court file.

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NUMBER: 11183/2008

DATE: 17 NOVEMBER 2008

In the matter of:

BUSINESS PARTNERS LIMITED APPLICANT

and

ANDRé NEVILLE PIETERSE RESPONDENT

and

ABSA BANK LIMITED INTERVENING CREDITOR

JUDGEMENT

TRAVERSO, D J P:

This is an application for the final sequestration of the respondent's estate. The applicant applied for the provisional order which was granted on 15 July 2008. On the return day of the *rule nisi* on 5 August 2008, Absa Bank applied to intervene in these proceedings in order to oppose the application. As a result of that, the matter was thereafter postponed and finally set down for today for hearing of the final order.

The papers in this matter are voluminous. They ran into some 417 pages. The issue, however, is a very, very simple one. It

is common cause between the parties that the applicant, who is the erstwhile Small Business Development Corporation, lends money in order to support small and medium enterprises in all sectors of the economy. It is partially funded by the government through the Department of Trade & Industry.

During May 2007, the respondent, who is a medical doctor and a member of the previously disadvantaged population group, applied to the applicant for finance. It is common cause that an amount of R450 000 was paid by the applicant to the respondent. It is quite clear that the respondent is not a man of very high moral standing. It is apparent that as at the date of the application for finance and when he received the money, he was already trading in insolvent circumstances. He held out to the applicant that he was earning between R20 000 and R30 000 per month, when in fact he was banking approximately R500,00 per month.

It appears that at the stage when he applied for the finance, he had already contemplated his departure from this country to Canada. Be that as it may, Absa Bank, the intervening creditor, has got a bond over the immovable property of the respondent, which is, as far as we know, the only asset which was left in the country after the respondent's departure.

It is equally common cause between the parties that the figures that were presented to the Court, who heard the matter in the first place, were incorrect. It is also common cause that there will be no benefit for any creditor other than Absa, being the secured creditor. Absa obviously wants to protect the security that it has got in terms of the bond, which is registered over the property.

The only aspect the applicant is relying on for their persistence in this application in the final order, is that they say that further investigation of the respondent's estate may indicate that a payment of R200 000 to Imperial Bank was an impeachable transaction and that it may be set aside and that the R200 000 may come back into the estate for distribution amongst creditors.

It is trite that in a situation such as the present, where there is no other benefit to creditors, a creditor cannot simply rely on the fact that further investigation may or may not reveal certain assets which can be used for distribution amongst the creditors. The applicant must satisfy the Court that there will be some financial benefit to the creditors. In the circumstances I do not believe that the applicant has made out a case which entitles it to a final order and that the intervening creditor's opposition to this application is sound.

In the circumstances the application for the sequestration of the respondent is dismissed and the *rule nisi* is discharged. The applicant is ordered to pay the costs of the intervening creditor.

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TRAVERSO, D J P