

**IN THE NORTH GAUTENG HIGH COURT OF PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

Case Number: 35444/11

In the matter between:

DATE: 14/2/2014

STANDARD BANK OF SOUTH AFRICA LIMITED

Applicant

and

ANLIE JANSE VAN RENSBURG

Respondent

JUDGMENT

DE KLERK AJ:

[1] This is an application for the provisional sequestration of the Respondent's estate based on the grounds that the Respondent committed acts of insolvency in terms of Section 8 (a) and (b) of the Insolvency Act 24 of 1956, as well as her factual insolvency.

[2] The Respondent opposed the application based on the grounds that she is not insolvent, that she did not commit any acts of insolvency and that her sequestration would not be to the advantage of creditors.

[3] The Respondent further stated that the estate of her husband, to whom she is married out of community of property, was sequestrated on 22 October 2008 and that her assets vest in terms of the provisions of Section 21 (1) of the Insolvency Act in the trustees of her husband's Insolvent estate and that the applicant is therefore not entitled to proceed against her for the relief sought.

The common cause facts are:

[4] On 1 November 2011 the Applicant obtained judgment against the Respondent for payment of the amount of R613 326,88 plus interest at a rate of 14,85% from 12 May 2011 as well as costs.

- [5] The said debt is in respect of monies lent and advanced for the purchase and improvement of an immovable property, situated at No. 2[...] D[...] E[...] street, S[...], Randburg.
- [6] The Respondent and her husband, were co-owners in equal shares of the said immovable property.
- [7] The estate of the Respondent's husband has been finally sequestrated on the 22nd of October 2008. Consequently the Respondent's assets also vest in the Trustee of her husband's estate.
- [8] The Respondent launched an application for rescission of the said judgment which application was dismissed.
- [9] On 31 January 2013, the Respondent's moveable property to the value of R23 950 was at the instance of the Applicant attached by the sheriff.

[10] The Respondent's 50% share in the said immovable property was accordingly attached by the sheriff.

[11] The disputes are whether:

1. The Respondent committed an act of insolvency.
2. The Respondent is factually insolvent.
3. The Respondent's sequestration will be to the advantage of creditors.

[12] Section 21 (i) of the Insolvency Act, constitutes a defence.

Legal Principles:

[13] Sections 8 (a) and (b) of the Insolvency Act reads as follows:

“8 Acts of Insolvency

A debtor commits an act of Insolvency-

- a) If he departs from his dwelling or otherwise absents himself, with intent by so doing to evade or delay the payment of his debts;
- b) if a court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment."

[14] Section 21 (1) of the Insolvency Act, states that:

"The additional effect of the sequestration of the separate estate of one of two spouses who are not living apart under a judicial order of separation shall be to vest in the Master, until a trustee has been appointed, and, upon the appointment of the trustee, to vest in him all the property (including property or the proceeds thereof which are in the hands of a sheriff or

a messenger under a writ of attachment) of the spouse whose estate has not been sequestrated as if it were property of the sequestrated estate, and to empower the Master or trustee to deal with such property accordingly".

[15] It is evident from the sheriff's return dated 4 February 2013 that he attempted on 15 January 2013 at 18:22 and 22 January 2013 at 6:45 to execute the writ of execution. On both occasions he found the premises locked and on both occasions he left a note for the Respondent.

[16] The Respondent gave an explanation as to her absence on both occasions. The Respondent however failed to reply to the averments about the notes left for her by the sheriff (more specifically of any attempts on her side to contact the sheriff).

[17] Be that as it may it is evident from the sheriff's return that:

1. Payment of the amount of R613 326, 88 plus costs and vat was demanded from the Respondent personally;

2. The Respondent was unable to pay the judgment debt and costs in full or in part;
3. The Respondent was asked to point out moveable and disposable property which could be attached;
4. The Respondent pointed out movable assets which were then attached by the sheriff as per the notice of attachment;
5. The Sheriff after diligent search and enquiry could find no further movable assets at the given address.

[18] In my view it is clear that the Respondent committed an act of insolvency in terms of Section 8 (b) of the Insolvency Act.

[19] With regard to the aspect of factual insolvency, it was stated by the Applicant that on the available information the total value of the Respondent's assets amounted to R1 201 983, 33 and her total liabilities to R1 958 326, 88.

[20] The Respondent took the point that the valuations relied upon by the Applicant in this regard were not sworn evaluations and consequently should be ignored.

[21] The Respondent was invited to disclose other assets.

[22] Save to state that the Municipal valuation of the house in Ventersdorp amounts to R510 000 and that the Respondent only has a bond of R30 000 over one of her other properties the respondent failed to give an exposition of her assets and liabilities.

[23] Although the Respondent stated that she was in the process of obtaining a bond statement and a sworn affidavit from the valuator which would be handed up to the Court, no such documents were forthcoming.

[24] With regard to the aspect of an advantage to creditors, it is evident that the Respondent has assets (including interests in

four immovable properties) as well as a monthly surplus which can be utilized to the advantage of creditors.

[25] With regard to the provisions of Section 21 (l) of the Insolvency Act, it was held that an application may be made to sequester the estate of the solvent spouse on the ground of an act of insolvency committed by such spouse since the vesting of her property in the Master or the Trustees of the estate of the Insolvent spouse. (*Souter No v Said No 1957 (3) SA 457W*).

It is therefore ordered that:

1. The estate of the Respondent is placed under provisional sequestration.
2. A *rule nisi* is issued calling upon the Respondent and all persons interested to show cause on a date to be determined by the Registrar as to why the estate of the Respondent should not be placed under final sequestration.

3. This order shall be served by the sheriff on the Respondent personally.
4. The costs of this Application shall be costs in the sequestration of the Respondent's estate.

Signed at _____ on this _____ day of _____ 2014.

Judge De Klerk AJ
The Honourable Judge of the
High Court
Of Pretoria