

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NUMBER: 28039/2017

DELETE WHICHEVER IS NOT APPLICABLE

1.REPORTABLE: NO
2.OF INTEREST TO OTHER JUDGES: NO
3.REVISED NO

03 November 2021


Judge Dippenaar

In the matter between:

ADELE PRINSLOO

First Applicant

And

THE MASTER OF THE HIGH COURT

First Respondent

GI SMIT TRUST

Second Respondent

SMIT GI N.O

Third Respondent

PARPHOO R N.O

Fourth Respondent

PETER MCCARTER

Fifth Respondent

JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 10h00 on the 03rd of November 2021.

DIPPENAAR J:

[1] This is an opposed application, conducted via a virtual hearing for the removal of liquidators and reviewing certain actions and decisions of the first respondent ("the Master") under s6 of the Promotion of Administrative Justice Act¹. The amended notice of motion and founding papers were cast in broad terms and included the review of the Master's actions. Costs were sought only against any respondents who opposed the application.

[2] In terms of the applicant's draft order provided at the hearing, the applicant sought slightly different relief, including orders: (i) removing the third and fourth respondents as joint liquidators of PMC Waterproofing and Roofing CC ("PMC") and directing them to repay any fees paid to them, (ii) appointing new liquidators tasked with the administration of the estate and the investigation of fees and certain objections raised by the applicant in correspondence to the Master dated 5 October 2016 and 28 January 2020 respectively; (iii) setting aside decisions of the Master (a) to admit the claim of Stand 244 Hughes Ext 29 CC ("Stand 244"), an entity of which the fifth respondent is the sole member and (b) to reject the applicant's claim and (iv) a costs order against the second to fifth respondents.

¹ 3 of 2000

[3] Only the third and fourth respondents (“the liquidators”) together with the second respondent² opposed the application, by way of affidavits deposed to by the third respondent, Mr Smit. The confirmatory affidavit of the fourth respondent is unsigned. From the papers, it does not appear that the fourth respondent has been actively involved in the administration of the PMC estate. The second respondent, the entity through which the third respondent conducts business as a liquidator, plays no real role in these proceedings. The fifth respondent did not oppose the application. The Master filed a report dated 7 December 2020, pursuant to an order granted on 5 February 2019 for him to conduct an investigation, but did not actively participate in the proceedings. He abided the decision of the court.

[4] The liquidators did not persist with the three points *in limine* raised in their answering papers. On the papers, the primary issues requiring determination are: first, whether the liquidators should be removed and whether the ancillary relief sought pursuant thereto should be granted; second, whether the Master’s decisions to respectively admit and reject certain claims should be set aside; and third, whether the Master’s failure to uphold the applicant’s complaints should be reviewed or be subjected to a further investigation.

[5] This application has its genesis in the conduct of the liquidators in relation to the administration of the PMC estate.

[6] It was common cause that the applicant and the fifth respondent were the sole members of PMC, which was placed under final winding up at the instance of the fifth respondent by order of court on 7 January 2016. Pursuant thereto, the liquidators were appointed on 25 January 2016. The present application was instituted during July 2017, after the applicant had applied to the Master to remove the liquidators during October 2016 on the grounds that certain assets of PMC had been removed and the liquidators were not acting independently or in the best interest of its creditors. The Master did not

² The entity through which Mr Smit practices as a liquidator

make a formal determination of the issue, nor were formal determinations made pertaining to the various complaints raised by the applicant.

[7] In summary, the applicant's case is that the conduct of the liquidators has not been impartial, has been irregular in numerous respects and that she has a reasonable apprehension of bias on their part in favour of the fifth respondent and his business entities. She complained of various irregularities, including that the liquidators released substantial assets of PMC to the fifth respondent, some of which were subsequently sold by him. The applicant further alleged that the liquidators did not take proper control of the estate assets and its books and records, that debtors of PMC were not collected and that there was conduct on the part of the liquidators to the prejudice of PMC and its creditors.

