REPORTABLE JUDGMENT

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Case No: 3804/2012

In the matter between:

NEDBANK LIMITED	**Applicant**
and	
JAN KURT FULS	**First Respondent**
ANITA FULS	**Second Respondent**

Counsel for the Applicant Adv. C W Kruger

Counsel for Respondents Adv. A De Wet

Date of Hearing **1 November 2012**

Date of Judgment **12 November 2012**

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No:3804/2012

In the matter between:

NEDBANK LIMITED	**Applicant**
Versus	
FULS, KURT JAN **(identity number:)** **(married out of community of property to)**	**First Respondent**
FULS, ANITA	**Second Respondent**

JUDGMENT DELIVERED ON 12 NOVEMBER 2012

MANSINGH, AJ

[1] This is an application for the provisional sequestration of the first respondent.

[2] The applicant has to convince the court that *prima facie:*

2.1. it has a liquidated claim;

2.2. that the debtor has committed an act of insolvency or is factually insolvent, and

2.3. that there is reason to believe that it will be to the advantage of the first respondent's creditors if his estate is sequestrated. (Section 10 of the Insolvency Act 24 of 1936, ("the Act").

[3] Applicant's case is based on a judgment it holds against the first respondent for payment of R3 708 929, 49 in terms of a Confession to Judgment as contemplated in Rule 31 (1)(c) of the Uniform Rules of Court and that first respondent has committed an act of insolvency in terms of section 8(b) of the

Act.

[4] The first respondent raised three defences:

4.1. Applicant's *locus standi:*

(i) The monthly payments due in terms of the settlement agreement are being paid punctually by co-sureties to the principal debt and consequently the account is not in arrears and therefore the applicant lacks *locus standi.*

(ii) The provisions of Rule 31 (1)(c) of the Uniform Rules of Court do not apply to this judgment obtained under case no. 2011/32613.

4.2. Advantage to Creditors:

The sequestration of the first respondent's estate will not be to the advantage of his creditors because he has no assets.

4.3. The Court's Discretion:

(i) First respondent will suffer prejudice if his estate is sequestrated because as a result he might be deregistered as a chartered account and will then be unable to practice his profession.

(ii) First respondent is being treated unequally to the other signatories to the 'indulgence agreement'. That the application is vexatious.

(iii) Applicant holds security for its claim. Again, that the application is vexatious.

APPLICANT'S *LOCUS STANDI*:

(i) Account not in Arrears:

[5] In order to have *locus standi* in a sequestration application a creditor must have a liquidated claim, [s 9(1) of the Act]

[6] For purposes of this application, *"a liquidated claim is one sounding in money, the amount of which is fixed and determined either by agreement, judgment, or*

otherwise. "

[7] Section 9(2) of the Act provides that, *"A liquidated claim which has accrued but which is not yet due on the date of the hearing...shall be reckoned as a liquidated claim..."*

[8] On 9 June 2011, the applicant launched an application for judgment in the North Gauteng High Court, under case number 32613/11, against the respondents and three co-sureties, jointly and severally, the one paying the other to be absolved, in their capacities as sureties and co-principal debtors with Blue Age Properties 28 Pty Ltd ("Blue Age"), for the obligations of Blue Age to the applicant, arising *inter alia,* from a written loan agreement dated 2 December 2008. Before the matter could be heard, the respondents and co-sureties entered into a written "indulgence agreement" with the applicant, providing for payment in monthly instalments.

[9] Blue Age was not a party to the application for judgment as it was deregistered on 16 July 2010 for failure to file the necessary statutory returns with the Registrar of Companies, (as it then was). Blue Age is the owner of immovable property, being

vacant land situated in Trafalgar, KwaZulu Natal. The monies lent and advanced by the applicant to Blue Age was utilised to purchase the said immovable property from second respondent.

[10] On 24 August 2011, pursuant to the indulgence agreement the first and second respondents signed a Consent to Judgment.

[11] Respondents failed to comply with the indulgence agreement. First respondent admits that he defaulted.

[12] On 4 November 2011 judgment was granted in terms of Rule 31(1)(c) against the respondents for, inter alia, payment of R3 708 829,49.

[13] The respondents do not deny that the aforesaid judgment still stands.

[14] Respondents at the hearing of the provisional sequestration application, requested a postponement in order to launch an application for the rescission of the judgment granted against them on the basis set out and dealt with at paragraphs 21-30, hereunder.

