REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT

JOHANNESBURG

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

23/1/2012 .....

B20 In the ex parte application of: **CASE NO: 12/24688**

SHMUKLER-TSHIKO, MARK **1st Applicant**

SHMUKLER-TSHIKO, EMMA **2nd Applicant**

B40 In the matter between: **CASE NO: 12/15390**

DEYZEL, TAMMY-LEIGH **Applicant**

and

VAN VUUREN, PETRUS JACOBUS **1st Respondent**

VAN VUUREN, MAGDA **2nd Respondent**

B43 In the matter between: **CASE NO: 12/21525**

MCCOURT, INGRID **Applicant**

and

MOODLEY, MERGANATHAN **1st Respondent**

MOODLEY, SORAYAKANTHE **2nd Respondent**

B45 In the ex parte application of: **CASE NO: 12/22373**

NIENABER, HENDRIETTA **1st Applicant**

NIENABER, LOUIS ARTHUR **2nd Applicant**

B49 In the ex parte application of:	**CASE NO: 12/24325**
VAN ZYL, LEE-ANNE	**Applicant**
B50 In the ex parte application of:	**CASE NO: 12/24326**
JACOBS, CATHARINA CORNELIA.	**Applicant**
B52 In the ex parte application of:	**CASE NO: 12/24328**
NIEUWOUDT, LILANI	**Applicant**
B53 In the ex parte application of:	**CASE NO: 12/24329**
JANTJIES, PUMEZA	**Applicant**
B54 In the ex parte application of:	**CASE NO: 12/24330**
MGIJIMA, NOMPUMELELO	**Applicant**
B55 In the ex parte application of:	**CASE NO: 12/24331**
MARISHANE, TAOLE FAITH	**Applicant**
B56 In the ex parte application of:	**CASE NO: 12/24332**
DU TOIT, JACOB JOHANNES	**Applicant**
B57 In the ex parte application of:	**CASE NO: 12/24333**
DU TOIT, PHILLIPA JANE	**Applicant**
B58 In the ex parte application of:	**CASE NO: 12/24334**
HALIM, ZANE MERVYN	**1st Applicant**
HALIM, MILLY-JO GRECIAN	**2nd Applicant**
B59 In the ex parte application of:	**CASE NO: 12/25184**
LABUSCHAGNE, GIDEON CHRISTOFFEL JACOBUS	**1st Applicant**
LABUSCHAGNE, ERIKA	**2nd Applicant**

Neutral citation: *Ex parte Mark Shmukler-Tshiko and Emma Shmukler-Tshiko and 13 other cases* 2012 SA (GSJ)

Coram: SATCHWELL J

Heard: Motion Court of 10th – 13th July 2012 and 23rd July 2012

Delivered: 26th October 2012

Summary: Dishonesty in and abuse of insolvency proceedings places a burden on creditors, their shareholders, taxpayers and the general South African economy; where legal representatives realize that collusive or unfounded applications may be dismissed, they should not fail to appear in court in the expectation that the matter will be "struck off the roll" – it will be dealt with on the merits.

Summary: Where costs of sequestration are in amounts that exceed the alleged shortfall between assets and liabilities – firstly such costs simply increase the quantum of insolvency to no useful purpose; secondly, such costs reduces the amount available for distribution amongst creditors; thirdly, such costs advantage administrators rather than creditors.

Summary: When offered the opportunity to furnish some proof of quantum of assets and liabilities applicants frequently are unable so to do making it clear that affidavits were drafted without real knowledge of the applicant's financial affairs; undated schedules prepared by debt counselors containing the names of creditors and quantum of balances at unknown dates are of no corroborative value for purposes of determining whether or not there will be an amount available for distribution to concurrent creditors sufficient to justify sequestration.

JUDGMENT

SATCHWELL J:

INTRODUCTION

[1] Since 2008 the economies of the world have been faltering and, in some cases, stalling and in certain sectors there has been partial or almost total collapse. The South African economy has not been immune from these economic crises. One day in the insolvency Motion Court in the South Gauteng Division of the High Court indicates the extent to which South African consumers and their legal representatives are doing their best to further exacerbate this. On 10th July 2012, during the recess, there were 398 unopposed applications on the court roll plus a further 21 applications. Of these, approximately 30 were applications for provisional or final sequestration or applications for surrender of an insolvent estate.

[2] The range of dishonesty and abuse of both the Insolvency Act and the court process has ceased to surprise me since this is encountered every day in the insolvency Motion Court. However, it is worth reminding consumers and bankers, creditors and debtors, legal representatives and the courts of the lengths to which individuals can and will go in order to evade the personal consequences of their indebtedness and to pass on such burden to their creditors including shareholders, taxpayers and the general South African economy.