[8] The liquidators' case in summary is that they disputed the applicant's entitlement to relief, denied any improper or irregular conduct and averred that the application is vexatious, has caused a four-year delay in the administration of the estate and that the removal application was brought by the applicant to avoid a proposed enquiry into the affairs of PMC. On this basis a punitive costs order was sought against the applicant.

[9] The application must be considered against the statutory backdrop of the Companies Act, 1973³ and the insolvency laws, including the Insolvency Act⁴. The first issue is whether the liquidators must be removed.

[10] The duties of liquidators are well established and usefully summarized in *Standard Bank of SA Ltd v The Master of the High Court and Others*⁵. As enunciated by Navsa JA:

"In the winding-up of companies liquidators occupy a position of trust, not only towards creditors but also the companies in liquidation whose assets vests in them. Liquidators are required to act in the

³ 61 of 1973. The provisions of Chapter XIV of the Companies Act 1973 are rendered applicable in terms of Item 9, Schedule 5 of the Companies Act, 2008

⁴ 24 of 1936, rendered applicable in terms of s339 of the Companies Act, 1973, which renders the law relating to insolvency applicable in the winding up of a company unable to pay its debts, in respect of any matter not specifically provided for by the Companies Act.

⁵ 2010 (4) SA 404 (SCA)

*best interests of creditors. A liquidator should be wholly independent, should regard equally the interests of all creditors, and should carry out his or her duties without fear, favour or prejudice.*⁶

[11] Navsa JA further summarized the relevant principles applicable to the removal of liquidators thus:

[124] ...Section 379(2) of the Companies Act 61 of 1973 provides:

'The Court may, on application by the Master or any interested person, remove a liquidator from office if the Master fails to do so in any of the circumstances mentioned in subsection (1) or for any other good cause.'

The relevant circumstances mentioned in subsec (1) are as follows:

'(b) that he has failed to perform satisfactorily any duty imposed upon him by this Act or to comply with a lawful demand of the Master or a commissioner appointed by the Court under this Act; or

...

(e) that in his opinion the liquidator is no longer suitable to be the liquidator of the company concerned.'

[125] In Hudson and others NNO v Wilkins NO and others 2003 (6) SA 234 (T) (at para 13) the following appears:

'[13] A liquidator may be removed from office if there is sufficient suspicion of partiality or conflict of interest, since a liquidator must be and appear to be independent and impartial. He or she must be seen to be independent since his duties as liquidator may require him or her to investigate. (See Re Giant Resources Ltd [1991] 1 Qd R 107 at 117; Re National Safety Council of Australia (Vic Division) [1990] VR 29 ([1989] 15 ACLR 355 (SC Vic); City of Suburban Ltd v Smith [1998] 28 ACSR 328 (FC of A) at 336.) A Court will exercise its discretion to remove a liquidator if it appears that he or she, through some relationship, direct or indirect, with the company or its management or any particular person concerned in its affairs, is in a position of actual or apparent conflict of interest. In exercising that discretion Bowen LJ in Re Adam: Eyton Ltd: Ex parte Charlesworth (1887) 36 Ch D 299 at 306 said:

"Of course fair play to the liquidator himself is not to be left out of sight, but the measure of course is the substantial and real interest of liquidation."

[126] In Ma-Afrika Groepbelange (Pty) Ltd v Millman and Powell NNO 1997 (1) SA 547 (C) at 561H-J the following is stated:

'Good cause for the removal of a liquidator has also been held to have been shown where a liquidator has not been independent. This was the ratio of the judgment in Re Sir John Moore Gold Mining Co (1879) 12 ChD 325 (CA) at 332, where a liquidator was removed because his "interests may conflict with his duty". See also Re P Turner (Wilsden) Ltd (1986) 2 BCC 99, 567 (CA) at 99, 570 and Re London Flats Ltd [1969] 2 All ER 744 (Ch) at 752E-F, where it was held that a liquidator should be "wholly independent" and that the removal of a liquidator should be "in the interests of every one concerned in the liquidation."