[15] Respondents in their answering affidavit in this application made the bald allegation though, that they were forced to sign the indulgency agreement on the basis that failing which they would face litigation on the suretyship agreement which they had signed. This constitutes due notice though, of the possible legal consequences.

[16] The respondent is thus indebted to the applicant. His obligation in terms of the indulgence agreement were replaced, or at least confirmed by the judgment.

[17] In terms of the indulgence agreement, respondents and co-sureties undertook joint and several liability to repay the debt.

[18] In terms of the indulgency agreement, if any of the sureties who signed the said indulgence agreement committed a breach of the terms, the applicant is entitled to apply for judgment against such surety.

[19] The co-sureties have subsequently entered into further indulgency agreements of lesser monthly re-payments due to financial difficulties. They are making

payments punctually. However, despite these payments, the principal debt has not been reduced, but has in fact increased.

[20] Accordingly, the respondent is not entitled to rely on an allegation that he is excused from paying the debt because the other parties to the indulgence agreement are making regular payments towards the debt.

(ii) Applicability of Rule 31(1)(c):

[21] I turn then to turn deal with a second point on *locus standi* raised for the first time in Respondent's Heads of Argument, that Rule 31 (1)(c), (under which the applicant applied for judgment by consent) does not allow for such an application if the consent to judgment is not founded on the relief claimed in the notice of motion but on a settlement agreement unless the settlement agreement provides that its breach entitles the applicant to take judgment in terms of the original cause of action.

[22] Respondent submitted that the judgment obtained by the applicant was

founded on the cause of action contained in the settlement agreement, namely the debt for R3 708 829,49, and not on the original cause of action namely the suretyship agreement which limited the liability of the sureties to R3 500 000,00. That although the settlement agreement provides that its breach entitles the applicant to take judgment in terms of the original agreement the relief agreed to in the consent of judgment is based on the settlement agreement and not the original claim against the first respondent.

[23] First respondent relied on the case of Citibank NA v Thandroyen Fruit Wholesalers CC 2007 (6) SA 110 (SCA), p113, paras H-J, which reads as follows:

"Rule 31(1) provides that a defendant may confess in whole or in part 'the claim contained in the summons'. In terms of s 1 of the Supreme Court Act 59 of 1959 'civil summons' is defined as including, inter alia, a notice of motion. But in motion proceedings the confession, in order to comply with Rule 31(1), must be to the claim contained in the notice of motion. If the claim is founded not on the relief claimed in the summons or notice of motion but on a settlement agreement, Rule 31(1) cannot be applied. "

[24]The said paragraph in Citibank *supra,* though continues as follows, *"The position is different if the settlement agreement provides that its breach entitles the plaintiff or applicant to take judgment in terms of the original cause of action contained in the summons or notice of motion. See* ***Barbour v Herf 1986 (2) SA 414 (N) . ''***

[25] Respondent's argument is flawed for the following reasons:

25.1. The indulgence agreement refers to the terms in the application under case number 2011/32613, specifically the suretyship agreements.

25.2. The cause of action remains the application and not the indulgence agreement. The terms of, *inter alia* the suretyship agreements remain the same.

25.3. The amount acknowledged in the suretyship agreement is the same as the amount claimed in the notice of motion. First respondent's liability

does not stop at R 3, 5 million. Interest must be added to that.

25.4. The indulgence agreement clearly provided that applicant was entitled to elect to take judgment in terms of the cause of action set out in the application. The clause reads as follows:

> *"6.5. The parties hereto expressly agree that this Agreement of Settlement does not in any way novate the original cause of action set out in the Applicant's founding affidavit in the Application. The parties further agree that should the Respondents fail to fulfil any one or more of their obligations in terms hereof, the Applicant will be entitled, or may elect, to take judgment not in terms of this Agreement, but in terms of Applicant's cause of action as set out in the Applicant's founding affidavit in the Application. "*

25.5. The first respondent's consent is expressly founded upon the judgment sought by the applicant for R3 708 829, 49 and not on the acknowledgement of debt (for the same amount) contained in the

indulgence agreement.

