IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO: 6791/2021

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

In the matter between:

MATSHAROGA LORDWICK MAKHOPA	**FIRST APPLICANT**
PENNY GEOFFREY KHOSA	**SECOND APPLICANT**
WELMA ADELAINDE UBISI	**THIRD APPLICANT**
NGWANABJALA JACOBETH LENTSOANE	**FOURTH APPLICANT**
ELIZMA DESIRE JO-ANNE VAN DER WESTHUIZEN	**FIFTH APPLICANT**
REFILOE MATALJI	**SIXTH APPLICANT**
JOHN FREDERICK HUME	**SEVENTH APPLICANT**
MANTSIBI GAME RANCH (PTY) LTD (REG NO: 1996/013503/07)	**EIGHTH APPLICANT**

And

MASTER OF THE HIGH COURT POLOKWANE	**FIRST DEFENDANT**
MARYNA ESTELLE SYMES N.O	**SECOND RESPONDENT**
JOHANNES ZACHARIAS HUMAN MULLER N.O	**THIRD RESPONDENT**

PULENG FELICITY BODIBE N.O **FOURTH RESPONDENT**

MUSTUFA MOHAMED N.O **FIFTH RESPONDENT**

SUMAIYA ABDOOL GAFAAR KAMMISSA **SIXTH RESPONDENT**

LINDIWE FLORENCE KAABA **SEVENTH RESPONDENT**

NURJEHAN ABDOOL GAFAAR OMAR **EIGHTH RESPONDENT**

MT SELEKE **NINTH RESPONDENT**

NEWINVEST 56 (PTY) LTD **TENTH RESPONDENT**
(REG NO: 2000/001629/07)

SOUTHERN SKY COMMERCIAL PROPERTIES **ELEVENTH RESPONDENT**
(REG NO: 2005/038559/07)

SHAMIRA RINDERKNECHT **TWELFTH RESPONDENT**
(ID NO: …….)

SOUTHERN SKY DEVELOPMENTS (PTY) LTD **THIRTEENTH RESPONDENT**
(REG NO: 2005/042887/07)

SOUTHERN SKY RESIDENTIAL PROPERTIES **FOURTEENTH RESPONDENT**
(REG NO: 2006/017584/07)

SOUTHERN SKY ESTATE (PTY) LTD **FIFTEENTH RESPONDENT**
(REG NO: 2006/017592/07)

SOUTHERN SKY WILDLIFE **SIXTEENTH RESPONDENT**
(REG NO: 2006/017595/07)

SOUTHERN SKY HOTEL & LEISURE (PTY) LTD **SEVENTEENTH RESPONDENT**
(REG NO: 2006/005152/07) (IN LIQUIDATION)

JUDGMENT

MAKGOBA JP

[1] The Applicants seek an interlocutory interdict against the First and Ninth Respondents, on an urgent basis, in terms of Part A of the Notice of Motion.

[2] In the interim the Applicants seek relief in Part A of the application pending the finalization of Part B of the application, the latter application being in effect a review and setting aside of certain actions by the Master of this Court.

[3] In the interim the Applicants seek relief to interdict and restrain the First Respondent ("the Master") from issuing the certificate of final appointment in respect of liquidators of a company in liquidation, Southern Sky Hotel and Leisure (Pty) Ltd ("the company in liquidation").

The Applicants also seek relief that pending Part B of the application the powers of the provisional liquidators shall remain of full force and effect pending Part B.

[4] The relief sought by the Applicants is in terms of the provisions of section 151 of the Insolvency Act 24 of 1936 ("the Insolvency Act") which provides as follows:

*“**151 Review***

Subject to the provisions of section fifty-seven any person aggrieved by any decision, ruling, order or taxation of the Master or by a decision, ruling or order of an officer presiding at a meeting of creditors may bring it under review by the court and to that end may apply to the court by motion, after notice to the Master or to the presiding officer, as the case may be, and to any person whose interests are affected: Provided that if all or most of the creditors are affected, notice to the trustee shall be deemed to be notice to all such creditors; and provided further that the court shall not re-open any duly confirmed trustee’s account otherwise than as is provided in section one hundred and twelve.”

The Applicants contend that they are aggrieved persons as envisaged in terms of section 151 of the Insolvency Act.