[127] In 4(3) Lawsa under the titles Companies and Winding-up M S Blackman at para 281 states the following:

'The court will remove a liquidator if some unfitness, in the wide sense of that term, is shown in the liquidator, whether it be from personal character or from his connection with other parties or from circumstances in which he is involved. Thus, even though no bad faith was alleged, the court removed a liquidator where he had become so engrossed in his own view that he was unable to see the reasonableness of the proposals of those interested in the liquidation and threw obstacles in their

⁶ Para [1]; Bertelsman *et al* Mars: *The Law of Insolvency* 9 ed (2008) pp293-294 and the authorities cited there.

way; ... where it was prima facie established that the liquidator and two directors were liable to account to the company for certain sums and the liquidator refused to take proceedings against the directors; ...'

Further on, the following appears:

'Although there may be no individual characteristic in itself sufficient on which to base a conclusion that a liquidator is unfit, there may be a number of circumstances which combined might force the court to that conclusion. Also, the court might take into account some unfitness on the part of the liquidator together with what might be in the interests of those persons interested in the liquidation. A relevant factor is also the costs that would be incurred if another liquidator has to come in and complete the work that the present liquidator has already done. Thus, in the circumstances, the court will be less likely to discharge a liquidator towards the end of the winding-up, after he has become acquainted with the affairs of the company, than it would early in the winding-up. Although each one of these considerations taken singly might not be sufficient to justify the removal of the liquidator, taken together they might be.'

[12] The application papers are voluminous and various supplementary affidavits were delivered by both the applicant and the liquidators. There are a myriad of factual disputes on the papers. The relief sought by the applicant is final in nature. It is trite that the so-called Plascon Evans⁷ test applies and that the application is to be determined on the basis of admitted facts in the applicant's papers together with the respondent's version⁸, unless the respondents' version is palpably false or so clearly untenable and can be safely rejected on the papers.⁹ A real dispute of fact arises, inter alia, where a court is satisfied that the party who purports to raise the dispute has in its affidavit seriously and unambiguously addressed the facts said to be disputed.¹⁰ In various instances, the liquidators' affidavits failed to do so and they merely baldly disputed the applicant's averments.

[13] Against this backdrop, I return to the facts. It was undisputed that one of the liquidators, Mr Smit, took control of the PMC premises on 25 January 2016. According to the applicant, she left the books and records of PMC under the control of Mr Smit. In support of her contention, various photographs were produced of files containing records and computer equipment.

⁷ Plascon Evans Paints (ty) Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634E-635C

⁸ National Director Public Prosecutions v Zuma 2009 (2) SA 277 (SCA) para [26]

⁹ J W Wightman (Pty) Ltd v Headfour (Pty) Ltd 2008 (3) SA 371(SCA) para 12

¹⁰ PMG Motors Kyalami (Pty) Ltd (in liquidation) v Firstrand Bank Ltd, Wesbank Division 2015 1 All SA 437 (SCA) ; 2015 (2) SA 634 (SCA); Wightman supra para 13

[14] The liquidators averred that they were not given the books and records of PMC, which were in the control of the applicant and that the applicant manipulated the 2015 financial statements of PMC to include various items not hitherto contained in the financial statements. According to the liquidators, they are in possession of only limited financial records obtained from PMC's auditors, including its financial statements for 2009 to 2014 and bank statements obtained from PMC's bankers. The financial statements provided by the liquidators reflected members' loans, moderate amounts in respect of rental and limited assets. No equipment or vehicles were reflected as assets. According to the applicant, both she and the fifth respondent are creditors of the estate. She further avers that there are unproved claims of other employees and that one of the fifth respondent's other entities is a substantial debtor of PMC, which debt has not been collected by the liquidators.

[15] It was undisputed that the fifth respondent was given free access to the premises. According to the liquidators it was because one of his entities, Stand 244, owned the property and the fifth respondent conducted business from those premises through another of his entities, PMC Contractors CC.

