing of further material directed at that issue can scarcely be impugned on the basis now advanced.

[50] Nevertheless, the dictum by Rampai J in the case of *Louw v Grobler and Another*²¹ is the universal compass in cases in which court orders, rules and process are abused, manipulated and not observed.

'[18] The purpose of the uniform court rules is to regulate the litigation process, procedures and the exchange of pleadings. The entire process of litigation has to be driven according to the rules. The rules set the parameters within (sic) the course of litigation has to proceed. The rules of engagement, must, therefore, be obeyed by the litigants. However, dogmatically rigid adherence to the uniform court rules is as distasteful as their flagrant disregard or violation. Dogmatic adherence, just like flagrant violation, defeats the purpose for which the court rules were made. The prime purpose of the court rules is to oil the wheels of justice in order to expedite the resolution of disputes. Quibbling about trivial deviations from the court rules retards instead of enhancing the civil justice system. The court rules are not an end in themselves.'

²¹ *Louw v Grobler and Another* (3074/2016) [2016] ZAFSHC 206 (15 December 2016).

[51] Compounding matters, Mr Georgio filed an affidavit as late as 3 November 2025 and disclosed extensive new information. It also perpetuates his defence as a victim of the banks' onslaught but confirms his factual insolvency. The late disclosure of this information is a matter of serious concern. He disclosed the following in summary:

a) The respondent filed a further affidavit in which he disclosed two additional proceedings that, on legal advice, could arguably be regarded as contingent or prospective claims relevant to the question of factual insolvency. He nevertheless maintained that both claims are fundamentally disputed, devoid of merit, and have no material bearing on his solvency. The affidavit was said to have been filed out of an abundance of caution and in the interests of candour to the Court.

b) The first matter concerns proceedings instituted by Mr Mahomed Farook Bana. The respondent explained that Mr Bana had previously launched a provisional sequestration application against him, which was dismissed in *Bana v Georgiou* (3759/2023) [2024] ZAFSHC 171. In that judgment, this Court held that the acknowledgement of debt relied upon by Mr Bana constituted a credit agreement under the National Credit Act 34 of 2005 and was unlawful and void because Mr Bana was not a registered credit provider. Leave to appeal was subsequently refused in *Bana v Georgiou* (3759/2023) [2024] ZAFSHC 336.

c) The respondent stated that, notwithstanding those findings, Mr Bana thereafter instituted action proceedings under case number 5289/2024 based on alleged oral agreements concluded during 2021 and 2022. The respondent disputes the existence of those agreements and has raised a special plea of prescription. He contended that the claim has no, alternatively extremely weak, prospects of success and that, in any event, the amount claimed is immaterial relative to the value of his assets and does not affect his solvency.

d) The second matter concerns proceedings in the Gauteng Division, Pretoria, under case number 2019/93417, in which the respondent is cited together with numerous other respondents. The applicants in that matter seek, *inter alia*, leave to institute derivative and class actions and declaratory relief relating to alleged investor losses said to amount to billions of rands. The respondent characterised those allegations as unfounded and devoid of merit. He further contended that any

underlying claims would in any event have prescribed by December 2019 and emphasised that no actionable claim has yet been instituted against him personally. He stated that interlocutory relief sought by the applicants had thus far been unsuccessful and that the applicants themselves had indicated that the litigation would effectively terminate should leave to appeal against a costs order not be granted. The respondent accordingly denied that the proceedings constitute any determinable contingent liability affecting his solvency.

e) The respondent explained that he had not previously disclosed these proceedings because he did not regard them as liabilities relevant to the present application. He stated, however, that during the hearing of the matter criticism was levelled at him for allegedly failing to disclose all liabilities, which prompted him, on legal advice, to place the matters before the Court out of caution and in the interests of transparency.

f) The respondent further attributed the late filing of the affidavit to what he described as an extensive and coordinated litigation campaign instituted by the applicants, RMB and Investec, against him and various entities associated with him, including MFT, Azrapart, Macrospac, FWP, Loch Logan Waterfront (Pty) Ltd,²² and the Karmel Trust. He referred to numerous pending sequestration, liquidation, business rescue, interdict and enforcement proceedings across several courts, many involving voluminous records extending to thousands of pages.

g) In this regard, the respondent furnished a chronology of several ongoing matters, including: the Investec enforcement proceedings against MFT; the Azrapart business rescue litigation extending to the Constitutional Court and Supreme Court of Appeal; liquidation proceedings involving Macrospac²³ and FWP; sequestration proceedings against MFT; urgent interdict proceedings involving LLW, MFT and the Karmel Trust; and liquidation proceedings concerning Khumonetix.²⁴ The respondent stated that the cumulative effect of these simultaneous proceedings required urgent and overlapping responses, resulting in what he termed unavoidable 'triage' in the management of litigation and delays in filing certain papers.

h) The respondent denied that the delay in filing the affidavit was tactical or

²² From the judgment provided by Cilliers AJ Fourways Precinct Proprietary limited was placed under provisional liquidation on 2 August 2025 (case 5901/2024).