The Parties

[5] The First to Sixth Applicants are employees of the company in liquidation, alleging to have claims against the company in liquidation.

The Seventh and Eighth Applicants allege to be creditors. A mortgage bond, in order to secure his claim; has been registered in favour of the Seventh Applicant over immovable property of the company in liquidation.

[6] The First Respondent is the Master. The Second to Fifth Respondents are the existing provisional liquidators.

The Sixth to Eighth Respondents are the final liquidators purportedly appointed by the Master at the creditors' first meeting held on 03 September 2021.

The Ninth Respondent is the official in the offices of the Master who presided over the first meeting of creditors and members held on 03 September 2021.

[7] All of the Tenth to Seventeenth Respondents are companies under control of the Twelfth Respondent, Mrs Shamira Rinderknecht who was the force behind the affairs of the company in liquidation (Seventeenth Respondent) when it financially collapsed and ultimately liquidated.

[8] The Tenth to Sixteenth Respondents oppose this application.

The Master and the Ninth Respondent have not filed any papers in order to oppose the application.

The Second to Fifth Respondents (existing provisional liquidators) have filed a report in order to assist the Court on the adjudication of this application.

Review in Part B of the Application

[9] In Part B the Applicants seek a review and a setting aside of various decisions taken by the Master on 03 September 2021. Those decisions are namely:

9.1. The decision to reject the claims of the Applicants;

9.2. The decisions to admit the claims of the Tenth to Sixteenth Respondents;

9.3. The decision to allow the alleged creditors who proved claims to vote for the appointment of a final liquidator on loan accounts claims; and

9.4. To allow voting at the members' meeting, without the Master having been satisfied that the members' register of the company in liquidation is properly before the Master and/or by failing to satisfy itself that Mrs Rinderknecht is in fact the sole member of the company.

Factual matrix

[10] The company in liquidation was finally wound-up on 21 January 2020. After protracted litigation the application for business rescue was dismissed by this Court on 03 June 2021, and coincidentally an application for leave to appeal against the dismissal of the business rescue application was also dismissed on 03 September 2021, the very same day on which the first meetings of creditors and members were convened.

[11] It is undisputed that the Second to Fifth Respondents were properly appointed as provisional liquidators and that their history includes an attempt to have an enquiry as contemplated in section 417 read with section 418 of the Companies Act 61 of 1973, held which enquiry was aimed at interrogating the Twelfth Respondent (Mrs Rinderknecht) as the director of the company in liquidation, i.e the Seventeenth Respondent. This did not occur *inter alia* as a result of the business rescue application that was brought and ultimately dismissed by this Court on 03 June 2021.

[12] It is common cause from the papers that the publication of notice of the first meeting of creditors on 06 August 2021 was not at the insistence of the provisional liquidators but at the insistence of the First Respondent (the Master). At the time of the publication of the notice of the meeting the liquidation process was still suspended by the business rescue application

which was still pending until this Court dismissed the application for leave to appeal on 03 September 2021.

It is trite law that the first meeting in the winding-up of a company consists of a meeting of creditors and a meeting of members.

These meetings are for the purpose of considering the statement of the company's affairs, proof of claims against the company and the nomination and appointment of a person(s) as final liquidators.

[13] The Seventh and Eighth Respondents or their legal representatives did not even know of the date of the meeting of creditors. Although they had already lodged their claims, they did not attend the meeting of creditors on 03 September 2021 to present their claims and interrogate the claims of other creditors, like the Tenth to the Sixteenth Respondents.

It is common cause that at the creditors meeting of the 3rd September 2021 the claims of all the Applicants herein were rejected whilst the claims of the Tenth to Sixteenth Respondents were admitted by the Master.

[14] The Seventh and Eighth Applicants contend that had they been present at the creditors meeting the claims of all the Applicants and the Tenth to Sixteenth Respondents would have been investigated prior to the acceptance and/or rejection thereof, with its concomitant impact on the right to vote for a final liquidator. It is common cause that at the aforesaid meeting of creditors on 03

September 2021 the Sixth to Eighth Respondents were appointed as final liquidators, and this in the absence of major creditors like the Seventh and Eighth Applicants.

