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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2023-071111
1. REPORTABLE: ~~YES~~/NO
2. OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
3. REVISED: YES/~~NO~~
DATE: 11 October 2024

In the matter between:

VOLTEX(PTY)LTD	Applicant
And	
THE TRUSTEES FOR THE TIME BEING OF THE ANDRE DE LEEUW FAMILIETRUST NO	First Respondent
CORNELIUS ANDREAS GERT DE LEEUW NO	Second Respondent
HELENA ELIZABETH MARIA DE LEEUW NO	Third Respondent
And	

CASE NO: 2023-074271

VOLTEX(PTY)LTD Applicant

and

DE LEEUW, CORNELIUS ANDREAS GERT **First Respondent**

Date of birth of the first respondent	11th November 1957
Identity number of the first respondent	5[…]
Martial state of the first respondent	Married in/alternative out of community of property to the second Respondent

DE LEEUW, HELENA ELIZABETH MARIA **Second Respondent**

Date of birth of the second respondent	4th of March 1962
Identity number of the second respondent	6[…]
Martial state of the second respondent	Married in/alternative out of community of property to the first Respondent

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JUDGMENT

VORSTER AJ:

1. In case 2023-07111 the Applicant at this stage seeks the provisional sequestration of the Andre De Leeuw Familietrust ("*the Trust"*). In case number 2023-074271 the Applicant seeks the provisional sequestration of two individuals, Mr and Mrs De Leeuw, who are the trustees of the Trust.

2. Because the facts and legal issues in the two applications overlap to a large extent, the applications were argued together and are both dealt with in this composite judgment.

3. The following facts are common cause between the parties:

3.1. ADL Electrical Contractors (Pty) Ltd ("ADL") owes the Applicant the sum of R 17 933 150.02 together with interest in respect of the purchase of electrical goods by ADL from the Applicant.

3.2. The Trust bound itself as surety and co-principal debtor in favour of the Applicant for ADL's indebtedness to the Applicant.

3.3. Mr De Leeuw, acting in his personal capacity, also bound himself as surety and principal co-debtor to the Applicant for the debts of ADL.

3.4. Mr and Mrs De Leeuw are married in community of property.

3.5. The Applicant obtained judgment in the above amount plus interest against the Trust and Mr De Leeuw, jointly and severally on 25 February 2019 after the Trust, De Leeuw and ADL had in terms of a settlement agreement undertaken to pay such sum by 15 January 2019.

3.6. ADL was placed under final winding-up on 23 January 2024.

3.7. The Applicant thus has a judgment against the Trust and Mr De Leeuw in the amount of almost R 18 million plus interest, which judgment has not been satisfied for a period of approximately five and a half years.

3.8. The Trust is the sole shareholder of a company named Loumarles Landgoed (Pty) Ltd ("*Loumarles*") which owns an immovable property being farmland in Limpopo ("*the farm*").

4. Although there are a number of issues in dispute of the papers, I was informed during the commencement of argument that the parties had agreed that the only issues remaining were whether the Respondents had committed an act of insolvency as described in section 8(b) of the Insolvency Act 24 of 1936 ("*the Act*"), i.e. whether there had been *nulla bona* returns and whether there is reason to believe that it will be to the advantage of creditors of the Respondents as intended in section 10(c) of the Act if their estates are provisionally sequestrated. In discussing the evidence below, the emphasis is on evidence which is germane to these issues. However, during argument it transpired that the question whether the Respondents are in fact insolvent also required consideration.

5. Annexed to the founding affidavit in case 71111 is an affidavit deposed to by Mr De Leeuw on 6 June 2023 in opposition to the winding-up application which the Applicant had launched against ADL in 2018. The important averments in this affidavit may be summarised as follows:

5.1. ADL has always maintained that it is willing and will repay the Applicant, but ADL is bound by processes out of its control which make it impossible to effect payment.

5.2. The farm has significant value and Loumarles is in the process of selling the farm in order for such proceeds to be utilized to settle the mortgage bond over the property as well as to settle the debt of the Applicant.

5.3. The property had previously been sold but the transaction failed due to the purchaser's inability to obtain financing for the sale.