[3] Applicants have prepared their affidavits in accordance with an accepted and standard format utilized in the South Gauteng Division. Regrettably, that format fails to set out the calculations which are of value to a presiding judge exercising his/her discretion in terms of the Insolvency Act such as the total alleged shortfall between assets and liabilities and the total administration costs.

[4] It is interesting to note that in a number of matters the applicants have sought the advice of debt counselors, as contemplated in the National Credit Act, but were apparently unable or unwilling to make offers of payment acceptable to creditors and thereafter the debt counselors

made a referral to the applicants' attorney advising that the applicant preferred to followed the sequestration route.

[5] In each matter where I had doubt as to the existence of an alleged debt in an apparently collusive application for sequestration and as to the quantum of assets and liabilities in an application for surrender, I offered counsel appearing for applicants a postponement to enable them to obtain and furnish me with the necessary corroboration.

[6] Since I handed down the judgment in *Esterhuizen v Swanepoel and others* 2004 (4) 89 W, I have taken a critical look at friendly applications for sequestration or applications for voluntary surrender of estates. I have noticed that, when I am sitting in the insolvency court of the South Gauteng Motion Court, there are always a number of matters where neither attorney nor advocate appear to move the application. I have no doubt that the expected or desired result is that the matter will be "struck off the roll" and it will simply be reenrolled when the applicant's attorney believes a more liberally minded judge would be presiding. I have now adopted the procedure that my registrar telephones the attorneys in matters where there has been no appearance in the Tuesday Motion Court and advises these attorneys that the matter will not be struck off and will be dealt with on the merits irrespective of a failure to appear in court. In this particular week, 10th July 2012, my registrar telephoned one attorney representing the applicants in several matters who queried whether these matters would not simply be struck off by reason of non-appearance. On receiving advice that this would not be done, the attorney did arrange for counsel to appear.

NO ACT OF INSOLVENCY ALLEGED OR PROVEN

[7] Where persons feel overburdened by the state of their financial affairs, it is disconcerting to discover that such persons feel they may apply for the surrender of their estate notwithstanding that their liabilities do not exceed their assets nor is any act of insolvency alleged or proven. It is of considerable concern that indebted but not insolvent persons seek to avoid the inconvenience of taking steps to responsibly and proactively administer their financial affairs through the process of voluntary surrender.

[8] It should not need to be restated that insolvency proceedings do not exist for the benefit of distressed or even harassed debtors. In *Mayet v Pillay* 1955 (2) SA 309 N the court reminded us that "The machinery of voluntary surrender was primarily designed for the benefit of creditors and not for the relief of harassed debtors". The insolvency process is not one to enable the debtors "to obtain welcome relief from misery" (see *Hillhouse v Stott* 1990 (4) SA 580 W).

Ex parte Mark Shmukler-Tishko and Emma Shmukler-Tishko (case number 12/24688)

[9] The Shmukler-Tishkos seek the surrender of their respective estates. In their "Statement of Debtors' Affairs"[1] they claim assets of R1,815,000.00 and liabilities of R1,674,000.00 resulting in no shortfall and no insolvency. Proof of creditors and liabilities has been provided by the applicants' attorney which still discloses no insolvency.[2]

[10] In *ex Parte Harmse* 2005 (1) SA 323 N the court stated that it was "only when *it is established* that it is improbable that his assets will realise sufficient to settle the amounts of his debts in full that it can truly be said that the Court ought to be *satisfied* that the estate of the debtor is insolvent".

[11] There is nothing in the Founding Affidavit to suggest any act of insolvency save the averment that "*due to the fact that we have a number of creditors our debt has accumulated to such an extent that we have no alternative but to surrender our estate for the benefit of all our creditors. We attempted to sell our belongings to service our payments but to no avail. Should we not surrender our estate our creditors will be at a great disadvantage*".[3]

[12] The applicants rely upon none of the acts of insolvency identified in section 8 of the Insolvency Act.

[13] In the result I am not satisfied that the necessary jurisdictional facts exist to permit this court to order the sequestration of the applicants' estate.

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[1] Annexure MST1.
[2] Section 8 of the Insolvency Act.
[3] Annexure MST1at page 25.

[14] Counsel was present in court representing the intervening creditor, Nedbank, who opposed this application for surrender and who sought the costs of such opposition.

[15] Accordingly, the application for surrender is dismissed with costs of opposition awarded to Nedbank.