[15] The provisional liquidators raised their concerns against the claims of the Tenth to Sixteenth Respondents and the qualified financial statements in support thereof. Despite these concerns the Ninth Respondent proceeded to accept the claims without the opportunity given the provisional liquidators to enquire as to the veracity of the claims. Similarly, other creditors were not given the opportunity to investigate the veracity of the claims.

The provisional liquidators further raised concern pertaining to the absence of the share register at the meeting and indicated lack of success in obtaining a copy of the share register at the registered address of the Seventeenth Respondent. Despite this concerns the Ninth Respondent accepted the share certificate handed to him on face value alone.

[16] The voting process and the appointment of the final liquidator followed despite a request by creditors present for a postponement to review the proceedings of the meeting held on 03 September 2021.

[17] Despite these allegations being made, no answer has been filed on behalf of the First and/or Ninth Respondents. The failure to reply to these allegations

levelled by the Applicants and to a large extent confirmed by the provisional liquidators (the Second to Fifth Respondents) strengthens the Applicants' case.

Issues

[18] The issues for determination are:-

1. Urgency;
2. Whether the Applicants have made out a case for interim relief.

[19] The Tenth to Sixteenth Respondents contend that:-

19.1. The matter is not urgent. That the Applicants can obtain substantial redress in the ordinary course.

19.2. The Applicants are not entitled to the relief sought. The Applicants have not satisfied any, or all of the requirements for interim relief.

19.3. Even if the Applicants have satisfied the requirements for interim relief, the Court ought to in the exercise of its discretion refuse the relief sought by the Applicants.

19.4. The Applicants' application ought to be struck off the roll for want of urgency, or, if found to be urgent, dismissed, with costs.

Urgency

[20] In their opposition of this application the Tenth to Sixteenth Respondents raised the issue of urgency. That this matter is not urgent and that it be struck from the roll. The Applicants contend that this matter is urgent and correctly so in my view.

[21] This matter is clearly urgent. The impugned decisions of the Master have been made only on 03 September 2021. Prior to bringing this application the Applicants sought an undertaking from the Master that, pending the finalization of a review application to be launched or on before 10 September 2021, that the Master would not, pending the application, appoint final liquidators. No such undertaking had been forthcoming.

[22] Counsel for the Applicants correctly submitted that if effect is given to the voting which took place on 03 September 2021, a travesty of justice will occur and the Applicants would be prejudiced particularly in circumstances where certain gross and egregious irregularities have occurred relating to the first meeting of creditors and members.

[23] In my view the inherent nature of interlocutory interdictory relief dictates that it be sought and obtained on an urgent basis. The purpose of seeking an interlocutory interdict pending the finalization of another process will be defeated if it is not sought on an urgent basis. The Applicants would not be able to receive substantial redress in due course. The horse would have bolted.

[24] This application was issued within thirteen calendar days, and as soon as possible, after conclusion of the first meeting of creditors. In my view none of the Applicants dragged their feet in the bringing of the application, and it cannot seriously be suggested that the Applicants created their own urgency. This application was also not brought on an extremely urgent basis, and all the Respondents herein were provided ample opportunity to file their papers and thus respond to the application well in time before the date of hearing of this application.

[25] In the circumstances I hold that a proper case has been made out for urgency in support of prayer 1 of Part A of the notice of motion.

First Creditors Meeting on 03 September 2021

[26] The Applicants question the lawfulness of the meeting held on 03 September 2021. It was argued on behalf of the Applicants that it would have been at least very unusual if not outright irregular on the part of the Master to convene a first meeting of creditors and members at the time where there was still an application for business rescue pending. It is common cause that the meeting was advertised in the Gazette on 06 August 2021. The issue that arises is whether the Master, having regard to the non-concluded litigation seeking relief in the form of business rescue practitioner being appointed, was legally empowered to proceed to give notice of the first meeting of creditors.

[27] It is trite that a pending business rescue application (*in casu*, the application for leave to appeal keeping it alive) causes the provisions of Section 131(6) of the Companies Act 71 of 2008 to remain in effect.

The section provides that:

> *" 131(6) If liquidation proceedings have already been commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until:*
>
> *(a) the Court had adjudicated upon the application; or*

(b) the business rescue proceedings end, if the Court makes the order applied for."