5.4. There have been active and continuous attempts to sell the farm in order to settle the mentioned debts and Loumarles is in possession of a signed offer to purchase. However, financing of the transaction has proven to be a tedious process.

5.5. It is submitted by the deponent that the successful sale of the farm is inevitable and in the process of being finalised.

6. The following is clear from the annexures to this affidavit (which form part of the answering papers in case 71111):

6.1. Loumarles has been attempting to sell the farm since at least 2018.

6.2. An offer to sell the farm signed behalf of the Loumarles in October 2021 (which was not signed by the purchaser) indicated the total purchase price as R 43 million, made up as follows:

6.2.1. Purchase price for the land, R 33 150 000.00;

6.2.2. Purchase price for the movable property R 6 000 000.00; and

6.2.3. Purchase price for the game R 1 700 000.00.

6.3. The sale referred to in paragraph 7.1 below indicates that the purchase price of R 48 million does not relate solely to the farm, but also to movable property such as 300 head of cattle weighing in at approximately 150kg each as well as feed and medication for 120 to 140 days.

6.4. On 2 April 2023 an attorney apparently acting on behalf of ADL and its sureties addressed a letter to the attorneys of the Applicant and of ABSA. In this letter the following was stated in relation to service of a warrant of execution in March 2023 upon the Trust:

"It is not clear to us, nor our clients, as to what exactly VOLTEX (PTY) LTD is trying to achieve with same as our client had disclosed all relevant immovable and movable property, inclusive of security to Loumarles ... The re- execution as instructed, is causing unnecessary costs at this stage, as there is no purpose in proceeding with the auction taking into consideration the liquidation application that is still pending. Should VOLTEX (PTY) LTD choose to proceed with the auction, it would be unjust to all relevant creditors. A previously attempted auction clearly proved that there was no buyer's market

for such property and that the purchase price that was attempted as a potential sell of the property, was Jess than half of what can be obtained from a private sale. This attempt from VOLTEX (PTY) LTD is seen as vexatious, and might be seen as an attempt to bring harm to our clients and the entities involved."

7. In the Trust's answering affidavit in case 071111 which was deposed to on 11 January 2024, Mr De Leeuw states inter alia the following:

7.1. Loumarles sold the farm on 23 March 2023 for an amount of R 48 million in order for the proceeds thereof to be utilized to settle the mortgage bond and the debt of the Applicant. Transfer was stated to be pending and subject to the purchaser obtaining financing from the Land Bank.

7.2. The mortgage holder has confirmed to Mr De Leeuw that it would be willing to accept a payment towards the mortgage at about R25 million. (It is worth noting that there is no document or affidavit from the mortgage holder confirming the correctness of this assertion.)

7.3. It is repeated that the sale of the farm is inevitable and in the process of being finalised.

7.4. *"...[T]here is simply no means other than the proceeds of the farm with which the Applicant's debt can be paid.* ***There is certainly no entity or person involved with the financial means to pay an amount of more than R 17,000,000.00***" (emphasis added.)

7.5. "*[T]he execution of the judgment would be a futile exercise until the farm has been successfully sold*". Mr De Leeuw's attitude regarding the sale of the farm in execution is thus consistent with what was stated by his attorney in the letter quoted in paragraph 6.4 above.

8. The founding papers in both case 71111 and case 74271 contain warrants of execution issued pursuant to the court order referred to in paragraph 3.5 above against the Trust on 10 April 2019 and against Mr De Leeuw on 2 March 2023.

9. The Sheriffs return of service in relation to the Trust states that the warrant of execution was served on 24 May 2023 on Mr De Leeuw (in his capacity as trustee) at his residence in Pretoria after explaining the nature and exigency of the said process. The Sheriff then demanded payment of the judgment debt from the said trustee and as he was unable to pay the judgment debt and costs in full or in part, the movable property described in an annexed inventory was judicially attached. The Sheriff placed a value of approximately R 275 000.00 on the assets so attached. The return of service in respect of Mr De Leeuw in his personal capacity is formulated in a substantially similar way to the return in relation to the Trust.