[26] The judgment was thus correctly granted as envisaged in the Citibank case *supra.*

[27] Even in the absence of the judgment, it is clear that the first respondent remains indebted to the applicant in the full amount because, (a) he acknowledged to be so indebted, (b) he acknowledged that in the event of breach by him of his part of the agreement he would be liable for the full amount less payments already made and he admitted to having fallen in arrears. Blue Age (and therefore the first respondent as surety), remains indebted to the applicant in a substantial amount of money.

[28] It must be borne in mind, that the applicant's claim against the first respondent is not for the total arrears amount payable in terms of the indulgence agreement, but for the whole amount owing to the applicant.

[29] Most significantly, the first respondent never disputes that he owes the applicant a substantial sum of money. For the applicant to have *locus standi* as a creditor, that amount need not be due.

[30] I do not find any reason then to grant a postponement in this matter as requested by the first respondent, in order for the first respondent to launch an application for the rescission of the judgment granted under case no. 2011/32613.

ADVANTAGE TO CREDITORS:

[31] First respondent relied on the case of **Meskin & Co v Friedman 1948 (2) SA 555 (W) at 559,** that the facts placed before the Court must satisfy it that there is a reasonable prospect - not necessarily a likelihood but a prospect which is not too remote - that some pecuniary benefit will result to the creditors.

[32] First respondent submitted that the burden of proof lies with the applicant to place sufficient facts before the Court, to enable the Court to exercise its discretion in favour of granting a sequestration order. That to make bald and unsubstantiated

statements that the respondent has hidden assets due to the fact that he was a chartered accountant etc does not help. The first respondent's reliance on Standard Bank van SA Beperk v Van Zyl N.O. en n' Ander 1999 (2) SA 221 (0) at 225A-C, was misplaced as that case dealt with a deceased estate and the choice that the Court was called upon to make between sequestrating the deceased estate or allowing it to be distributed in terms of the Administration of Estates Act. The determining factor was the interest of the creditors, not the interests of the (deceased) debtor.

[33] The Supreme Court of Appeal decision of, Commissioner, South African Revenue Services v Hawker Air Services (Pty) Ltd 2006 (4) SA 292 (SCA) para 29, is particularly instructive, that, *"...a Court need not be satisfied that there will be advantage to creditors in the sense of immediate financial benefit. The Court need be satisfied only that there is reason to believe - not necessarily a likelihood, but a prospect not too remote - that as result of investigation and inquiry assets might be unearthed that will benefit creditors. "*

[34] Applicant made out a compelling case for advantage to creditors.

[35] The applicant avers that it appears from the records of CIPRO, conducted on 17 January 2012, that the first respondent is a director of no less than 15 active companies and close corporations.

[36] First respondent alleges that the majority of these entities have been deregistered on dates well prior to the date of applicant's enquiry. First respondent however, fails to attach copies of the records that would substantiate his denial that the companies are active. In the premises, at least prima facie, the applicant's averment must prevail.

[37] Some of first respondent's averments in respect of the long list of entities in which he is or was involved, deserves further attention.

[38] **Adfotect Properties:**

38.1. According to the first respondent that company *"had"* assets but at the same time he seems to suggest that the company still has immovable

property.

38.2. The first respondent fails to expand on his involvement with that company. As director of an apparently property-holding company one would expect the first respondent to also hold shares and/or a loan account in that company.

38.3. In this regard it is significant that the first respondent does not deny the applicant's averments that a trustee may find that he does in fact hold shares in some of the companies of which he is a director, and even in other companies.

38.4. The first respondent is, however, very unforthcoming with details of his involvement in the company and the exact financial state of the company.

38.5. This is a good example of a situation that may well be investigated with good results by the first respondent's trustee with a view to establish the nature and value of the first respondent's interest in that company.

[39] **Argentor Incorporated:**

39.1. No explanation for the fact that the first respondent is still a director of that company and that the company is still “active” in the records of the CIPRO is provided.

39.2. The first respondent does not allude to the terms of the alleged dissolution of the business conducted by this company. The company seemed to have been doing business profitably just before the first respondent left it. A trustee will be empowered to investigate the matter to see whether the first respondent has received any consideration for his interest in the company and if so, what he has done with it.

[40] **Born Free Investments:**

401. It is clear from what the first respondent says that the company is conducting a business. It seems unlikely that the first respondent would act as a director of the company and not receive some monetary benefit from its

operations.

40.2. However, once again the first respondent elects not to furnish any particulars of his financial interest in the company or the nature of the business of the company or any assets that the company may have.