[28] *In casu*, as at the time the Master convened the meeting the adjudication upon the application for business rescue had not been finalised as the application for leave to appeal suspended the order of the Court, dismissing the application for business rescue.

[29] In ***GCC Engineering (Pty) Ltd & Others v Maroos & Others***[1] the Supreme Court of Appeal gave some clarification on the meaning of Section 131(6) and *inter alia,* held that an application for business rescue does not oust the provisional liquidators from office and return the management back to the directors. The Court held that the provisional liquidators still retain their function to preserve the assets of the company in liquidation. As to what is suspended the Court gave the following answer:

" What is suspended is the process of winding-up and not the legal consequences of a winding-up order."

[30] In paragraph [19] of the ***Maroos*** judgment, the Court deals pertinently with the term liquidation proceedings and as follows:

[1] 2019 (2) SA 379 (SCA).

" [19] I find the appointment, office and powers of the provisional liquidators are not suspended. In s131(6) the legislature used the word "suspend", which does not mean termination of the office of the liquidator. In my view the term "liquidation proceedings" refers only to those actions performed by a liquidator in dealing with the affairs of a company in liquidation in order to bring about its dissolution. What is suspended is the process of winding up and not the legal consequences of a winding-up order."

[31] In the light of the above legal exposition, the Master did not have authority to give notice of the first meeting of creditors. The dismissal of the application for leave to appeal on the day of the first meeting (03 September 2021) did not cure this material defect as a step in the liquidation proceeding was taken whilst the liquidation proceeding was suspended.

Having regard to section 131(6) of the Companies Act, the liquidation proceedings could not be advanced by the Master prior to finality of the business rescue application.

[32] I am of the view that the first meeting of creditors held on 03 September 2021 could not have been convened and published and as a result the proceedings of such meeting are irregular.

The Tenth and Sixteenth Respondents take issue that this point was not taken at the meeting with the Ninth Respondent presiding.

I agree with the submission made by Counsel for the provisional liquidators that the failure to take a point regarding the irregular nature of the proceedings does not magically turn an unlawful process and procedure into a lawful process. The failure to object does not grant powers to the Master to give notice of the meeting when no such powers existed at the time when notice of the meeting was given. The Master had no power to convene the meeting in the light of the suspension of the liquidation proceedings.

[33] The point regarding the irregularity in convening the first meeting of creditors is a point of law and failure to raise that before the Ninth Respondent does not detract from the reviewability of the process followed and the decisions made at the meeting.

The meeting remains irregular and is not a meeting convened in terms of the regulations. In the result, this renders the remainder of the decisions taken and the process followed and resolved similarly irregular and unlawful.

Interim Relief

[34] The requirements for interim relief are well-established.

An applicant must establish:

34.1. a *prima facie* right even though open to some doubt;

34.2. a well-grounded apprehension of irreparable harm if the interim relief is not granted;

34.3. the balance of convenience must favour the applicant; and

34.4. there must be an absence of an alternative remedy.

[35] In ***Breedenkamp v Standard Bank of SA Ltd*** [2] Jajbhay J summarized the trite requisites of an interlocutory interdict at paragraphs 42 to 45 as follows:

> *" [42] An interim interdict is by definition a court order preserving or restoring the status quo pending the final determination of the rights of the parties. It does not involve a final determination of these rights and does not affect their final determination. The dispute in an application for an interim interdict is therefore not the same as that in the main application to which the interim interdict relates. In an application for an interim interdict the dispute is whether, applying the relevant legal*

[2] 2009 (5) SA 304 (GSJ).

requirements, the status quo should be preserved or restored pending the decision of the main dispute. At common law, a court's jurisdiction to entertain an application for an interim interdict depends on whether it has jurisdiction to preserve or restore the status quo. It does not depend on whether it has the jurisdiction to decide the main dispute.