10. With regard to advantage to creditors the following is stated in the founding affidavit in case 71111:

10.1. As it appears that Mr De Leeuw is attempting to sell the farm for the sum of R 43 million, it is submitted that this is a significant asset which will result in a substantial advantage to creditors.

10.2. Apart from the Trust being the sole shareholder in Loumarles it is also the sole shareholder in Webram Eleven (Pty) Ltd and Vtric (Pty) Ltd and a trustee will be able to ascertain whether any of such companies have assets which can be realised for the benefit of creditors.

10.3. The items in the inventory referred to above may constitute assets belonging to the trust, which the trustee can utilize for the benefit of creditors.

10.4. The circumstances require that the trustee investigate the affairs of the trust and there is at least a reasonable possibility that he may locate assets which will afford a pecuniary benefit to creditors.

11. The following further features of the answering affidavit in case 71111 are relevant:

11.1. In respect of Webram and Vtric, Mr De Leeuw baldly confirms that these entities have been dormant for many years and have no assets.

11.2. The Applicant's averment that the farm has substantial value is noted and not disputed.

11.3. It is stated that the movable assets which were attached related to the trust and not to Mr De Leeuw personally.

11.4. The Applicant's averments and contentions relating to advantage to creditors are denied and it is stated that there are no creditors apart from the Applicant. It is stated that sequestration of the trust will not hold any advantage even to the Applicant. Although it is raised that the liquidation proceedings of ADL are ongoing and that it is unclear what benefit will be yielded to the Applicant from the liquidation of ADL, ADL has now finally been wound up as indicated above.

11.5. It is denied that the investigation of a trustee would lead to a location of any assets of substantial value.

11.6. Although there is a bare denial of the averment that the trust is factually insolvent, no evidence is provided which could justify the conclusion that the trust is factually solvent.

12. The only important differences between the papers under case 71111 and case 74271 are as follows:

12.1. In addition to the service of the warrants of execution dealt with in both case 71111 and case 74271, service of the warrant of execution on Mr de Leeuw personally on 25 April 2023 is dealt with in case 74271.

12.2. This return reads as follows:

> "*The WARRANT OF EXECUTION in this matter, which service address is Plot 1[…], 5[…] B[…] Avenue, Kenley, Sinoville is returned herewith on this 25th day of April 2023 at 08:00 as NO ASSETS OF [MR DE LEEUW] COULD BE FOUND AT THE GIVEN ADDRESS.* ***ALL THE ASSETS IS PRESUMABLY ON A FARM IN NABOOMSPRUIT NAMELY; 513KR, NABOOMSPRUIT AS INFORMED BY MR CAG DE LEEUW*** *... "* (Emphasis added)

12.3. In the answering affidavit in case 74271 Mr De Leeuw merely notes the content quoted above, but does not elucidate the sentence which has been emphasised above. Mr De Leeuw does, however, state with reference to a return of non-service by the Sheriff that the Sheriff seemingly failed to locate the farm despite it being easily traceable with large signs on the way to the farm. Mr De Leeuw suggests, with some justification that the Applicant should have requested information pertaining to the farm from the Respondents' attorneys of record who had already been on record for a substantial period.

12.4. As far as advantage to creditors is concerned, the Applicant states in case 74271 that the assets reflected on the inventory constitute assets of Mr De Leeuw which have a substantial value and which will constitute a pecuniary advantage to creditors. In response to this, Mr de Leeuw merely baldly asserts that the assets judicially attached, do not belong to him.

12.5. In case 74271 reliance is also placed on the circumstances which require a trustee to investigate the affairs of Mr De Leeuw and it is suggested that there is at least a reasonable possibility that the trustee may locate assets which will afford a pecuniary benefit to creditors.

13. In the answering affidavits in both applications it is explained that the De Leeuws previously had the ability to live a luxurious lifestyle when ADL was a very lucrative company from which Mr De Leeuw managed to draw a lucrative income.

However, ADL's profitability ceased upon the collapse of Sharemax when ADL could not recuperate large amounts outstanding to it from the developer of the infamous Villa Mall.