COLLUSION – BOGUS CREDITOR FALSELY CLAIMS INDEBTEDNESS OF PERSON WHO WANTS TO BE SEQUESTRATED

[16] The practice of "friendly" sequestrations is not unknown in South African law and collusion in such an environment has long been deprecated by our courts.[4]

[17] In short, a person who feels burdened by indebtedness to genuine debtors arranges with another to masquerade as a "creditor" who will procure the debtor's sequestration. By so doing, the sequestrated debtor is then relieved of his/her legal, financial and moral obligations to the original and genuine creditors save to the extent that the insolvent estate is able to satisfy such debts.[5] The result, as in the matters below, is that "the debtor is relieved of his misery and may safely cock a snook at his creditors" (*ex parte Steenkamp and related cases* 1996 (3) SA 822 W).

Tammy-Leigh Deyzel vs Petrus Jacobus van Vuuren and Magda van Vuuren (case number 12/15390)

[18] Ms Deyzel claims that *"on the 20th of August 2011, the respondents and I had entered into an agreement that constitutes an acknowledgment of debt....that amounted to R15000.00 that was due and payable by the respondents to me in respect of monies lent and advanced..."*. Since *"the respondents failed and, or neglected to repay me the sum of R15000.00 that was agreed to be paid back on or before 30th August 2011"*, Ms Deyzel instituted legal proceedings and now seeks to have the van Vuurens sequestrated.

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[4] See *Esterhuizen supra.*

[5] See paragraphs 8 and 10 of the *modus operandi* of such collusion and the indiciae as set out in *Esterhuizen supra.*

[19] Ms Deyzel fails to give any indication of her own financial position which allegedly enabled her to make a loan of R15,000.00. There is no indication why the alleged loan was made for a period of 10 days only. It is not explained why failure to pay a 10 day loan results in sequestration proceedings. These queries alert one to the possible collusion.

[20] When invited to provide proof of this alleged loan of R15,000.00, either by way of cheques drawn on Deyzel's bank account deposited into the van Vuurens' account, cash drawn from Deyzel's account and deposited into the van Vuurens' account, EFT transfer or any other transaction, counsel was unable to assist the court.

[21] At a further hearing I was furnished with a Nedbank deposit slip dated 8th October 2011 indicating that the account of P Jansen van Vuuren had been credited in the amount of R15,530.00. This document bears no relation to the dates or amount deposed to in the Founding Affidavit nor is there any connection to the applicant.

[22] The application provides no details of assets, other liabilities or in what manner it would be to the advantage of anyone if the estate of the van Vuurens is sequestrated. This is clearly a friendly sequestration since Ms Deyzel made a loan to the van Vuurens. One would therefore expect that the "creditor" has the assistance of the "debtors" in setting out all details of the debtors' affairs. (See *Hillhouse supra* at 584H).

[23] In the result, I am not satisfied that the respondents were or are indebted to the applicant and the application must be dismissed.

Ingrid McCourt vs Merganathan Moodley and Sorayakanthe Moodley (case number 12/21525)

[24] Ms McCourt says that she is owed the sum of R13,000.00 by reason of "*goods sold and delivered by me to the respondents...during the period ending August 2010*". Such goods were "*the furniture which was standing in my home and which they asked me to sell to them*". She claims that the Moodleys failed to make payment of the agreed sum. Instead they offered to pay

the sum of R8,000.00 in settlement of this claim. This offer has been rejected by Ms McCourt. Nevertheless, the Moodleys deposited a sum of R8,000.00 into the trust account of Ms McCourt's attorneys. Ms McCourt "*is still adamant that this offer is not acceptable and believes she should receive all the money which is owing to me*". Accordingly, she proceeds with an application for the sequestration of the Moodleys.

[25] Ms McCourt has given no indication of an inventory of the items sold or the values thereof prepared at the time of the alleged sale or for the purposes of the sequestration.

[26] It is more than strange that the Moodleys knew the details of the trust account of Ms McCourt's attorney and that they were able to make a deposit therein when an offer of settlement had been rejected. This is somewhat suggestive that these funds have been made available to meet the costs of sequestration.

[27] There are no details of any assets other than the alleged R8,000.00 purportedly deposited into Ms McCourt's attorney's trust account. It appears that the only indebtedness of the estate is the R13,000.00 allegedly owing to her.