[16] It was common cause that a valuation report of the assets was prepared by Mr Bolton who attended the premises with Mr Smit on 25 January 2016, particularizing certain assets¹¹ and ascribing a forced sale value of R655 610 thereto. This valuation included only some of the numerous vehicles of PMC. The applicant complained that she was not provided with an asset list of all PMC's assets, despite various requests and contended that all PMC was the owner of all the vehicles.

[17] A claim by the landlord of the PMC business premises, Stand 244, represented by the fifth respondent, was admitted to proof at a first meeting of creditors on 1 April 2016. The Master accepted the claim. At the behest of the fifth respondent, the sole member of the landlord, an enquiry was convened at which the applicant was to be interrogated. The

¹¹ 122 items

first meeting of creditors was postponed for this purpose. The applicant was warned to appear at the enquiry on 6 July 2016 and to produce certain documents. The enquiry did not proceed.

[18] The liquidators were notified by the applicant that she objected to the claim of Stand 244 as there was no rental agreement and rental was not paid by PMC. She contended that the claim also included arrear municipal charges for which PMC was not liable. There is no evidence that this claim was fully interrogated by the liquidators or that the applicant's complaint was properly considered by the liquidators. The liquidators concluded that as it was common cause that Stand 244 was the owner of the premises, rental would have to be paid and the applicant had to provide proof of her contention. The applicant in turn, alleged that the PMC bank statements and the records would reflect that no rental was paid.

[19] Various further disputes arose between the liquidators and the applicant regarding PMC's records, assets, vehicles and claims both by and against the PMC estate in relation to entities owned by the fifth respondent. This resulted in the applicant applying to the Master on 5 October 2016 for the urgent removal of the liquidators on the basis that they were not acting independently and in the best interests of creditors. This request was repeated in further correspondence dated 19 October 2016 and 9 December 2016. The applicant raised further objections to the liquidators' conduct in correspondence dated 22 January 2019.

[20] The objections raised by the applicant primarily pertained to the liquidators' conduct in failing to properly secure PMC's records and assets and in allowing the fifth respondent access thereto and the removal of PMC's assets from the premises, including vehicles and equipment by the fifth respondent. Those assets were later released to the fifth respondent. Further complaints were raised pertaining to a Volkswagen motor vehicle which applicant contended a court had ruled was to be returned to PMC and the damage to the applicant's personal laptop and the destruction of information thereon. A further objection was raised regarding the liquidators' conflict of interest in using the fifth

respondent's legal team, attorney Christofides and Adv Saldino at the enquiry. It was alleged that Adv Saladino had made an improper settlement proposal to the applicant to avoid the enquiry and any criminal charges by paying fifth respondent an amount as damages. The Applicant further objected to the acceptance of the Stand 244 claim, without proper investigation. A bias on the part of the liquidators was alleged as personal information had been sought only from the applicant but not from fifth respondent.

[21] In essence, the same complaints are raised by the applicant in these proceedings as those raised before the Master, save for further complaints pertaining to the sale of PMC assets which occurred later.

[22] The applicant further contended before the Master, as presently, that PMC Contractors, allegedly a sole proprietorship of the fifth respondent, was the same entity as PMC, and that the names and trading activities were used interchangeably. She averred that the documents which should have been in the liquidators' possession, would evidence this. The liquidators did not meaningfully address this issue in their papers.

[23] The liquidators disputed these averments but in various instances addressed them only broadly and in vague terms, without meaningfully grappling with the substance of the applicant's averments. Their version rather focused on attacking the veracity of the applicant's version and alluding to her dishonesty aimed at seeking to avoid an enquiry. Their papers further did not make a full disclosure of exactly what information they obtained from the fifth respondent or how they independently verified the correctness of such information.

[24] The liquidators on oath declared that Adv Saladino had represented the proved creditor, Stand 244 at the enquiry, whereas the transcript of the meeting reflected that both Adv Saladino and Mr Smit confirmed counsel's attendance on behalf of the liquidators. This material conflict in the liquidators' version has not been explained.