14. The De Leeuws accordingly had to down-scale their lifestyle immensely since the downfall of the Villa project and are getting by financially on the income Mr De Leeuw draws from the remaining operations of ADL, which is on a much smaller scale.

15. The answering affidavits were deposed to a few weeks before the granting of the final winding-up order in respect of ADL and the question does arise as to how the De Leeuws have been getting by financially and paying their legal team since the final winding-up of ADL some six months ago.

16. It appears from the papers that the mortgage bond holder, ABSA has indeed instituted proceedings against Loumarles for a winding-up order.

17. It thus appears that, although on the papers the Trust has no creditors other than the Applicant, it is not only the Applicant, but also ABSA who have instituted sequestration and winding-up proceedings with a view to utilizing the proceeds of the sale of the farm in order to satisfy their respective claims in whole or in part.

ACTS OF INSOLVENCY AND FACTUAL INSOLVENCY:

18. In the founding papers the Applicant relies both on an act of insolvency in terms of section 8(b)[1] of the Act and on actual insolvency of the Respondents.

19. The Respondents have put up a *virilis defensio* in respect of the act of insolvency relied upon by the Applicant and have forcefully argued that the returns of service relied upon by the Applicant do not constitute *nulla bona* returns as required in section 8(b) of the Act.

[1] The reference to section 8(a) appears to be a typographical error if one has regard to the context sketched in the founding affidavit as well as that the trust is factually insolvent.

20. The Applicant sought to counter these arguments by relying in argument on an act of insolvency as intended in section 8(g) of the Act, i.e. the giving of notice in writing to any one of the Respondents' creditors that the Respondents are unable to pay any of their debts. This argument was based on the statement in the answering papers quoted in paragraph 7.4 above. The Respondents resisted this attempt to rely on section 8(g) on the basis that this was not the case advanced by the Applicant on the papers.

21. In view of the conclusion which I have reached below with regard to the actual insolvency of the Respondents it is not necessary to decide whether the returns of service relied upon by the Applicant comply with the requirements of section 8(b) or whether the Applicant is entitled to rely on an act of insolvency in terms of section 8(9), which has not been relied upon in the Applicant's papers.

22. In the case of a hostile sequestration the sequestrating creditor does not have to set out in its founding affidavits the detail and intensity of averments which are required in a friendly sequestration, although a proper case should always be made out.[2]

23. The relevant legal principles relating to actual insolvency may be summarised as follows:

23.1. Actual insolvency denotes that the debtor's liabilities actually exceed the value of his or her assets.[3]

23.2. However, actual insolvency may be established indirectly by adducing evidence of circumstances indicative thereof such as the fact that debts remain unpaid.[4]

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[2] **Dunlop Tyres (Pty) Ltd v Brewitt** 1999 (2) SA 580 (W) at 583F.
[3] **Ex parte Harmse** 2005 (1) SA 323 (N) at par. [8].
[4] **De Waard v Andrews and Thienhans Limited** 1907 TS 727 at 733 where the following was stated: "*To my mind the best proof of solvency is that a man should pay his debts; and therefore I always examine in a critical spirit the case of a man who does not pay what he* owes"; **Ullman Sails (Pty) Ltd v Jannie Reuvers Sails (Pty) Ltd** [2022] 2 All SA 290 (WCC), par. 48.

23.3. An Applicant relying on actual insolvency is not required to adduce evidence to finitely determine the Respondent's assets and liabilities and may discharge the *onus* of establishing a *prima facie* case by way of sufficient evidence to justify the inference that the Respondent is insolvent. If the Applicant does so, the *onus* is on the Respondent to rebut the inference by showing that he has sufficient assets to be able to settle his liabilities.[5]

23.4. While proof of "*commercial insolvency*", i.e. inability to pay debts as they become due is not sufficient, *per se* for the purpose of obtaining a sequestration order, evidence of such inability may enable the court to conclude that the debtor's liabilities in fact exceed the value of his or her assets.[6]

24. The fact that the Trust and Mr de Leeuw have not satisfied a judgment of almost R 18 million (together with interest) for a period of approximately five and a half years must be a very strong indication of factual insolvency. Bearing in mind that at provisional sequestration stage the court needs to be of the opinion that *prima facie* the debtor is insolvent, I am satisfied that the Applicant has satisfied the burden resting on it.