²³ Macrospac Trading Proprietary Limited (Case No. 2025-008682) was placed under provisional liquidation on 3 November 2025.

²⁴ Khumonetix (Case No. 7114/2024) was placed under provisional liquidation on 12 June 2025.

dilatory. He contended that the volume and pace of the litigation placed him and the related entities under exceptional pressure and created an objectively overwhelming litigation timetable. He further invoked the principle of equality of arms and the right to a fair hearing under section 34 of the Constitution, contending that fairness required that he be permitted to place the contents of the affidavit before the Court.

i) The respondent accordingly sought condonation for the late filing of the further affidavit and submitted that the applicants would suffer no prejudice, particularly as the matter was still to be heard during the week of 3 November 2025 and the applicants remained free to file a replying affidavit should they be so advised. He ultimately persisted in seeking the dismissal of the application with costs, including the costs of three counsel where employed.

Prescription

[52] Prescription constitutes the respondent's principal substantive defence. The dominant theme of the respondent's case is that Investec's claim, insofar as it is founded on the MFT's indebtedness, has prescribed and is therefore extinguished. In the heads of argument, the respondent emphasises the doctrine of extinctive prescription as a rule of substantive law intended to promote finality, certainty, and fairness by preventing the litigation of stale claims. The respondent contends that the MFT debt became due in May 2020, that prescription commenced running at that stage, and that, unless validly interrupted before May 2023, the debt became extinguished. Prescription is accordingly advanced not as a technical defence, but as a complete answer to the indebtedness upon which the sequestration application is founded. Counsel for the applicant disputed these contentions and dealt comprehensively with the relevant dates during oral argument. His submissions in this regard are supported by the facts. The debt did not prescribe.

[53] Prima facie, Mr Georgiou remains indebted in an amount exceeding R100. Even on the respondent's own approach to prescription, he fails to engage with the residual capital amounts due under the various loan agreements. These amounts became payable between November 2020 and August 2021 and had therefore not prescribed by the time the AOD was executed in August 2023. Significantly, the respondent does not contend that these capital amounts have prescribed. This omission is fatal to the prescription defence. At the very least, substantial

indebtedness remains due and payable.

[54] A central feature of the further affidavit is the respondent's attempt to characterise the mortgage bond as limited and transaction-specific. That contention is incorrect. The bond was registered in March 2011, several years before the Deal 43 Loan Agreement, and is framed as a continuing covering security for all present and future indebtedness. The underlying loan agreements and their standard terms reinforce this position by expressly providing that the bond secures all obligations owed by the trust to Investec, from whatsoever cause arising. The respondent's attempt to confine the bond to a single facility is inconsistent with the documentary evidence and cannot be sustained. Furthermore, the failure to disclose the bond in the answering affidavit, coupled with the subsequent attempt to minimise its significance, materially undermines the respondent's bona fides.

[55] The respondent's principal analytical premise is that none of the conduct relied upon by Investec constituted a legally effective acknowledgment of liability for purposes of s 14(1) of the Prescription Act. The respondent examines each alleged act of acknowledgment, including letters, emails, telephone discussions, negotiations, silence, and the term loan facility, and contends that none satisfies the legal requirements necessary to interrupt prescription. The recurring submission is that the communications do not amount to an admission that: (a) the debt existed; (b) the debtor was liable; and (c) the indebtedness was accepted without reservation. According to the respondent, the communications merely reflect commercial negotiations, restructuring attempts, or logistical engagement, rather than an unequivocal acknowledgment of subsisting liability.

[56] The respondent further seeks to distinguish commercial negotiation from legal admission. A recurring theme in the respondent's case is that proposals to pay, requests for extensions, engagement with amended facilities, and restructuring discussions were undertaken for commercial reasons and cannot be equated with admissions of legal liability. Particular emphasis is placed on the letter dated 10 December 2020, in which the respondent purportedly reserved his rights and declined to engage with the merits of the breach notice. The communications are

accordingly characterised by the respondent as commercially pragmatic, but legally non-committal.

[57] The argument lacks merit. The correspondence referred to above, together with the formal AOD, constitutes clear and unambiguous acknowledgments of the indebtedness, the amount due, and the due date for payment. A document framed in the context of negotiation may nevertheless amount to a legal admission where, properly construed, it contains a clear acknowledgment of indebtedness, no genuine dispute as to liability, and an undertaking to pay. Conversely, a proposal to compromise does not amount to an admission merely because payment is offered. The enquiry is therefore substantive: whether the communication constituted an attempt to compromise a disputed claim, or whether it amounted to an unequivocal acknowledgment of liability expressed in commercial language. In the present matter, Mr Georgiou admitted the indebtedness and sought to make arrangements for payment.