[25] The liquidators averred that they released the majority of the assets found on the PMC premises which were reflected in the valuation report and certain other vehicles to the fifth respondent, as their investigations concluded that those assets did not belong to PMC but to the fifth respondent's other entity PMC Contractors CC. Only certain documentation was provided, which reflected various conflicts in the entities in whose names various of the vehicles were registered.

[26] From the voluminous affidavits and documents presented, what is glaringly absent is a full record of exactly what investigations the liquidators conducted and how they came to the conclusion that the majority of the assets did not belong to PMC. On the papers, there are allegations and counter allegations that both the applicant and the fifth respondent acted fraudulently in relation to the affairs of PMC and the registration of vehicles in different names. There are conflicting registration certificates in relation to some of the vehicles, indicating that the ownership details have been amended. The documentation provided is not conclusive and cannot be accepted without further investigation. Conclusions were proffered by the liquidators, without all the necessary substantiating documentation being provided to clarify the issues. It appears that the liquidators heavily relied on the version proffered by the fifth respondent.

[27] There is also no indication that the liquidators investigated the inter relationship between PMC Contractors and PMC as averred by the applicant. The applicant averred that the businesses of PMC and PMC Contractors were intertwined and the names were used interchangeably in conducting the same business. This issue was not meaningfully dealt with by the liquidators in their affidavits. It does not appear anywhere from the liquidators' affidavits how these matters were fully investigated. It appears that the liquidators relied on affidavits from the fifth respondent, although those affidavits do not form part of the application papers. Although the liquidators averred that they received information from the fifth respondent, no confirmatory affidavit from the fifth respondent was produced as part of their papers. From a conspectus of the application papers, it is not even clear whether PMC Contractors was a sole proprietorship or a close corporation.

[28] The applicant's claims were admitted to proof at a second meeting of creditors on 23 March 2018. Although the liquidators duly published the notice in the Government Gazette and a newspaper, the applicant and her legal representatives were inexplicably not specifically notified of the meeting. Considering the extent of the correspondence between the parties' respective legal representatives, it appears curious why the applicant was not specifically advised of the meeting or at least advised on how to properly complete the claim forms. The applicant was not present at the meeting and her claim was rejected by the Master on the basis that the cause of action of her claims was not identified in the claim forms.

[29] The liquidators contended that the present application prevented any progress in the estate. However, in one of their supplementary affidavits, the liquidators produced a liquidation and distribution account that was submitted to the Master on 31 January 2019, whilst the present application was pending. That account reflects that a contribution of R52 404.33 was to be levied and that there were limited assets available for distribution. Stand 244 and SARS are reflected as the only proved creditors. The applicant has objected to that account.

[30] The liquidators further relied on the report of the Master provided on 7 December 2020, which provided no evidence of any wrongdoing on their part. The parties addressed the Master's report in supplementary affidavits. It appears that the Master had appointed the liquidators to furnish him with a report under the provisions of s 381 of the Companies Act 1973, and had relied on the information provided by them to compile his report. It does not appear that the Master conducted any independent investigation or that the applicant was afforded a proper opportunity to provide her input after lodging her initial objections. In the Master's report, no reason was provided why there was such a substantial delay from the granting of the order directing the Master to conduct an investigation on 5 February 2019 to the date upon which his report was provided on 7 December 2020. The Master's report is in my view of limited value.

[31] In their supplementary affidavit addressing the Master's report, the liquidators provided certain documentation and information, but did not provide all the documentation provided to the Master, including the attachments to their letter responding to the Master's queries. It is thus not possible to obtain a full picture of what exactly had been placed before the Master.

[32] There is further no evidence that the liquidators conducted any independent investigations into the validity of the claim of Stand 244, pursuant to its acceptance by the Master, bearing in mind that the acceptance of a claim by the Master is only provisional¹².

