

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

4099/2008

DATE:

19 NOVEMBER 2008

5 In the matter between:

VINCEMUS INVESTMENTS (PTY) LTD

APPLICANT

t/a KEMPTON TRUCK HIRE

and

A LAHER & ONE OTHER

1ST and 2ND Respondents

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J U D G M E N T

GAUNTLETT, AJ:

15 [1] This is the postponed return day of a provisional
sequestration order. The respondent this morning sought
a further postponement. After hearing him, both initially
and later at great length, and counsel for the applicant, I
refused that application for reasons I said I would later
20 indicate. I thereafter heard argument on the merits.
These are my reasons in respect of the refusal of the
postponement and my order and reasons in respect of
the merits of the matter.

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[2] I refused the postponement mindful of the fact that the respondent is a lay person, albeit a businessman clearly articulate and commercially adept. The application was for a further postponement of some four weeks now. The chronology in these proceedings is very shortly that they appear to have been launched on 14 May. On 26 September a provisional sequestration order was granted by Van Reenen, J., returnable on 29 October. On that day the applicant sought a postponement of some 10 weeks but was granted a postponement of three weeks. This, I was told, was on the basis that the applicant wished to arrange his finances to engage attorneys and counsel.

15 [3] The respondent has been on notice at least since March of the current proceedings. He was allowed three weeks as I have indicated after 29 October in order to put his financial affairs in order to the extent that he could do so. There is no indication that the further period will have the beneficial effect not effected first between March and September, then between September and October, and thereafter between 29 October and today. He has not even engaged an attorney yet nor has he put up any affidavit. His request to me today, he conceded, impliedly amounts to seeking to achieve the very 10

weeks delay he sought to procure but failed to do on 29 October.

[4] The only glimmering of a substantive defence in the letter
5 handed up by him relates to contended disputes regarding ownership of certain Sea Point flats and his liabilities arising therefrom. There is no evident reason why the relevant facts, at least in that regard, could not have been put up in an affidavit and put before me.
10 These are presumably facts within his knowledge if he is able to advance them as a defence. They would not appear to be, on the face of it, a matter of such inherent complexity that he has been disabled for this considerable period of time from doing.

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[5] Turning to the merits of the matter I am satisfied that the respondent has committed the acts of insolvency detailed in the application. It would also appear that there is significant equity in properties which the respondent has reflected as owning. Moreover, it would seem likely that
20 he may own other assets which he has not fully disclosed. The irregularities indicated as having been committed by him would benefit from proper investigation. I am satisfied that there is a reasonable prospect of an advantage to creditors arising from his
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sequestration. For the reasons I have given, in my view, a proper case is made out for the order sought.

[6] The respondent is accordingly placed under final sequestration in terms of the draft order handed up to me reading as follows:

- "1. A final order of sequestration is granted.
2. The costs of the application shall be costs inst the sequestration.

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GAUNTLETT, AJ

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