[28] The total administration costs will apparently amount to R2,656.20 which would leave, from the R8,000.00 in trust, a sum of only R5,343.80 available for distribution. Ms McCourt is adamant that she wants the full sum of R13,000.00 and will not accept R8,000.00 but she appears prepared to take the risk of receiving the lesser amount of R5,343.80. Ms McCourt is clearly wanting to cut off her nose to spite her face. Further, it seems somewhat unlikely that the Moodleys have no other creditors in which case she may receive much less than the R5,343.20 she believes may be available for distribution.

[29] In the result I am not satisfied that the respondents are indebted to the applicant and the application is dismissed.

COSTS OF SEQUESTRATION WILL EXCEED AMOUNTS AVAILABLE FOR DISTRIBUTION AMONGST CREDITORS

[30] On reading through several of these applications and adding up the figures contained therein, it frequently emerges that the costs of sequestration or "administration costs" are in amounts that exceed the alleged shortfall between assets and liabilities. It seems somewhat anomalous to spend a great deal on administration costs simply to increase the shortfall between assets and liabilities and therefore the quantum of insolvency.

[31] Furthermore, the result of incurring such administration costs obviously reduces the amount available for distribution amongst concurrent creditors, ie the funds which can be used for partial payment of the claims of genuine creditors which undermines the purpose of a sequestration for the "advantage of creditors".

[32] When performing the necessary calculations as to the costs of sequestration or "administration costs", it frequently emerges that these costs exceed the amount available for distribution to concurrent creditors which appears to advantage administrators (in the widest sense) rather than creditors.

[33] In *Ex parte Van Den Berg* 1950 (1) SA 816 W, Ramsbottom J commented that the use of the "machinery of sequestration to distribute a very small amount to creditors ....after paying the costs of realisation and the cost of administration is really to use a sledgehammer to break a nut". He cautioned against the use of the "expensive machinery of sequestration" opposed to the ordinary litigation process. In *Gardee v Dhanmanton Holdings* 1984 (1) SA 1066, Didcott J criticised the use of the "elaborate" mechanism of sequestration and thus the "increasing costs which sequestration imposes on an estate" and, he too, advocated a return to or preference for ordinary means of litigation and execution. (See also *Manacos v Davids* 1976 (1) SA 19 C).

[34] I must remark that I am mindful that "advantage to creditors" does not only encompass the financial benefit which creditors may or will receive but also includes other aspects such as an investigation into the financial affairs of the insolvent. However, in none of these matters has

such an investigation been mooted as a possible real benefit to creditors and I can see no reason why, in an application for the surrender of one's own estate, the applicant would even be able to motivate such an advantage.

Ex parte Zane Mervyn Halim and Milly-Jo Grecian Halim (case number 12/24334)

[35] Mr and Mrs Halim sought the surrender of their respective estates. They claim total assets of R592,200.00 and liabilities of R629,393.36 resulting in a shortfall of R37,193.36.

[36] The costs of sequestration are R91,003.08 and, on the figures presented by the Halims, they conclude that there will be the sum of R37,740.31 available for distribution amongst concurrent creditors. In other words, the administration costs are two and a half times the amount which will be available to concurrent or non-secured creditors.

[37] On being requested to provide proof of creditors and liabilities, applicants' attorney provided an affidavit in which they requested that the matter be postponed for information to be obtained concerning creditors. In other words, the affidavit was drafted without such information being to hand.

[38] In the result I am not satisfied that it is or could be to the advantage of creditors to increase the shortfall, reduce the sum available to creditors and benefit administrators at the expense of creditors. The inability to provide corroboration of the liabilities means that I am not persuaded that the applicants' figures are correct or genuine or that there will be an advantage to creditors.

[39] Accordingly their application is dismissed.

Ex parte Nompumelelo Mgijima (case number 12/24330)

[40] Ms Mgijima seeks the surrender of her estate claiming assets of R461,800.00 and liabilities of R495,491.66 resulting in a shortfall of R33,691.66.

[41] The costs of sequestration are R82,125.25 and, on the figures presented by Ms Mgijima, it appears that there will be the sum of R31,530.88 available for distribution amongst concurrent creditors. In other words, the administration costs exceed two and a half times the amount which will be available to concurrent or non-secured creditors.

[42] In the Founding Affidavit, there is a miscalculation where the total assets are wrongly described as R495,491.66 instead of R461,800.00. Further there has been a miscalculation of the sum available for distribution as R31,530.88 instead of R43,279.28.