[33] Section 45 provides:

"45 Trustee to examine claims:

- (1) After a meeting of creditors the officer who presided thereat shall deliver to the trustee every claim proved against the insolvent estate at that meeting and every document submitted in support of the claim.*
- (2) The trustee shall examine all available books and documents relating to the insolvent estate for the purpose of ascertaining whether the estate in fact owes the claimant the amount claimed.*
- (3) If the trustee disputes a claim after it has been proved against the estate at a meeting of creditors, he shall report the fact in writing to the Master and shall state in his report his reasons for disputing the claim. Thereupon the Master may confirm the claim, or he may, after having afforded the claimant an opportunity to substantiate his claim, reduce or disallow the claim, and if he has done so, he shall forthwith notify the claimant in writing: Provided that such reduction or disallowance shall not debar the claimant from establishing his claim by an action at law, but subject to the provisions of section seventy-five;"*

[34] It does not appear from the papers that the third and fourth respondents properly complied with their obligations to investigate the claim including its quantum as envisaged

¹² Breda NO v Master of the High Court Kimberley (20537/2014) ZASCA 166 (26 November 2015) at paras [15]-[16] and [20] and the authorities cited therein.

by s45(2) of the Insolvency Act¹³. There is no proper evidence how such claim was investigated or that the liquidators complied with their statutory duties in this regard.

[35] On a conspectus of the evidence, the liquidators also did not act independently and adopted a biased view in favour of the fifth respondent and against the applicant. It is not clear on what basis the fifth respondent's advices were accepted, whilst the applicant's averments were rejected out of hand. It appears clear that the applicant was to be the main focus of the enquiry proceedings, despite the liquidators' glib contention that the fifth respondent would also be involved. At the very least, the liquidators adopted a hostile approach towards the applicant, did not keep her or her legal representatives abreast of developments or their investigations and simply accepted the fifth respondent's *ipse dixit* without much further ado. There is thus merit in the applicant's contention that she has a reasonable suspicion of bias on the part of the third respondent in favour of the fifth respondent and that the liquidators did not act impartially in relation to the administration of the PMC estate.

[36] A factor which militates against the removal of the liquidators is that a final liquidation and distribution account has been lodged and it appears that the winding up process is nearing its end. However, in counterbalance to the prejudice which the incurring of additional costs may have for the PMC body of creditors, it appears that there are still unproved creditors who wish to prove claims and that there are a number of serious questions regarding the assets and debtors of the estate. Taking into consideration that the present liquidation and distribution account reflects a substantial contribution being due, it would be in the best interests of the PMC body of creditors that the issues raised in this application be properly and fully investigated before the estate can be finalised.

¹³ Standard Bank of South Africa v The Master supra para [93]-[94]

[37] It still remains unclear whether the liquidators acted jointly, as they are obliged to do under s 384 of the Companies Act, 1973 and the fourth respondent's role still remains unclear. In those circumstances it would be appropriate not to differentiate between the third and fourth respondents.

[38] Seen in isolation, not all of the applicant's complaints against the liquidators may justify their removal. However, seen cumulatively and measured against their fiduciary obligations, applying the relevant principles referred to earlier, I am persuaded that the conduct of the liquidators in relation to the administration of the PMC estate was not compliant with their duties. For these reasons, I conclude that good cause has been shown for the removal of the third and fourth respondents as liquidators and that the Master should be directed to appoint new liquidators to the PMC estate. I am further persuaded that the new liquidators should be directed to investigate the applicant's objections and various other issues pertaining to the PMC estate, as sought by the applicant.