40.3. A trustee will have the power to investigate the nature of the first respondent's interest in this company and lay claim to such interest to the advantage of first respondent's creditors.

[41] **Southern Palace Investments:**

41.1. From the respondent's version, it seems likely that he has an interest in the company over and above his directorship. For all we know, he may even be the sole shareholder and/or the holder of a substantial loan account claim and the property of the company may either be unencumbered or represent sizeable equity that may be dealt with by the first respondent's trustee for the benefit of his creditors.

41.2 The fact that the first respondent is silent on the nature and value of his interest in this company lends support to a strong suspicion that he is trying to obscure his true financial position.

[42] **Vertical Trading:**

42.1. The first respondent admits that he has a claim against that company and that the company has assets.

42.2. The first respondent provides no facts supporting his speculative statement that *"it is very unlikely that there will be anything left"* from which his and his co-directors' loans can be repaid.

42.3. The first respondent does not say whether he is also a shareholder of that company - something that seems to be likely from what the respondent does say.

[43] **Viko Trading:**

43.1. Here, too, is an entity of which the first respondent is a member and that is actively conducting business.

43.2. Again the first respondent elects not to disclose the nature and value of his member's interest.

43.3. The first respondent's trustee will not suffer from the same reluctance as the first respondent and will take charge of the first respondent's member's interest and realise it to the advantage of his creditors.

[44] The first respondent does not furnish any reason for becoming a director of a host of companies that, according to him, became deregistered and have no assets. Applicant contended that there must have been some monetary incentive for the first respondent's involvement in those companies. A trustee should investigate these aspects with a view to establishing the exact nature of the first respondent's interest in those companies, whether they had any assets and if so, what happened to those assets.

[45] The first respondent offers no explanation for his failure, as director and

member of the aforesaid entities and as an auditor, to present any financial statements of any of those entities. The first respondent's trustee will have the power to expose the nature and value of the first respondent's interest, past and present, in those entities.

[46] It is significant that during 2006 the first respondent was earning R99.000,00 per month on average from the entities in which he had an interest. Now, however, the first respondent is unable to account for any assets or income. This lends support to the applicant's statement in paragraph 17.6 of the founding affidavit, to wit that the first respondent is hiding his financial interest from his creditors. Only a trustee will be able to find and realise these assets and interests.

[47] **The Freedom Trust:**

47.1. The respondents live in a rented house. Some of the furniture in the house and one of the family's motor vehicles belong to this trust.

47.2. Applicant contended that the first respondent's trustee must

investigate how it came about that the said furniture and motor vehicle ended up in a trust of which the first respondent may well be a beneficiary, and what claims the first respondent may have against the trust.

[48] **The Fuls Family Trust:**

48.1. During 2006 the second respondent had a small interest in the Fuls Family Trust.

48.2. The applicant voiced its concern over the possibility that this trust may serve as a *"vessel for the assets of the respondent and his spouse".*

48.3. The first respondent's reply is a terse denial. No details are provided of his or his wife's involvement with the trust, be it as creditors or as beneficiaries. No details of the Assets and liabilities of the trust are provided.

48.4. It was submitted that in view of the first respondent's business *modus operandi* it is necessary to appoint a trustee with the necessary power to investigate the respondents' connection with the Fuls Family Trust and to salvage assets (if any are found) for the benefit of the first respondent's creditors.

[49] **First Respondent's Auditing Practice:**

49.1. First respondent has been practicing as an auditor in Wellington since July 2011. It was submitted by applicant that, the first respondent's allegation that after a year's practice he still does not earn an income from the practice and has to rely on the help of friends and family to survive seems highly suspect.

49.2. The first respondent does not offer any supporting evidence for his allegation that he does not earn an income from his practice. There are no supporting affidavits from any friend or family member. The first respondent, an auditor by profession, fails to annex even the most rudimentary statement of income and expenses to support his plea of poverty.

49.3. Applicant contended that a trustee will likely find a different picture from the one that the first respondent is presenting.

50. The first respondent's spouse (second respondent):

50.1. The second respondent's balance sheet of 30 June 2006 indicated that she had nett assets of R6 225 000,00, comprising mainly of two immovable properties and motor vehicles.

50.2. Once the first respondent's estate is sequestrated the second respondent's assets vest in the Master and then in the first respondent's trustee.