[43] There is a further discrepancy between the amount of indebtedness set out in respect of certain creditors in the Founding Affidavit and the Statement of Debtor's Affairs which, in some cases, is considerable. For instance, in the Founding Affidavit the loan from African Bank is reflected as R16,916.93 whereas in the Debtor's Statement it is reflected as R26,916.93 and the debt to HTC College is reflected in the Founding Affidavit as R11,500.00 whereas in the Debtor's Statement it is reflected as R29,426.88. These differences clearly have a considerable negative impact upon the calculations to be made of any dividend available to creditors.

[44] On being requested to provide proof of creditors and liabilities, applicant's attorney furnished an affidavit stating that Mgijima had not kept complete records of all her indebtedness and that, at the time of the first consultation, the applicant had contacted the creditors to ascertain the amounts of indebtedness. The attorney's office had relied upon client's instructions and was unable to provide any proof thereof.

[45] In the result I am not satisfied that it is or could be to the advantage of creditors to increase the shortfall, reduce the sum available to creditors and benefit administrators at the expense of creditors. The discrepancy in figures provided as also the inability to provide corroboration of the liabilities means that I am not persuaded that the applicant's figures are correct or genuine or that there will be an advantage to creditors.

[46] Accordingly the application is dismissed.

Ex parte Pumeza Jantjies (case number 12/24329)

[47] Ms Jantjies seeks the surrender of her estate. She claims total assets of R351,200.00 and liabilities of R384,891.88 resulting in a shortfall of R33,691.88.

[48] The costs of sequestration are R64,467.00 and, on the figures presented by Ms Jantjies, she concludes there will be the sum of R29,652.01 available for distribution amongst concurrent creditors. In other words, the administration costs are twice as much the amount which will be available to concurrent or non-secured creditors.

[49] On being requested to provide proof of creditors and liabilities, applicant's attorney furnished an affidavit stating that the attorney's office had relied upon client's instructions and was unable to provide any proof of creditors and indebtedness other than the home loan.

[50] In the result I am not satisfied that it is or could be to the advantage of creditors to increase the shortfall, reduce the sum available to creditors and benefit administrators at the expense of creditors. The inability to provide corroboration of the liabilities means that I am not persuaded that the applicant's figures are correct or genuine or that there will be an advantage to creditors.

[51] Accordingly, the application is dismissed.

Ex parte Taole Faith Marishane (case number 12/24331)

[52] Ms Marishane sought the surrender of her estate claiming assets of R147,400.00 and liabilities of R180,095.00 resulting in a shortfall of R32,695.00.

[53] The costs of sequestration are R46,073.50 and, on the figures presented by Ms Marishane, it appears that there will be the sum of R20,944.92 available for distribution amongst concurrent creditors. In other words, the administration costs are more than twice as much as the amount which will be available to concurrent or non-secured creditors.

[54] The major asset in the estate is immovable property of which Ms Marishane is the registered owner of a one-half share only. The value placed on this asset is misleading since it is highly unlikely that a sale of a one-half share of a property can or would ever be achieved so as to produce funds to satisfy any debts.

[55] On being requested to provide proof of creditors and liabilities, applicant's attorney provided an affidavit stating that their client had information concerning only two of her seven creditors. There are apparently no other records in respect of the other indebtedness.

[56] In the result I am not satisfied that it is or could be to the advantage of creditors to increase the shortfall, reduce the sum available to creditors and benefit administrators at the expense of creditors. The inability to provide corroboration of the liabilities means that I am not persuaded that the applicant's figures are correct or genuine or that there will be an advantage to creditors.

[57] Accordingly, the application is dismissed.

ADVANTAGE TO CREDITORS NOT PROVEN

[58] The court must be "satisfied" that "it will be to the advantage of creditors" (Section 6(1)) or the court is "of the opinion that *prima facie* there is reason to believe that it will be to the advantage of creditors" (section 10(c)) or the court "is satisfied that there is reason to believe that it will be to the advantage of creditors" (section 12(1)(c)). The more onerous test is set for voluntary surrenders because the debtor himself or herself should have all essential information available and be in a position to make full disclosure to the court. (See *Amod v Khan* 1947(2) SA 432 N).

[59] It is trite that an advantage to creditors is a broad concept ranging from a "not negligible pecuniary benefit" through to an enquiry into a debtor's financial affairs. There must be "some useful purpose" (*Hillhouse supra*). However, an act of insolvency is an insufficient reason on its own for the belief that the sequestration of his estate will be to creditors' advantage (see *Gardee*

supra at 1070 G). Of course, in sequestrations there is the possibility that through the Act's machinery "impeachable transactions, concealment of assets and other irregularities are detected" (See *Gardee supra* at 1069A). However, this is not really a consideration in cases of voluntary surrenders since the applicant is hardly likely to allege against himself or herself that an enquiry may result in disclosure of further assets for the advantage of creditors.