25. The inference of actual insolvency is strengthened by the fact that Loumarles has been trying unsuccessfully to sell the farm since 2018.

26. As has been indicated in paragraph 11.6 above no evidence has been provided by the Respondents which could justify the conclusion that they are factually solvent.

ADVANTAGE TO CREDITORS:

27. Section 10(c) of the Act requires that the Court must be of the opinion that *prima facie* there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated.

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[5] Ullman Sails (supra).
[6] Meskin Insolvency Law, par. 2.1.3.

28. As pointed out above, in the case of a hostile sequestration the sequestrating creditor does not have to set out in its founding affidavits the detail and intensity of averments which are required in a friendly sequestration, although a proper case should always be made out.[7]

29. At the provisional sequestration stage advantage to creditors need not be established, but only that there is reason to believe that there will be such advantage. This means that facts should be disclosed which in engender such belief, *prima facie*.[8]

30. It is also sufficient if the Applicant demonstrates, for example, that there are reasonable grounds for concluding that upon a proper investigation of the debtor's affairs, or otherwise, a trustee may discover or recover assets for disposal for the benefit of creditors.[9]

31. In **Stratford v Investec Bank Ltd**[10] the following was stated:

> "*The meaning of the term 'advantage' is broad and should not be rigidified. This includes the nebulous 'not-negligible' pecuniary benefit ... To my mind, specifying the cents in the rand ... in the context of a hostile sequestration where there could be many creditors is unhelpful ...*
>
> *The correct approach in evaluating advantage to creditors is for a court to exercise its discretion guided by the dicta outlined in Friedman[11] for example, it is up to the Court to assess whether the sequestration will result in some payment to the creditors as a body; that there is a substantial estate from*

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[7] **Dunlop Tyres (Pty) Ltd v Brewitt** (*supra*) at 583F.
[8] **London Estates (Pty) Ltd v Nair** 1957 (3) SA 591 (N) at 593C - D.
[9] **Dunlop Tyres (Pty) Ltd v Brewitt** (*supra*) at 583G.
[10] 2015 (3) SA 1 (CC), par. [44] - [45].
[11] Meskin & Co v Friedman 1948 (2) SA 555 (W) at 559 where the following was stated: *"[T]he facts 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. It is not necessary to prove that the insolvent has any assets. Even if there are none at all, but there are reasons for thinking that as a result of inquiry under the Act some may be revealed or recovered for the benefit of creditors, that is sufficient ... ".*

which the creditors cannot get payment, except through sequestration; or that some pecuniary benefit will result to the creditors."

32. In opposing an application for compulsory sequestration, a Respondent should provide the information necessary to enable the court to decide whether or not there is advantage to creditors, in the absence of which the court may accept the facts on which the application is based.[12]

33. In this regard the following statement of the law by Watermeyer J in **Hill & Co v Ganie**[13] has frequently been referred to with approval:[14]

"... *prima facie if there is a substantial estate to sequestrate and if the creditors cannot get their debts paid in the ordinary way it is to the advantage of creditors that the debtor's estate should be sequestrated. In most cases therefore the mere proof of an act of insolvency or of the fact that the debtor's estate is insolvent together with proof that the debtor has assets, would be enough to discharge the onus. If there are special circumstances which would make sequestration disadvantageous to creditors then the onus would lie on those who set up this contention to establish it."*

34. During the course of his able argument on behalf of the Respondents, Mr de Leeuw (who is not related to the Respondents), relied on a number of authorities which demonstrate that advantage to creditors may be difficult or impossible to prove in instances where the sequestrating creditor is the only creditor of the Respondents.

35. In this regard it is worth observing, however, that the argument raised on behalf of the Respondents that there will be no advantage to creditors if the Respondents are sequestrated and that the farm should rather be sold in execution, is somewhat incongruous against the background of the attorney's letter which has been quoted in paragraph 6.4 above and the statement by Mr De Leeuw which has been quoted in paragraph 7.5 above.