50.3. However, according to the unsupported statement of the first respondent, the second respondent now has no *''assets that can be attached and sold".*

50.4. No reason is offered why the second respondent could not confirm the first respondent's plea of poverty on the second respondent's behalf.

50.5. The respondents' reluctance to make full disclosure of their financial position in the circumstances of this matter, is further reason for a trustee to be appointed to conduct the necessary investigation into their affairs.

50.6. More importantly is the question as to how the second respondent succeeded in amassing a nett estate of more than R6 million (2006 values) while she "was a *housewife looking after our children up to July 2011*".

50.7. Applicant submitted that, there is a strong likelihood that the first respondent caused some of his property to be registered in the second respondent's name. Further, that such a *modus operandi* would certainly be compatible with the first respondent's inclination to be involved with a string of legal entities that enabled him to earn R99.000,00 per month yet now he has allegedly nothing to show for it in the form of assets.

50.8. According to the first respondent the second respondent's Lagoon Drive property that belonged to her in 2006, now (still) belongs to a company, Eagle Creek Investments 471 (Pty) Ltd, despite having been on sale by Eagle Creek in 2010. No details are provided as to Eagle Creek's shareholding or of any connection between the respondents and Eagle Creek, and no reason for the unusual two-year delay in transfer of ownership is offered.

50.9. According to the first respondent the only other property of the second respondent was the Marina Drive property. This was allegedly sold at a loss leaving an unpaid balance of an ABSA loan. Applicant submitted that, in view of the fact that this property was not listed in 2006 as one of the second respondent's assets, it must be presumed that she subsequently acquired that property, while being occupied as a housewife looking after the respondents' children.

50.10. The second property listed by the second respondent in her balance sheet of 2006, was sold by her to Blue Age (the principal debtor for whose liabilities *inter alia* the respondents bound themselves as sureties) about December 2008 and was financed with a loan amounting to approximately R3,5 million by the applicant.

50.11. The respondents do not account for the purchase price at all. In this regard it is noted that the second respondent during 2006 owed Investec bank only R500.000,00 against the property being valued at R6.000.000,00.

50.12. Applicant submitted, that bearing in mind that the first respondent is a director of Blue Age, this sale by the second respondent of her most **substantial asset to a company** of **which her husband is a director, should** be probed by a trustee with a view to establish the true ownership of the property, the true intention of the parties to the transaction and the flow of the purchase price obtained from the sale.

[51] I am mindful of the fact that the first respondent is clearly extremely loathe to provide full details of his financial position and of his involvement in the numerous business vehicles employed by him.

[52] I am of the opinion that, it is the interest of all of the first respondent's creditors for his estate to be provisionally sequestrated so as to enable a thorough investigation by a trustee backed by the full authority of the insolvency law. That there is a prospect not too remote, that as a result of investigation and enquiry, assets might be unearthed that will benefit creditors.

COURT'S DISCRETION:

[53] First respondent submitted that the applicant holds security over the immovable property of the principal debtor, Blue Age, yet applicant failed to disclose this, stating, "Applicant's claim against the Respondent is wholly unsecured" and contends in its Replying Affidavit that the first respondent caused the principal debtor to be deregistered.

[54] First respondent also submitted that the applicant failed to disclose in its founding affidavit that the applicant entered into further indulgency agreements with the other co-sureties and the latter are also paying lower monthly instalments than the first respondent. That the applicant is bias towards the first respondent in bringing this application and that the application is vexatious.

[55] Firstrand Bank Ltd v Evans 2011 (4) SA 597 (KZN), para 27, held as follows, *"Once the applicant for a provisional order of sequestration has established on a prima facie basis the requisites for such an order, the court has a discretion whether to grant the order. There is little authority on how this discretion should be*

exercised, which perhaps indicates that it is unusual for a court to exercise it in favour of the debtor. Broadly speaking, it seems to me that the discretion falls within that class generally described as involving a power combined with a duty. In other words, where the conditions prescribed for the grant of the provisional order of sequestration are satisfied, then, in the absence of special circumstances, the court should ordinarily grant the order. It is for the respondent to establish the special or unusual circumstances that warrant the exercise of the court's discretion in his or her favour. "

[56] I am of the opinion that the first respondent's failure to provide full disclosure of his financial and business position disqualifies him from appealing to this Court's discretion to refuse a sequestration order.

[57] The first respondent is hopelessly insolvent.