[60] In short, these applicants must demonstrate a reasonable expectation that a sequestration will exceed the likely proceeds of ordinary execution. "Unless he does that, the laborious and substantially more expensive remedy of sequestration can hardly be thought to be advantageous" (*Manacos supra*).

[61] In these matters, applicants have been at pains, sometimes contortions, to ensure that the assets and liabilities are stated in such a manner that there is the appearance of a dividend to concurrent creditors in excess of 10c in the Rand. This is apparently meant to satisfy the views on a "not negligible dividend" set out by Southwood J in *Ex Parte Kelly* 2008 (4) SA 615 T at 616D where he commented that "Currently, in this division it is accepted that this requirement is satisfied if it is shown that creditors will receive at least 10 cents in the rand".

[62] However, careful scrutiny of the papers in these applications indicates inflation of assets by inclusion of values for second-hand furniture which are not corroborated and reduction of liabilities by little or no information concerning the alleged sums of indebtedness.

[63] I am aware of the decision in *Fesi and another v ABSA Bank Ltd* 2000 (1) SA 499 C to the effect that, when calculating advantage to the "general body of creditors", the general body of creditors must be reckoned by value which would result in a calculation that payment of a mortgage bond would, in and of itself, be deemed to be to the advantage of creditors merely because a mortgagor who is the secured creditor is paid the bulk of what is owed. However, in the present instance the applicants have all followed the approach of this Division which is to exclude mortgagors or secured creditors from the calculation of that which is available and to be considered the "advantage" to creditors.

Ex parte Gideon Christoffel Jacobus Labuschagne and Erika Labuschagne (case number 12/25184)

[64] Mr and Mrs Labuschagne seek the surrender of their estate. They claim assets of R97,000.00 and liabilities in the region of R417,005.22 resulting in a shortfall R320,005.22.

[65] The Labuschagnes state that they have no immovable property and they disclose no movable assets. However, they claim that they have a sum of money in the amount of R97,000.00 which has been paid into the trust account of their attorneys. With such sum available, they are able to show that the costs of sequestration (R15,127.80) can be paid leaving a sufficient amount available for distribution amongst concurrent creditors and so that they can aver that the dividend will meet 20c in the Rand.

[66] In their Founding Affidavit, the Labuschagnes set out a history of unemployment and reductions in earnings, financial woes and inability to meet more than minimum monthly payments on debt. In such circumstances, it is surprising that the Labuschagnes fail to indicate the source of the R97,000.00 which they claim as their asset and which was not utilised to pay debtors in the past. Quite fortuitously, such sum of R97,000.00 is to hand so that the costs of sequestration can be met and an acceptable dividend claimed.

[67] No proof or corroboration of the amounts owing to twenty creditors including seven loan accounts/overdrafts/credit cards to various banks and other retailers and suppliers could be furnished.

[68] The inability to provide corroboration of the liabilities means that I am not persuaded that the applicants' figures are correct or genuine or that there will be an advantage to creditors.

[69] Accordingly their application is dismissed.

Ex parte Catharine Cornelia Jacobs (case number 12/24326)

[70] Mrs Jacobs seeks the surrender of her estate claiming assets (second-hand furniture) of R64,800.00 and liabilities of R220,791.13 resulting in a shortfall of R155,991.13.

[71] Total costs of sequestration are in an amount of R23,790.56 and the balance available for distribution amongst creditors, according to Mrs Jacobs, will be R45,294.44.

[72] On being requested to provide proof of creditors and liabilities, applicant's attorney provided an affidavit to which was attached recent (2012) invoices indicating that the information contained in the Founding Affidavit was more or less accurate – although the liabilities have, in the main, increased since preparation of the Founding Affidavit and although there was no proof in respect of certain creditors.

[73] It is possible that there may be an advantage to creditors in this matter and accordingly the application for sequestration is granted.

Ex parte Lilani Nieuwoudt (case number 12/24328)

[74] Mrs Nieuwoudt seeks the surrender of her estate. She claims assets (second-hand furniture) in the amount of R58,500.00 and liabilities of R179,923.98 resulting in a shortfall of R121,423.98.

[75] Total costs of sequestration are in an amount of R18,186.90 and the balance available for distribution amongst creditors, according to Mrs Nieuwoudt, will be R37,330.05.