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[12] **MAN Financial Services SA (Pty) Ltd v Buys** 2014 JDR 1013 (GSJ), par. 29.
[13] 1925 CPD 242.
[14] E.g. Stockowners Co-Op Ltd v Rautenbach 1960 (2) SA 123 (E) at 128B; Puzyna v Puzyna 1962 (1) SA 165 (C) at 166G; Mamacos v Davis 1976 (1) SA 19 (C) at 21A.

36. In **Waterkloof Boulevard Homeowners Association v Yusuf**[15] this court dismissed a sequestration application because, on the facts before it, the sequestrating creditor, who was the sole creditor, was unable to demonstrate the necessary advantage to creditors. In arriving at this conclusion the court relied on **Mamacos v Davids**,[16] Gardee v Dhanmanta Holdings[17] and **Zikalala v Body Corporate of Selma Court**.[18]

37. Whether an advantage to creditors has been demonstrated in a given case is of course dependent on the facts of that case. I am of the view that there are important distinguishing features in the present two matters which were not present in the cases relied upon by the Respondents.

38. In **Mamacos** the Respondent owned bonded immovable property, but there was no information in the papers as to the value of the property or whether on a sale the proceeds will be more or less than the mortgage debt. In the circumstances it is understandable that the court found that there was no reason why the applicant could not proceed with the attachment of the property and its sale, instead of sequestration proceedings.[19] During the course of the judgment Burger J distinguished a number of cases relied upon by the applicant in that matter on the basis that in those cases the real issue was whether the debtor should have an extension of time in which he must pay, it being alleged that given time the debtor will eventually pay all his debts. In those cases the question as to whether the assets were sufficient to justify the costs of sequestration did not arise.[20] The Respondents in the present case also allege that given time, they will eventually pay the debt due.

39. The Court in **Mamacos** correctly held that there is no authority for the proposition that a creditor can insist on the sequestration of a debtor by merely alleging that he should be examined and held that a petitioning creditor must go

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[15] [2023] ZAGPPHC 737 (28 August 2023).
[16] Supra at 20C.
[17] 1978 (1) SA 1066 (N) at 1067 and 1069.
[18] 2022 (2) SA 305 (KNP), par. 31.
[19] 20C.
[20] 21D - F.

further and allege facts which indicate that such an examination has some prospect of revealing additional assets.[21]

40. In **Gardee** advantage to creditors was the only issue to be adjudicated and the sequestrating creditor was also the sole creditor. The Court took into account that in the papers before it information was totally lacking about the Respondent's assets and nothing was known about its business activities, past or present. Neither the extent nor the general character of its business had been revealed. The same silence covered the details and nature of the transaction which resulted in the applicant's judgment against it. By way of summary the court found that there was no evidence which suggested that anything at all would be recovered from the Respondent's estate if it were sequestrated.[22]

41. It is in the foregoing context that Didcott J stated the following:

> *"While there may be no reason in principle why a debtor with only one creditor should not have his estate sequestrated, the potential advantages in that situation are inherently fewer, and the case for it is correspondingly weaker. Then it is really no more than an elaborate means of execution, and because of its costs an expensive one too ... [The applicant] must demonstrate some reasonable expectation that [the benefits of sequestration] will exceed the likely proceeds of ordinary execution. Unless he does that, the laborious and substantially more expensive remedy of sequestration can hardly be thought to be advantageous."*

42. The decision in **Zikalala** does not take the matter further in the present context, as it dealt with the situation where an owner of a sectional title property is in arrear with the payment of levies. In that context it was pointed out that pursuant to judgment against the owner of the unit, a sale in execution of the unit would only lead to transfer of the property after the outstanding levies have been paid.

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[21] 21H.
[22] 1070E - G.

