

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NUMBER: **9403/2020**

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD

Applicant

and

THE TRUSTEES FOR THE TIME BEING OF THE

Respondent

SATAAR TRUST

(being: Abdul Majid Aziz, Zakier Hoosain Aziz and Abdul Samad Aziz)

Ex tempore Judgment: 13 April 2021

CORAM: Steyn J

Today is the postponed return date of a rule Nisi issued by the court on 4 November 2020 by Erasmus J. At the hearing of this sequestration application in November 2021, it was opposed. After hearing argument of the representatives of both parties, the court ordered that the estate of the Trust, (respondent) in this matter, be provisionally sequestered. The court must therefore, *prima facie*, have been of the opinion that the applicant had established the elements set out in s 10(a), (b) and (c) of the Insolvency Act of 1963.

The respondent was ordered to show cause why his estate should not be finally sequestrated. Erasmus J also ordered that a trustees insolvency report be filed, relating to the affairs of the trust, to the extent that they could establish same, as well as a valuation of assets. This comprehensive preliminary report was filed on 21 January 2021 and delivered to respondent's attorney on the same day. The estimated liabilities and value of assets of the trust were dealt with in much detail. The insolvency of the trust is apparent. A compliance affidavit has been filed dated 14 January 2021, indicating that there has been full compliance with the terms of the order of Erasmus J relating to service of the provisional order.

On the return day, 27 January 2021, the matter was opposed by the respondent and was postponed by Allie J, by agreement between the parties, to today's date; the rule nisi was extended. The respondent was ordered to file its supplementary answering affidavit on or before 17 February 2021 and the applicant to file supplementary replying affidavits, if any, on or before 3 March 2021. Heads of argument were to be filed in accordance with court directives.

Applicant's heads of argument were filed before the Erasmus J hearing, on 14 October 2020. These heads have not been supplemented. No heads of argument and further affidavit have been filed by respondent, as ordered. The omission was pointed out on behalf of applicant, but no response was received. Today the final sequestration of the estate of the respondent is requested. Correspondence from my Chambers related to the hearing of the matter was not responded to on behalf of the respondent. I was advised that respondent's attorney contacted the applicant's attorney related to the matter, in without prejudice correspondence yesterday, and that respondent and his attorney are

aware that the matter will proceed today. Today the respondent and his representatives did not attend court and neither did they contact the court. Mr Goodman, for applicant, handed up an email dated 12 September 2021 (at 4h35 pm) confirming that his clients had withdrawn their opposition and abided the court's decision.

The affidavit filed on behalf of the applicant shows that there has been full compliance with the relevant procedural requirements prescribed in the Act, relating to an application for sequestration. The grounds for the sequestration were detailed. The Master's report, dated 14 August 2020, showed that due security had been found for payment of fees, expenses and charges as required for the prosecution of the sequestration proceedings. No objections to the order sought were raised by the Master. The applicant's locus standi was dealt with as was the liability of the trust arising from a suretyship and guarantee. The trust has extensive liabilities.

The applicant is a creditor of the trust in an amount of over R 20.7 million. The amount is due, payable and owing. The trust does not dispute its indebtedness and inability to pay. It is undisputed that the trust is insolvent and has committed an act of insolvency. I am satisfied that it has been shown that a reasonable possibility exists of a pecuniary benefit, constituting an advantage to creditors, if the trust is sequestrated. The trustees are investigating the values of claims and assets.

There is no basis for me to exercise a discretion against granting a final sequestration order. No special or unusual circumstances in this regard have been shown. As argued, the trust is hopelessly insolvent and has committed an act of insolvency. No grounds have been demonstrated why this court should indulge the respondent to the detriment

of the applicant and other creditors. The interests of the body of creditors, through an orderly equitable distribution of trust assets, can only can be protected by a final sequestration order.

ORDER

A final sequestration order is granted.

Costs of the application are costs in the administration of the trust's insolvent estate.

A handwritten signature in black ink, appearing to be 'E Steyn J', written over a horizontal line.

E STEYN J

Michael Papas

From: michael@dixonattorneys.co.za
Sent: 12 April 2021 04:35 PM
To: Lisa Melis; Andre Symington
Cc: 'richard goodman'; Michael Papas
Subject: RE: THE STAAR TRUST // STANDARD BANK OF SOUTH AFRICA LIMITED

Dear Lisa

It appears that this matter will not settle.

In the circumstances, my instructions are to confirm that my clients withdraw their opposition to the matter and leave the matter in the hands of the Court.

Regards

michael dixon

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dixon attorneys

ATTORNEYS CONVEYANCERS NOTARIES

From: Lisa Melis <lmelis@ensafrica.com>
Sent: Monday, 12 April 2021 11:46
To: michael@dixonattorneys.co.za; Andre Symington <asymington@ensafrica.com>
& richard goodman <rgoodman@iafrica.com>; Michael Papas <mpapas@ensafrica.com>
Subject: RE: THE STAAR TRUST // STANDARD BANK OF SOUTH AFRICA LIMITED

Dear Michael

We refer to your email of 12 April 2021. We do not intend to deal with each and every allegation contained in your correspondence under reply. Our election not to deal with any particular aspect of your correspondence under reply at this stage should not be interpreted as an admission as to anything contained therein. Our client's rights to deal with these aspects in future, if necessary, at the proper time and in the appropriate forum, are hereby reserved.

Our client has already afforded your client's one postponement of the return day. Our instructions are that no further postponements will be entertained by our client. Any application for postponement will be opposed.

Regards, Lisa Melis