[76] On being requested to provide proof of creditors and liabilities, applicant's attorney furnished an affidavit together with invoices and letters in respect of 7 of 11 creditors. These invoices were dated September, October or November 2011 whilst the Founding Affidavit is dated 28th June 2012. Clearly, in the intervening seven months, the amounts owed to creditors have clearly escalated considerably. The calculations in the Founding Affidavit were never accurate.

[77] The inability to provide corroboration of the liabilities means that I am not persuaded that the applicant's figures are correct or genuine or that there will be an advantage to creditors.

[78] Accordingly, the application is dismissed

Ex parte Jacob Johannes du Toit (case number 12/24332)

[79] Mr du Toit seeks to surrender his estate claiming assets (second-hand furniture) of R150,000.00 and liabilities of R599,516.65 resulting in a shortfall of R449,516.65.

[80] On being requested to provide proof of creditors and liabilities, applicant's attorney responded that they had only been furnished with an undated schedule from the firm "Debt Champions" setting out the identities of creditors and balances owing at an unknown date.

[81] Such a schedule cannot constitute corroboration of liabilities and amounts owing at the time of the application and certainly cannot justify any inference that, after payment of administration costs, there will be an amount available for distribution to concurrent creditors sufficient to justify sequestration.

[82] Accordingly, the application is dismissed.

Ex parte Henrietta Nienaber and Louis Arthur Nienaber (case number 12/22373)

[83] Mr and Mrs Nienaber seek to surrender their estate claiming assets of R685,000.00 and liabilities of R2,557,497.00 resulting in a shortfall of R1,872,497.00.

[84] The Founding Affidavit sets out no figures but refers the court to the "Statement of Debtor's Affairs"[6] which reflects the figures above. However, in annexure HN2 entitled "Advantage to Creditors", the assets total R1,390,000.00 and the liabilities are stated as

[6] Annexure HN1.

R2,861,188.23. There is either a typing or arithmetical problem or the figures are not based on any documentation to which the applicant could refer.

[85] In the Statement of Affairs,[7] movables are stated to be R65,000.00 (Daihatsu vehicle). In the document attached to the Founding Affidavit entitled "Advantage to Creditors", movables are now stated to be R140,000.00 with no details given. An undated supplementary affidavit restates the movable assets to be R162,000.00 being two vehicles plus (unvalued) household contents.

[86] The details of the value of the immovable property differ – in the Statement of Debtor's Affairs the property is valued at R620,000.00 but in the "Advantage to Creditors" document it is valued at R1,250,000.00 (valued by Argent Properties).

[87] In the Founding Affidavit the applicants refer to litigation against them for the sum of R890,000.00 but the Statement of Debtor's Affairs completely fails to identify any such liability. The only figures in the vicinity of this amount are a home loan with FNB in the amount of R988,691.96 or a claim from Business Partners in the amount of R1,350,000.00. This suggests that the actual liabilities exceed those disclosed in the Statement of Debtor's Affairs.

[88] In the result I am of the view that the changing values of assets, liabilities and shortfall means that I cannot be satisfied that the applicants' figures are correct or genuine or that there will be an advantage to creditors.

[89] Accordingly, the application is dismissed.

Ex parte Phillipa Jane du Toit (case number 12/24333)

[90] Ms du Toit seeks the surrender of her estate claiming assets of R90,000.00 (second-hand furniture) and liabilities of R332,137.18 resulting in a shortfall of R242,137.18.

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[7] Signed and dated 14th May 2012.

[91] On being requested to provide proof of creditors and liabilities, applicant's attorney responded that they had only been provided with an undated schedule from the firm "Debt Champions" setting out the identities of creditors and balances owing at an unknown date.

[92] Such a schedule cannot constitute corroboration of liabilities and amounts owing at the time of the application and certainly cannot justify any inference that, after payment of administration costs, there will be an amount available for distribution to concurrent creditors sufficient to justify sequestration.

[93] Accordingly, the application is dismissed.

Ex parte Lee-Anne van Zyl (case number 12/24325)

[94] Lee-Anne van Zyl seeks to surrender her estate claiming assets of R40,000.00 (second-hand furniture) and liabilities of R113,371.54 resulting in a shortfall of R73,371.54.

[95] The costs of sequestration are R20,698.00 and, on the figures of Ms Van Zyl, the sum available for distribution amongst concurrent creditors would be R23,587.00.

[96] On being requested to provide proof of creditors and liabilities, applicant's attorney furnished an affidavit stating that they had relied upon an undated schedule furnished to them by "Senator Counsellors" setting out the creditors and balances outstanding at an unknown date.