43. An important feature of the present two matters which in my view distinguishes them from the approach adopted in *inter alia* **Mamacos** and **Gardee** is the following: In both **Mamacos** and **Gardee** there was immovable property which could simply have been sold in execution without the costs attendant upon a sequestration having to be incurred. In cases such as that it is understandable that the court would require of an applicant to show some reasonable expectation that the proceeds realised in a sequestration will exceed the likely proceeds of ordinary execution. In the present matters, however, there is no immovable property which the Applicant can cause to be sold in execution. The available asset which can be converted into money in order to discharge a portion of the Applicant's claim is the shareholding of the Trust in Loumarles. On the version put forward by the Respondents the value of the shares would probably equate to the net asset value of Loumarles which would in turn equate to the likely proceeds emanating from the sale of the farm minus the amount of the mortgage bond. As ABSA has already instituted proceedings against Loumarles for a winding-up order, the effective date of the winding-up has already arrived on the assumption that the winding-up order will be granted. Any disposition of the property by way of a sale in execution will accordingly be void in terms of section 341(2) of the Companies Act 61 of 1973.[23]

44. I am satisfied that on the papers it is appropriate to find that prima facie there is reason to believe that it will be to the advantageous of creditors if the Trust is sequestrated. In this regard it is common cause that the farm belonging to the company of which the Trust is the sole shareholder, has substantial value. Although the existence of a mortgage bond over the farm was disclosed by the Respondents, they elected not to disclose the exact amount which is currently outstanding. It is accordingly appropriate to apply the statement by Watermeyer J quoted in paragraph 33 above in the present case. The Trust has simply not shown that any special circumstances exist which would make its sequestration disadvantageous to creditors.

[23] Although the Court has the power to order otherwise. See in this regard Excellent Petroleum (Pty) Ltd v Brent Oil (Pty) Ltd 2012 (5) SA 407 (GNP).

45. The following considerations are relevant specifically when determining whether there would be advantage to creditors if the joint estate of the De Leeuws is sequestrated:

45.1. The return of service in respect of Mr De Leeuw in his personal capacity (which has been quoted in paragraph 12.2 above) indicates that while no assets of Mr De Leeuw could be found at his Sinoville address, Mr De Leeuw probably informed the Sheriff that the assets are on the farm. On the evidence it is justified to infer at least on a *prima facie* basis that the assets referred to by Mr De Leeuw in this regard must be the movable property and animals referred to in paragraphs 6.2 and 6.3 above. This *prima facie* inference is supported by the fact that Mr de Leeuw has elected not to deal with the assets referred to in the return of service, in the answering affidavit. Even if this inference ultimately proves to be incorrect, there are certainly reasons for thinking that as a result of an enquiry under the Act, the trustee may well find that these movable assets are the property of the joint estate or that the joint estate has other assets which could be sold for the benefit of creditors.

45.2. As indicated above, although the De Leeuws no longer live a luxurious lifestyle they have been getting by financially and paying their legal team since the final winding-up of ADL some six months ago. However, they have not disclosed how they have been funding their more modest lifestyle.

45.3. There is a dispute on the papers whether the assets attached as referred to in paragraph 9 above are the property of the Trust or the joint estate. This is also something which the trustee will be able to clarify in an enquiry.

In the premises, it is ordered that:

<u>Case number 2023-071111:</u>

1. The estate of the Andre De Leeuw Familietrust, represented by its trustees for the time being, being the Second and Third Respondents in their capacities as trustees of the said Trust, is placed under provisional sequestration.

2. The Respondents and any other party who wishes to avoid such an order being made final, are called upon to advance reasons, if any, why the Court should not grant a final order of sequestration of the said estate (in the opposed motion Court) on the 27th day of January 2025 at 10h00 or as soon thereafter as the matter may be heard.

Case Number 2023-074271:

1. The estates of the First and Second Respondents are placed under provisional sequestration.

2. The Respondents and any other party who wishes to avoid such an order being made final, are called upon to advance reasons, if any, why the Court should not grant a final order of sequestration of the said estate (in the opposed motion Court) on the 27th day of January 2025 at 10h00 or as soon thereafter as the matter may be heard.

Signed at Pretoria on this the 11th day of October 2024.

J.P. VORSTER
ACTING JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANTS:	S Symon SC N Segal
ATTORNEYS FOR APPLICANTS:	Orelowitz Incorporated Attorneys
COUNSEL FOR RESPONDENTS:	R De Leeuw
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