[58] As already indicated, even on the respondent's own approach to prescription, he fails to engage with the residual capital amounts due under the various loan agreements. This omission is fatal to the prescription defence. At a minimum, substantial residual indebtedness remains due and payable.

[59] The defence of prescription is without merit. The debts had not prescribed at the time the AOD was executed, alternatively they are subject to a 30-year prescription period by virtue of the mortgage bond security. In addition, prescription was interrupted by acknowledgments of liability.

Authority

[60] The respondent further contends that he lacked authority to bind the trust unilaterally. The argument advanced is that, even if the communications could be construed as acknowledgments of liability, they were legally ineffective because the respondent lacked authority to bind the Michael Family Trust acting alone. The respondent submits that the trust could act only through properly authorised trustees in accordance with the trust deed, and that Investec was aware of this limitation. The

respondent accordingly contends that no statement made by him personally, or by attorneys allegedly acting on behalf of the trust, could constitute a valid acknowledgment by the MFT absent proper authority from the co-trustees.

[61] The respondent's contention that he lacked authority to bind the trust is contradicted by resolutions signed by all trustees authorising him to act. His professed inability to recall signing key documents is similarly untenable, particularly in light of his confirmation in related proceedings that the signatures appearing on the documents are indeed his. These contradictions are not peripheral. They point to evasiveness and a lack of candour.²⁵

Further Issues

[62] The respondent's reliance on Investec's monthly statements is misplaced. Properly construed, the statements confirm the implementation of the amended loan facilities and demonstrate that the debts could not have prescribed prior to the execution of the AOD.

[63] The respondent's reliance on non-variation clauses to suggest that earlier security was extinguished is misconceived. No written agreement evidencing the cancellation or replacement of the existing security has been produced. To the contrary, the agreements expressly provide for cumulative security.

²⁵ See heads of argument by the applicant dated 23 April 2025:

- '36. Michael Georgiou states that Investec is aware that he alone is not authorised to represent MFT and that he cannot alone bind MFT because he requires the consent of the other two trustees of MFT to act on its behalf (Further Affidavit: para 93, page 1370).
- 37. This allegation cannot pass muster in light of the fact that Michael Georgiou is authorised in terms of resolutions, signed by all the trustees of MFT, to act on behalf of MFT (Response: para 66, page 1432).
- 38. Michael Georgiou states that he does not recall signing the Term Loan Facility on behalf of MFT ("RA40": page 1151 to 1227; Further Affidavit: para 111, page 1376). However, in a further affidavit filed in the application issued by Investec in this Court against MFT (under case number 5357/2024), Michael Georgiou confirms that the signature on the Term Loan Facility is his signature ("FAA8": page 1497; Response: para 79 to 80, page 1434).
- 39. This is also corroborated by the resolution of MFT ("RA41": page 1128 to 1133), which was signed by Michael Georgiou on 10 December 2021 and the other two trustees of MFT on 11 December 2021, and the resolution of FWP ("RA42": page 1234 to 1339), which was signed by Michael Georgiou on 10 December 2021 (Response: para 81, page 1434 to 1435).
- 40. The signed Term Loan Facility and resolutions and related documents were provided to ENS by Glynn Marais ("FAA9": page 1498 to 1499; Response: para 83, page 1435).
- 41. There is accordingly force in Investec's allegation that the "pretence by [Michael Georgiou] that he cannot remember signing the documents . . . is false and dishonest" (Response: para 84, page 1435). This too, speaks volumes to the mala fides of Michael Georgiou.'

[64] The contention that Investec failed to comply with rule 41A is factually incorrect and legally unsustainable. The requisite notice was served and, in any event, mediation cannot be compelled. During oral argument, this point was not persisted with and was effectively conceded by the respondent.

[65] The argument that the various guarantees superseded one another is contradicted by their express terms, which provide that they operate cumulatively. Furthermore, the AOD is valid and enforceable, the service of the relevant papers complied with the applicable rules, and the National Credit Act 34 of 2005 does not apply to these transactions, which concern large agreements concluded with a juristic person. In the circumstances, there is no abuse in invoking sequestration proceedings where the statutory requirements have been satisfied.

Advantage to Creditors

[66] The respondent contends that sequestration is unnecessary because he is able to sell assets and negotiate with creditors. This contention is unsupported by any meaningful detail. No assets are specifically identified for sale, nor are any concrete proposals advanced. By contrast, the appointment of a trustee would facilitate the proper investigation, preservation, and realisation of assets. The requirement of advantage to creditors is satisfied where there exists a reasonable prospect of some pecuniary benefit to creditors.