[97] Such a schedule cannot constitute corroboration of liabilities and amounts owing at the time of the application and certainly cannot justify any inference that, after payment of administration costs, there will be an amount available for distribution to concurrent creditors sufficient to justify sequestration.

[98] Accordingly, the application is dismissed.

ORDERS

1. In the ex parte application of Mark Shmukler-Tishko and Emma Shmukler-Tishko (case number 12/24688), an order is made as follows: The application for surrender is dismissed with costs of opposition awarded to Nedbank.

2. In the matter between Tammy-Leigh Deyzel vs Petrus Jacobus van Vuuren and Magda van Vuuren (case number 12/15390), an order is made as follows: The application is dismissed.

3. In the matter between Ingrid McCourt vs Merganathan Moodley and Sorayakanthe Moodley (case number 12/21525), an order is made as follows: The application is dismissed.

4. In the ex parte application of Zane Mervyn Halim and Milly-Jo Grecian Halim (case number 12/24334), an order is made as follows: The application is dismissed.

5. In the ex parte application of Nompumelelo Mgijima (case number 12/24330), an order is made as follows: The application is dismissed.

6. In the ex parte application of Pumeza Jantjies (case number 12/24329), an order is made as follows: The application is dismissed.

7. In the ex parte application of Taole Faith Marishane (case number 12/24331), an order is made as follows: The application is dismissed.

8. In the ex parte application of Gideon Christoffel Jacobus Labuschagne and Erika Labuschagne (case number 12/25184), an order is made as follows: The application is dismissed.

9. In the ex parte application of Catharine Cornelia Jacobs (case number 12/24326), an order is made as follows: That the surrender of the estate of the applicant as insolvent be accepted and the estate be placed under sequestration in the hands of the Master of the High Court.

10. In the ex parte application of Lilani Nieuwoudt (case number 12/24328), an order is made as follows: The application is dismissed.

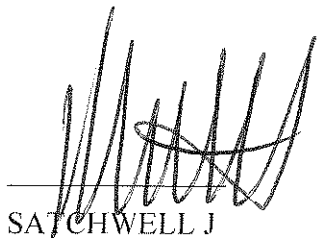
11. In the ex parte application of Jacob Johannes du Toit (case number 12/24332), an order is made as follows: The application is dismissed.

12. In the ex parte application of Henrietta and Louis Arthur Nienaber (case number 12/22373), an order is made as follows: The application is dismissed.

13. In the ex parte application of Phillipa Jane du Toit (case number 12/24333), an order is made as follows: The application is dismissed.

14. In the ex parte application of Lee-Anne van Zyl (case number 12/24325), an order is made as follows: The application is dismissed.

DATED AT JOHANNESBURG ON THIS 26th DAY OF OCTOBER 2012



SATCHWELL J

JUDGE OF THE HIGH COURT

APPEARANCES

Ex parte Halim, ZM & Halim, MG:	Mr Kotze Instructed by Bodenstein Attorneys, Hatfield
Ex parte Van Zyl, L:	Mr Kotze Instructed by Schoonraad Attorneys, Hatfield
Ex parte Du Toit, PJ:	Mr Kotze Instructed by Bodenstein Attorneys, Hatfield
Ex parte Mgijima, N:	Mr Kotze Instructed by Bodenstein Attorneys, Hatfield
Ex parte Jantjies, P:	Mr Kotze Instructed by Bodenstein Attorneys, Hatfield
Ex parte Marishane, TF:	Mr Kotze Instructed by Bodenstein Attorneys, Hatfield
Ex parte Du Toit, JJ:	Mr Kotze Instructed by Bodenstein Attorneys, Hatfield
Ex parte Nieuwoudt, L	Mr Kotze Instructed by Schoonraad Attorneys, Hatfield
Ex parte Jacobs, CC:	Mr Kotze Instructed by Schoonraad Attorneys, Hatfield
Deyzel, T v van Vuuren, PJ & van Vuuren, M:	Counsel's name not noted Instructed by CMM Attorneys, Alberton
Ex parte Nienaber, H & Nienaber LA:	Counsel's name not noted Instructed by Sithole Radebe Inc Attorneys, Johannesburg
Mc Court, I v Moodley, M & Moodley, S:	Counsel's name not noted Instructed by Bregmans Attorneys, Johannesburg
Ex parte Labuschagne, GCJ & Labuschagne, E:	Counsel's name not noted

	Instructed by Erasmus Roets Attorneys, Johannesburg
Ex parte Tshiko, MS & Tshiko, ES:	Counsel's name not noted
	Instructed by Amina Rahman Attorneys, Johannesburg