[39] I turn to consider whether the Master's decision to reject the applicant's claims and to admit the claim of Stand 244 fall to be reviewed and set aside. At this juncture it is apposite to refer to the exposition by Malan J¹⁴ of the approach to be taken by a court as stated in *Al-Karafi & Sons v Pema*¹⁵:

"A court hearing a review application under s 151 sits both as a court of review and a court of appeal to reconsider the ruling or decision of the Master. That does not mean that the court may disregard the factual material before the Master or the Master's reasoning. It is only where the Master, in granting his approval, has erred or misdirected himself based on the material placed before him that the court can, on review and or appeal, go further and decide the matter de novo. It is by reference to what was placed before the Master that the correctness or otherwise of the Master's decision is to be judged. If, based on what was before the Master, there was no error or misdirection on the Master's part, then that is the end of the matter. It is not open to the parties to introduce the new material that they seek to place before this court, and argue on the basis of what was not before the Master that the Master erred or misdirected himself. The approach is to consider the factual material placed before the Master, together with the Master's decision and his report, and to consider

¹⁴ As he then was

¹⁵ 2010 (2) SA 360 (W) par [11]; Nel and Another NNO v Meester (Absa Bank Ltd and Others intervening) 2005 (1) SA 276 (SCA) paras 22-23

whether in the light of that material, the Master erred or misdirected himself in any material respect. If any basis for interfering with the Master's decision does appear ex facie the documents before the Master as read with his decision and rulings, then the reviewing court may reconsider the matter based on the material before it."

[40] It is first necessary to consider whether the Master was correct in rejecting the applicant's claims. They were rejected by the Master as the claim forms in their terms did not contain a cause of action. From the application papers it does not appear that the applicant attached any supporting documentation to the claim documents submitted to the Master. In one of her supplementary affidavits, the applicant sought to attach certain documents in support of her claim. For purposes of deciding whether the Master correctly rejected the applicant's claims, consideration must only be given to that which was placed before the Master. The claim forms must comply with the requirements of s44 (4) of the Insolvency Act. The claim forms completed by the applicant did not contain the cause of action on which her claims were based. In my view, the Master was correct in rejecting the claims, as the claim documents were incomplete and defective¹⁶. It follows that the applicant has not made out a proper case for relief on this issue. That is not however the end of the applicant's claims. It is still open to her to prove a claim at a properly convened meeting of creditors.

[41] Turning to the claim of Stand 244, the claim is stated in terse terms as pertaining to arrear rentals. No proper details were set out on the claim documents, nor does it appear from the documents produced by the parties that the claim form was accompanied by any statement of account, as envisaged in the claim form. There is further no indication in the claim documentation of how the amount claimed was calculated. Considering the deficiencies in the claim documents provided, the Master should not have admitted the claim of Stand 244, even on a prima facie basis

¹⁶ Breda NO supra at para [23]

[42] The fifth respondent, as sole member of Stand 244 was at all times aware of the relief sought by the applicant but elected not to oppose the application. Moreover, Stand 244 did not seek to intervene in these proceedings.

[43] I conclude that the Master's decision to admit the claim of Stand 244 falls to be reviewed and set aside.

[44] Adopting the approach set out in *Al-Karafi*, it is open to the court to reconsider the claim. However, the application papers do not contain sufficient information regarding the validity of Stand 244's claim to do so and it cannot at this stage be determined whether Stand 244 has a valid claim against PMC or not. As the liquidators did not investigate the claim as they were obliged to do under s 45 of the Insolvency Act, no finding can be made on this issue. On the application papers, there are various disputes pertaining to the existence or not of a lease agreement between Stand 244 and PMC and what amount of rental was payable. Considering the 2009 to 2014 financial statements of PMC, the rental amounts reflected thereon appear substantially less than the amount of the admitted claim. For present purposes, the said claim must be rejected.

[45] As with the claims of the applicant, it is open to Stand 244 to submit a proper claim at a duly convened meeting of creditors. The new liquidators who will be appointed, will then be obliged to investigate the claim in accordance with their obligations under s 45 of the Insolvency Act.

[46] The third category of decisions which the applicant in her papers sought to review pertains to the Master's failure to sustain the applicant's objections raised in her correspondence. A determination on these issues cannot be made at this stage. Once new liquidators are appointed they must investigate those issues and provide a report to the parties, the Master and to the court. It was envisaged in the order of 5 February 2019 that a court be placed in a position to determine those objections, pursuant to the investigation by the Master. That purpose has not been achieved as the Master has been supine in relation to the complaints raised by the applicant and has relied on the advices

of the liquidators rather than to conduct any independent investigation in compiling his report.