[58] The first respondent has submitted no proof that he will be prohibited from earning an income if his estate is sequestrated.

[59] In respect of, first respondent's plea for equal treatment of co-sureties. The

applicant is under no obligation to treat the signatories to the indulgence agreement equally.

[60] The indulgence agreement has in any event become irrelevant for purposes of this application because the applicant subsequently obtained judgment against the first respondent, which judgment is still unsatisfied.

[61] Then in respect of security, the applicant holds no security for its claim against the first respondent.

[62] Section 2 of the Act provides, that, [1] *"security", in relation to the creditor of an insolvent estate, means property of that estate over which the creditor has a preferent right by virtue of any special mortgage, land lord's legal hypothec, pledge or right of retention. '*

[63] Thus, a sequestrating creditor is under no obligation to disclose in his application any security he may have over the assets of a third person, **(Van der Merwe v Kock 1930 CPD 320),** or any recourse he may have against some person other than the debtor, **(Ringer v Beckett & Co. 1927 TPD 714 at 720;**

Macket v Ballen 1939 WLD 183).

[64] The recent case of **Muller v Kaplan N.O. & Others, SGHC, case no 14732/10, (unreported), paras 71-73,** is directly in point in that there too, the claim was secured by a suretyship and mortgage bond over the fixed property of another entity, Orange Grove 13th Street (Pty) Ltd, not the property of the insolvent or his Estate. The court held, *"Accordingly, as Total held no security over the assets of the estate as contemplated by the Act, Total was not obliged to identify the security it held from a surety such as Orange Grove. "*

[65] In any event it is not as if the applicant concealed the fact that it had security over the principal debtor's property. In terms of clause 17 of the indulgency agreement signed by the respondents (the co-sureties), the applicant reserved the right to proceed at any time against the principal debtor upon the basis of the Loan Agreement and the Mortgage Bond in its favour, and only in the event of the respondents defaulting in their indulgence agreement obligations.

[66] This does not oblige the applicant to proceed against the principal debtor

instead of its sureties. The proviso in the indulgency agreement is a further concession to the signatories of the agreement, of which the respondent was one. It is only in the event of the respondents, (i.e. all of the co-sureties) being in default that the applicant would have the right to proceed against the principal debtor.

[67] Each of the respondents and co-sureties undertook joint and several liability for the whole debt.

[68] The fact that the applicant entered into further separate indulgency agreements with the other co-sureties cannot be held against the applicant because the respondents and co-sureties expressly agreed that the applicant would be entitled to show indulgency, leniency or extension of time to some of the respondents only.

[69] The application can not be branded vexatious merely because applicant is exercising its rights contractually agreed upon with the respondents.

[70] In any event, the only security involved is the applicant's mortgage over the

property of the principal debtor. The applicant has however being prevented from executing against the said property because the first respondent was at least partially responsible for the principal to be de-registered.

[71] Applicant contends, that even if the property concerned were to be sold in execution, the proceeds would not be sufficient to extinguish the principal debt.

[72] The first respondent, who appeals to this Court to exercise its discretion favourably, must place sufficient facts before the Court in order for it to consider the first respondent's request. It is noted, that while the property concerned is still registered in the name of a company of which the first respondent is a director, the first respondent fails to submit any proof at all of the likely proceeds of the sale in execution.

[73] Subsequent to this application being launched, the respondents were granted a further opportunity to regularise their relationship with the applicant but did not make use of the opportunity.

[74] A sequestration order should be granted unless special or unusual

circumstances exist that warrant the exercise of the discretion in the respondent's favour. The onus is on the respondent, not on the applicant to show circumstances that warrant the exercise of the discretion in favour of the respondent.

[75] The only allegation put forward by the respondent is that he *"might be deregistered as a chartered accountant and auditor by IRBA and SAICA".*

[76] The application must succeed and the following order is granted.

IT IS ORDERED THAT:

1. The estate of the first respondent is provisionally sequestrated.

2. The respondents and all interested parties are called upon to appear before this Court on Tuesday, 11 December 2012 at 10h00 to advance reasons, (if any), why the estate of the first respondent should not be finally sequestrated and why the costs of this application should not be costs in the administration of the sequestration.

3. This Order shall be served upon the respondents personally and further be dealt with in accordance with section 11(2A) of the Insolvency Act, 24 of 1936.

MANSINGH, AJ