[43] That the test is a nuanced one appears from the judgment of Holmes J in Olympic Passenger Service (Pty) Ltd v Ramlagan 1957 (2) SA 382 (D), in which he held (at 383C-G):

" It thus appears that where the applicant's right is clear, and the other requisites are present, no difficulty presents itself about granting an interdict. At the other end of the scale, where his prospects of ultimate success are nil, obviously the Court will refuse an interdict. Between those two extremes fall the intermediate cases in which, on the papers as a whole, the applicants' prospects of ultimate success may range all the way from strong to weak. The expression prima facie established though open to some doubt seems to me a brilliantly apt classification of these cases. In such cases, upon proof of a well-grounded apprehension of irreparable harm, and there being no adequate ordinary remedy, the Court may grant an interdict – it has a discretion, to be exercised judicially upon a consideration of all the facts. Usually

this will resolve itself into a nice consideration of the prospects of success and the balance of convenience – the stronger the prospects of success, the less need for such balance to favour the applicant: the weaker the prospects of success, the greater the need for the balance of convenience to favour him. I need hardly add that by balance of convenience is meant the prejudice to the applicant if the interdict be refused, weighed against the prejudice to the respondent if it be granted."

[44] In Fedsure Life Assurance v Worldwide African Investment Holdings (Pty) Ltd and Others 2003 (3) SA 268 (W) Cloete J stated the requirements for an interim interdict:

" Where the right asserted on the strength of which an interim interdict is sought is not clear, the position is as follows according to Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton, and Another 1973 (3) SA 685 (A) at 691C-G:

"The granting of an interim interdict pending an action is an extraordinary remedy within the discretion of the Court. Where the right which it is sought to protect is not clear, the Court's approach in the matter of an interim interdict was fiducially laid down by Innes JA in

Setlogelo v Setlogelo 1914 AD 221 at 227. In general, the requisites are –

(a) a clear right which, 'though prima facie established, is open to some doubt';

(b) a well-grounded apprehension of irreparable injury;

(c) the absence of ordinary remedy.

In exercising its discretion, the Court weighs, inter alia, the prejudice to the applicant, if the interdict is withheld, against the prejudice to the respondent if it is granted. This is sometimes called the balance of convenience."

[45] The foregoing considerations are not individually decisive, but are interrelated, for example, the stronger the applicant's prospects of success, the less his need to rely on prejudice to himself. Conversely, the greater the element of 'some doubt', the greater the need for the other factors to favour him. The court considers the affidavits as a whole, and the interrelation of the foregoing considerations, according to the facts and probabilities."

Whether the Applicants made out a case for interim relief

[36] The central theme of the Applicants and the joint provisional liquidators is that the Master (the Ninth Respondent) unduly favoured Ms Rinderknecht (Twelve Respondent) legal representatives in making the decisions that the Master did at the meetings, that the outcome of the meetings was predetermined and a very one-sided affair and that the Master was biased and afforded the legal representatives of Ms Rinderknecht preferential treatment.

[37] The Applicants state that the meetings were plagued by the following irregularities:

1. the unusual circumstances whereby the meetings were advertised and convened;
2. no access prior to the commencement of the meetings by the Applicants and the provisional liquidators to the claims submitted to the Master in order for the claims against the company in liquidation to be copied and inspected, whereas the Rinderknecht companies had such access;
3. the Master (the Ninth Respondent) not postponing the meetings in order to allow inspection and copying of the claims submitted to the Master;

4. the Master (the Ninth Respondent) being wrong in upholding the objections by the legal representatives of the Rinderknecht companies to, and was wrong in rejecting the claims of the Applicants;
5. the Master (the Ninth Respondent) being wrong in not upholding the objections by the provisional liquidators to the claims of Rinderknecht and the Rinderknecht companies as these claims were premised upon qualified financial statements;
6. the Master (the Ninth Respondent) being wrong to have refused the request by the provisional liquidators that the creditors meeting be postponed to allow the provisional liquidators to bring an application for review of the decisions of the Master;
7. the Master (the Ninth Respondent) being wrong to allow the Rinderknecht legal representatives to vote at the creditors meeting to nominate the Sixth, Seventh and Eighth Respondents as final liquidators because the Rinderknecht claims should have been rejected;
8. the Master (the Ninth Respondent) being wrong to allow the Rinderknecht legal representatives to vote at the members' meeting to nominate the Sixth, Seventh and Eighth Respondents as final liquidators.

The Applicant's *prima facie* rights, for purposes of the present application, emanate from the fact that they are all creditors of the company in liquidation (the Seventeen Respondent).