[47] The applicant can in due course approach the court on duly supplemented papers if it is required to deal with any remaining issues. As matters presently stand, the removal of the liquidators may well render various of the applicant's objections academic. Insofar as there are objections left, the parties will be afforded an opportunity to deliver supplementary affidavits setting out in clear and concise terms what objections remain which require determination.

[48] In her heads of argument, at the hearing and in the draft order provided, the applicant sought further ancillary relief pertaining to a disallowance and refund of the fees of the liquidators. It was further argued that the liquidators should bear the costs of the application on a *bonis propriis* scale. Those issues were not canvassed in the application papers and it would in my view thus not be appropriate to consider the granting of such relief.

[49] The normal principle is that costs follow the result. There is no reason to deviate from this principle. Although not all the relief sought was granted, the applicant was substantially successful in the application.

[50] I grant the following order:

[1] The third and fourth respondents are removed as joint liquidators of PMC Waterproofing and Roofing CC (in liquidation);

[2] The Master is directed to forthwith appoint alternative liquidators within 20 days of service of this order to:

[2.1] wind up the estate of PMC Waterproofing and Roofing CC (in liquidation);

[2.2] fully and comprehensively investigate:

[2.2.1] the asset and liability position of PMC Waterproofing and Roofing CC (in liquidation) at the date of its winding up;

[2.2.2] whether any assets of PMC Waterproofing and Roofing CC (in liquidation) were improperly released to the fifth respondent, what transpired with these assets and whether the estate has any claims against the fifth respondent or any of his associated entities;

[2.2.3] the administration of the said estate by the third and fourth respondents; and

[2.2.4] the applicant's objections referred to in this application, including the objections set out in the applicant's correspondence to the Master dated 5 October 2016 and 28 January 2020;

[3] The Master is directed to notify the applicant and the third to sixth respondents via email of the identities and contact details of the newly appointed liquidators forthwith upon their appointment;

[4] In addition to the ordinary execution and performance of their duties and obligations as liquidators to wind up the estate of PMC Waterproofing and Roofing CC, the newly appointed liquidators are directed to provide a detailed report pertaining to the issues in [2.2] above to the Master, the parties and the court within 90 days of date of their appointment;

[5] The Master's decision to admit the claim of Stand 244 Hughes Ext 29 CC is set aside and the claim is rejected;

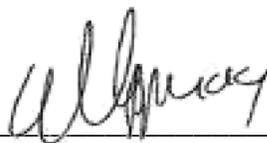
[6] The remaining relief pertaining to the Master's failure to consider and uphold the applicant's objections is postponed sine die;

[7] The parties and the newly appointed liquidators are authorized to deliver supplementary affidavits which in clear and concise terms deal with the applicant's objections and the contents of the report referred to in [4] above, within 10 days of being provided with that report;

[8] The third and fourth respondents are directed to pay the costs of the application to date;

[9] A copy of this order is to be served on the Master, the fourth, fifth and sixth respondents, Stand 244 Hughes Ext 29 CC and, once appointed, on the newly appointed liquidators;

[10] A full copy of the application papers is to be provided by the applicant to the newly appointed liquidators forthwith upon their appointment.



**EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG**

APPEARANCES

DATE OF HEARING : 13 October 2021

DATE OF JUDGMENT : 03 November 2021

APPLICANT'S COUNSEL

: Adv. I. Oschman

APPLICANT'S ATTORNEYS

: Mostert Attorneys
Mr Mostert

**2nd, 3rd and 4th RESPONDENT'S
COUNSEL**

: Adv. L. Grobler

**2nd, 3rd and 4th RESPONDENT'S
ATTORNEYS**

: Ayoob Kaka Attorneys
Mr Kaka