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IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 14892/15

DELETE WHICHEVER IS NOT APPLICABLE

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

In the matter between:

FIRSTRAND BANK LIMITED

Applicant

and

MARTHINUS THEUNIS STEYN FOURIE

Respondent

(Identity number: [...])

(Address: [...])

(Marital Status: married out of community of property to Cristina Susanna Fourie

Coram: Lagrange AJ

Heard: 13 November 2018

Delivered: 16 November 2018

JUDGMENT

LAGRANGE, AJ

Introduction

[1] Having heard both parties' counsel, I am satisfied that in terms of s 8 and 9 of the Insolvency Act 24 of 1936 the applicant has made out a case for the provisional sequestration of the respondent's estate in that:

- 1.1 the respondent is a debtor of the applicant in a substantial amount;
- 1.2 the respondent is factually insolvent, and
- 1.3 there is reason to believe the sequestration of the estate would be to the benefit of creditors.

[2] My brief reasons for the abovementioned findings are *inter alia* that:

- 2.1 There is no dispute that the respondent is indebted to the applicant in an amount in excess of R 11 million arising from a suretyship agreement.
- 2.2 It is common cause the respondent's liabilities, not only to the applicant, far exceed his assets.
- 2.3 The respondent has been making payments in an effort to reduce his indebtedness to other major creditors since this application was launched as a result of which those creditors might have been unduly preferred over the applicant as creditor.
- 2.4 While the sequestration of the respondent's estate will result in costs being incurred, the only feasible alternative means of satisfying the applicant's claim, on the available information, by means of a garnishee order on the respondent's salary would simply compound the situation in terms of which

one creditor would be preferred over another when there is no apparent basis for them being treated as anything but concurrent creditors.

2.5 The true extent of the realisable assets of the respondent and whether it should also comprise payments previously made to other creditors is best determined by the appointment of a trustee.

2.6 Sequestration in the context of rival claims on the respondents' assets would be in the best interest of creditors in general even if the net dividend payable from the free residue is likely to be small.

Order

1. The estate of the respondent is placed under provisional sequestration.
2. A rule nisi is issued calling upon all persons with a legitimate interest to advance reasons, if any, on 16 January 2019 why the estate of the respondent should not be placed under final sequestration.
3. The applicant is ordered to serve a copy of this order on the respondent, on SARS and on any employee of the respondent (and trade union which may represent them) and to furnish a copy to the Master of the High Court.
4. The applicant is ordered to publish this order once in the Government Gazette and once in The Star newspaper.
5. The costs of the application are to be costs in the administration of the insolvent estate of the respondent.

Lagrange J

Judge of the Labour Court of South Africa

Appearance:

Applicant: Adv J.E.Smit instructed by Edward Nathan Sonnebergs Inc.

Respondent: Adv N. Graddidge instructed by JJ Viljoen Attorneys.