The Seventh Applicant is in fact a secured creditor, with a secured and preferent claim against the insolvent estate of the Seventeenth Respondent. The Seventh Applicant's claim amounts to R 12 361 768.57 and is secured by a mortgage bond registered in favour of the Seventh Applicant given by the Seventeenth Respondent on 12 October 2015.

[38] The basis upon which the Master apparently (and unlawfully) rejected the Seventh and Eighth Applicants' claims and the criticism expressed against these claims in the opposing papers are without substance. It is suggested that these claims could not be determined at the first meeting of creditors because they are damages claims and not liquidated claims. This is against the letter and spirit of section 44 of the Insolvency Act which provides for the proof of liquidated and unliquidated claims.

The criticism and basis upon which the Seventh and Eighth Applicants' claims were rejected lacks a legal foundation.[3]

[39] In their capacity as creditors of the Seventeenth Respondent, the Applicants had an undeniable right in terms of section 44 of the Insolvency Act, to prove their respective claims against the insolvent estate of the Seventeenth Respondent , to specifically appear at the first meeting of creditors of the estate, and to give evidence in support of their claims to the satisfaction of the

[3] See *Cachalia v De Klerk NO and Benjamin NO* 1952 (4) SA 672 (T) at 678 A-G; and *Klein NO v Kolosus Holdings Ltd* and Another 2003 (6) SA 198 (T) at paragraphs 66 to 67.

officer presiding at the meeting, i.e the Ninth Respondent. They also in terms of section 44(7) of the Act, have the right to call upon any person present at the meeting, who wishes to prove a claim against the insolvent estate to take an oath, and to submit such person to interrogation. The Applicants also had a *prima facie* right to be informed of the date of the first meeting of creditors. It is common cause that in the present case the Seventh and Eighth Applicants were not notified of the meeting and could not attend such an important meeting.

[40] It is common cause that the Applicants' claims were rejected at the first meeting of creditors. The Applicants did not have the opportunity provided for in section 44(4) and 44(7) of the Act to prove their claims at the first meeting of creditors on the 3rd September 2021. The Seventh and Eighth Applicants did not even have any knowledge of the date of the meeting.

As a result, the Seventh and Eighth Applicants were irreparably deprived of

(1) the right to be represented at the first meeting of creditors in order to prove their claims and to give evidence in support thereof;
(2) the right to participate in the election of the liquidators;
(3) their right to call upon the Tenth to Sixteenth Respondents to be submitted to interrogation in regard to their claims.

[41] In ***Aircondi Refrigeration v Ruskin NO and Others*** [4] the following was said at 803G to 804B:

> *" In terms of s 44 of the Insolvency Act 24 of 1936, a claim made against an insolvent estate shall be proved at a meeting of the creditors of that estate to the satisfaction of the officer presiding at that meeting, who shall admit or reject the claim (ss (3)). Every such claim shall be proved by affidavit in the prescribed form and shall contain the matters set out in ss (4). The officer presiding at any meeting of creditors may call upon any person present at the meeting who wishes to prove or who has at any time proved a claim against the estate, to take an oath, to be administered by the said officer and to submit to interrogation by the said officer (ss (7)). The presiding officer may summon any person who wishes to prove or who has at any time proved a claim against the estate to appear before him at a place and time stated in the summons for the purpose of being interrogated by the said officer (ss (8)).*
>
> *From these provisions it appears that there are two elements in the proof of a claim:*
>
> *(a) The submission of an affidavit in the prescribed form; and*
>
> *(b) The satisfaction of the officer presiding at the meeting that it is valid.*

[4] 1981 (1) SA 799 (W).

No objection was taken in the present case to the form of the affidavit. In regard to (b) the presiding officer performs a quasi-judicial function (cf Aspeling and Another v Hoffman's Trustee 1917 TpD 305 at 306 – 7). As such he must exercise an independent judgment. Unless a claim is on the face of it bad, he should not reject it without hearing the creditor's evidence under ss (7). (See: IIsely v De Klerk NO and Another 1934 TPD 55.) It seems that a creditor is entitled to have his claim considered without any evidence being heard except his own under a s 44 (7). (See: Peach v Stewart NO and Another 1929 WLD 228 at 223.)"