[67] In *Stratford v Investec Bank Ltd*,²⁶ the Constitutional Court emphasised that this requirement must be applied broadly. The Court held that the concept of ‘advantage’ should not be rigidly construed. A test predicated solely upon the quantum of the pecuniary benefit likely to accrue to creditors may produce anomalous results. It may, for example, lead to the untenable situation where a debtor possessed of a substantial estate, but burdened by extensive liabilities, becomes effectively immune from sequestration merely because it cannot be demonstrated that the grant of a sequestration order will yield a not-negligible dividend to creditors. The correct approach is for the court to exercise its discretion in

²⁶ *Stratford and Others v Investec Bank Ltd and Others* [2014] ZACC 38; 2015 (3) SA 1 (CC) paras 43-46.

light of the principles articulated in Friedman,²⁷ including whether sequestration may yield some payment to creditors as a body, whether there exists a substantial estate from which creditors cannot otherwise obtain payment, or whether some pecuniary benefit may result for creditors.

[68] The respondent possesses assets and commercial interests capable of being realised by a trustee. In addition, there is reason to believe that a proper investigation may reveal further assets.

[69] Sequestration will also ensure an orderly and equitable distribution amongst creditors. There is accordingly a reasonable prospect of advantage to creditors. The statutory requirement is therefore satisfied.

Discretion

[70] Once the jurisdictional requirements for sequestration have been established, the court's discretion is limited. As held in *FirstRand Bank Ltd v Evans*,²⁸ a court should ordinarily grant a provisional sequestration order unless special circumstances are shown to exist. The respondent has failed to establish any exceptional circumstances. The defences advanced lack genuine merit. His assertion that he may, at some future stage, realise assets to satisfy creditors does not constitute a basis upon which sequestration should be refused. The avalanche of litigation on his inability to meet his debt shows that the absence of a collective process, caused creditors to resort to individual enforcement, resulting in a disorderly 'race to execution' in which the most expedient or powerful creditors might be disproportionately advantaged. A structured system of distribution in accordance with the insolvency law will establish priorities and order.

Conclusion

[71] The applicant has established a liquidated claim, prima facie insolvency, and advantage to creditors. The respondent has failed to raise a bona fide and

²⁷ *Meskin & Co v Friedman* 1948 (2) SA 555 (W) (Friedman) at 559. Also see *Meskin et al Insolvency Law Service* Issue 42 (2014) at 2.4.1.

²⁸ *First Rand Bank Ltd v Evans* (4229/10) [2011] ZAKZDHC 21; 2011 (4) SA 597 (KZD) (18 March 2011).

reasonable defence. In the circumstances, a provisional sequestration order is warranted.

[72] In light of the conclusion reached in respect of the main application, and having regard to the fact that RMB seeks, *inter alia*, an order placing Mr Georgiou's estate under provisional sequestration in the event that Investec's application does not proceed or is unsuccessful, it is unnecessary, for present purposes, to determine the intervening creditor's application.

Order

[73] Accordingly, I make the following order:

1 The estate of Michael Nicolas Georgiou (identity number: 700[...]) is placed under provisional sequestration and handed over to the Master of the High Court, Bloemfontein.

2 A *rule nisi* is hereby issued, calling upon all interested parties, if any, to appear before this Honourable Court on 10 September 2026 at 09h30 to show cause why:

2.3 A final sequestration order should not be granted; and

2.4 the costs of the applications should not be costs in the sequestration of the respondent's estate.

3 The applicant and the intervening creditor are directed to cause service of this order as required by s 11 of the Insolvency Act 24 of 1936 (as amended) on:

3.1 Every registered trade union that, as far as the applicants can reasonably ascertain, represents any of the employees of the respondent;

3.2 the respondent's employees, if any, by affixing a copy of the order to any notice board to which the employees may have access inside the premises of the respondent, or, if there is no access to the premises of the respondent, by affixing a copy of this order to the front gate of the premises and in the event of there not being a front gate to the premises, by affixing a copy of this order to the front door of the premises from which the respondent conducts his business;

3.3 the South African Revenue Service; and

3.4 the respondent.

4 The applicant and the intervening creditor are directed to cause this order to

be published in one (1) edition of the Citizen Newspaper and the Government Gazette.

5 The costs of both applications shall be the costs in the administration of the insolvent estate of the respondent.

M OPPERMAN
JUDGE OF THE HIGH COURT

Appearances

For the applicant & intervening creditor:

Instructed by:

J E Smith SC with P G Louw
Edward Nathan Sonnenbergs Inc.,
Johannesburg
c/o Phatshoane Henny Attorneys,
Bloemfontein

For the respondent:

Instructed by:

S Symon SC with D Sive
Fluxmans Inc.,
Johannesburg
c/o EGCM Attorneys,
Bloemfontein.