[42] Accordingly, the Ninth Respondent could not reject the Seventh and Eighth Applicants' claims as the Master in fact did, without hearing the evidence of these Applicants. The Applicants were deprived of the right to give evidence at the first meeting and will suffer irreparable harm if the interim relief is not granted, and the ultimate relief is eventually granted.

The aforementioned deprivation of the Applicants' rights constitute a well-grounded apprehension of irreparable harm, if the interim relief is not granted and the ultimate relief is eventually granted.

[43] In my view, if the interlocutory interdict in this matter is granted pending the finalization of the review relief, no prejudice will be suffered by the

Respondents. Even if the review relief ultimately fails, the Respondents would have lost nothing.

However, the contrary is true, if the interlocutory interdict is not granted.

In the circumstances, the balance of convenience favours the granting of an interlocutory interdict.

[44] It was argued on behalf of the Respondents that the Applicants have an alternative remedy in the sense that they will have further opportunities to prove the claims at a subsequent meeting of creditors. There is no merit in this submission. In my view the rights to be executed and exercised during the first meeting of creditors vary in nature and extent from the rights to be exercised at subsequent and further meetings of creditors. It is common cause that final liquidators have been nominated during the first meeting. The Applicants have lost their opportunity to participate in the appointment of final liquidators and will never regain this lost opportunity unless the decision of the Master is reviewed and set aside.

Accordingly, the rights that the Applicants may exercise in future and at the future meetings of creditors do not constitute alternative remedies.

[45] Part A of the notice of motion is concerned with restoring the *status quo ante* if the review is eventually granted, in order to re-vest the Applicants with the rights that they were deprived of during the first meeting of creditors, in

particular the right to testify in support of their claims. The Applicants would not be afforded the opportunity to partake in the selection of liquidators if they only prove their claims at the second and further meetings of creditors.

Similarly, there is no alternative remedy to afford the Applicants the opportunity of interrogating the Tenth to Sixteenth Respondents in respect of their claims, now that their claims have been accepted.

The suggestion that alternative remedies are available to the Applicants is not in touch with reality and it is accordingly rejected.

Conclusion

[46] The Applicants have established each of the jurisdictional requirements to succeed with an interlocutory interdict.

In all the above circumstances I am satisfied that a proper case has been made out for an interim relief sought by the Applicants.

Order

[47] In the result the following order is granted:

1. Pending finalisation of Part B of this application, the first and ninth respondents are interdicted and restrained from issuing a certificate of final

appointment and to finally appoint the sixth, seventh, and eighth respondents as joint liquidators of Southern Sky Hotel and Leisure (Pty) Ltd (in liquidation), Masters Ref L14/20 (“the company in liquidation”);

2. That pending finalisation of Part B of this application, the *status quo* with reference to the appointment and powers of the provisional liquidators shall remain in full force and effect, and pending finalisation of Part B, the provisional liquidators shall continue with their normal functions and duties as provisional joint liquidators of the company in liquidation.

3. That the tenth to sixteenth respondents be ordered to pay the applicants and the second to fifth respondents costs of this application, such costs to include the employment of two counsel, one of which is a senior, and where applicable.

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E M MAKGOBA
JUDGE PRESIDENT OF THE HIGH COURT, LIMPOPO DIVISION, POLOKWANE

APPEARANCES

Heard on	**:**	**12 October 2021**
Order pronounced on	**:**	**12 October 2021**
Judgment delivered on	**:**	**19 October 2021**
For the 1st to 6th Applicants	**:**	**Adv MP Van der Merwe SC** **Adv J Hershensohn**
Instructed by	**:**	**Vermaak Beeslaar Attorneys Inc** **c/o Steytler Nel Attorneys**
For the 7th & 8th Applicants	**:**	**Adv GF Heyns SC** **Adv C Jacobs**
Instructed by	**:**	**Seymore Du Toit & Basson Inc**
For the 2nd, 3rd, 4th & 5th Respondents	**:**	**Adv GJ Scheepers SC**
Instructed by	**:**	**Barnard & Patel Inc** **c/o Steytler Nel Attorneys**
For the 10th to 16th Respondents	**:**	**Adv EL Theron SC**
Instructed by	**:**	**Mendelson Attorneys Inc** **c/o Kampherbeek & Pogrund Attorneys**