

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2019/13587

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

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S.E. WEINER

19 JULY 2022

In the matter between:

MAHENDREN MUNSAMY

First Applicant

LEEGALE FRANCESCA ADONIS

Second Applicant

and

RICHARD KEAY POLLOCK N.O.

First Respondent

**THE MASTER OF THE HIGH COURT,
JOHANNESBURG**

Second Respondent

The written reasons were handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded to Case Lines. The date and time for hand-down is deemed to be 10h00 on 19 July 2022.

WRITTEN REASONS

WEINER J:

- [1] This is an application for leave to appeal against the judgment that I granted on the 23rd of June 2022 in which I refused the rescission of a judgment granted by Mia AJ. This matter is related to various other matters which go

back many years. The applications relate to the liquidation of Castle Quest Properties (Pty) Ltd (Castle Crest), which was placed under provisional liquidation on the 21st of October 2015.

- [2] The final order of liquidation was granted in February 2017. The provisional liquidators (Mr Pollock N.O. and Mr Ismail, since deceased) applied to court for an extension of their powers as they wished to sell certain properties belonging to Castle Crest and evict the applicants herein (Mr Munsamy and Dr Adonis). The matter was heard before Mia AJ, who granted the provisional liquidators the power to bring proceedings for, *inter alia*, the eviction of the applicants who were residing at one of the properties situated in Hyde Park (the property) and the disposition of the property by public auction, tender or private contract.
- [3] The eviction application was launched on the 9th of July 2019. Attached to the eviction application, which was served on Mr Munsamy personally on the 16th of July 2019, was the order granted by Mia AJ. In the rescission application, the applicants sought condonation for the late filing of the rescission application. I found that a proper case had not been made out, in that the various delays in seeking the order, were not adequately detailed. I also found that the prospects of success on the merits were poor and thus refused condonation.
- [4] Mr Van Rensburg SC, who appears for the applicants has raised various grounds upon which leave to appeal is sought. He submitted that I erred in finding that the applicants had engaged in dilatory tactics; that I did not consider the seriousness of the complaints levelled against Mr Pollock and the Masters' Office and the investigations into the maladministration of the estate. He also contended that the master was biased in favour of Mr Pollock, and that the extension of powers order was as a result of the maladministration and corruption in the Master's office, which I had failed to deal with. He submitted further that I erred in not taking into account that the provisional liquidators' powers were restricted and they were therefore prohibited from launching the application, unless and until the decision of the

Master restricting their powers was reviewed and set aside. In addition, it was contended that I erred in finding that the applicants were not proven creditors of Castle Crest and therefore did not have legal standing to launch the rescission application.

- [5] I had found that the Mia AJ order did not affect them and they were therefore not entitled to have been joined to the application. The order, in my view, extended the liquidators' powers and that did not affect them. Only the eviction application would affect them and notice would be given to them on that occasion. This, too, Mr Van Rensburg submitted, was an error.
- [6] Mr Van Rensburg, at the hearing for leave to appeal, raised the issue that the provisional liquidators, in applying for the extension order before Mia AJ, were obliged, in the same application, to first apply for authority to bring the application for their powers to be extended. This issue was not raised in the rescission application nor in the written application for leave to appeal.
- [7] At a previous hearing, I had raised the issue as to whether or not the application for rescission was moot as, on 18 February 2022, Mr Pollock was appointed as the final liquidator and that appointment still stands. I was informed at the present hearing, that a review of that appointment has now been launched on the basis that the Master previously refused to appoint Mr Pollock and /or removed him as as a final liquidator. and that decision was never reviewed and set aside.
- [8] In my view, the question boils down to whether the rescission application and this application will have any effect on the ongoing activities and conduct of this estate.
- [9] The Master in a report dated 3 February 2022 stated that one of the officials was supposed to be supervising the administration of the estate and a different Master had taken control of the file. According to the Master's report, the assistant master who had removed Mr Pollock as liquidator was not the master who was tasked with the administration of the estate and in control of

the file. Several Masters and assistant Masters have involved themselves in this estate and have issued contradictory orders.

[10] The latest decision emanating from the Masters' office is the one in which Mr Pollock was appointed the final liquidator. As stated above, that decision has now been taken on review and is pending.

[11] A meeting of creditors took place on 25 March 2022. At that meeting, the creditors ratified and confirmed the actions of the liquidator(s) to date. Other resolutions were adopted at the second meeting of creditors. The respondent argued that as a result of his appointment and the meeting of creditors which have ratified all his actions. Mr Pollock is entitled to bring proceedings on behalf of Castle Crest and no longer requires the extension of powers that Mia AJ granted in order to sell the property and apply for the applicants' eviction.

[12] The respondent submitted that to rescind and set aside the Mia AJ will have no practical effect as Mr Pollock, until the application for review is decided, remains the final liquidator and can exercise his powers as such.

[13] The respondent contended further that it is not open to a third party (even one who has some sort of interest as a shareholder, creditor or a tenant of the property) to challenge a liquidators' authority to litigate on behalf of an insolvent company.¹

[14] In *Lynn N.O. and another v Coreejas and another*,² the SCA, in dealing with non-compliance with S 382(1) of the Companies Act (1973) held that although the section requires a liquidator to be duly authorised by a meeting of creditors or members, or by the Master, to bring certain proceedings, such proceedings can be brought on behalf of the company. If the liquidator litigates without such authority, the court may refuse to allow him his costs out of the company's assets and he may have to pay such costs himself. But, the

¹ *Waisbrod v Potgieter and others* 1953 (4) SA 502 (W), where it was held that whilst the liquidator requires to be authorised before he embarks on litigation, if he does so without the prescribed authority, the Court may refuse to allow him his costs out of the assets of the company and he may have to pay them himself. But that does not give a person with whom the liquidator is litigating the right to object that the liquidator has not been authorised to institute the proceedings.

² *Lynn NO and another v Coreejas and another* 2011 (6) SA 507 (SCA).

litigation is not a nullity or invalid. Retrospective sanction of unauthorised litigation is available to the liquidator in appropriate instances. The present matter relates to proceedings of the liquidator and not necessarily on behalf of the company. Even without the authority of the court, such proceedings are not a nullity and have, in any event, been sanctioned by the creditors, retrospectively.

[15] Whilst some of the points raised by Mr Van Rensburg may raise some interesting legal issues, these will be dealt with in due course, during the review proceedings. In my view, there would be no point in granting leave to appeal in this matter, as the review will encompass the issues raised. The issues raised in this matter will most likely be overtaken by subsequent events and will become moot.

[16] Accordingly, I make the following order:

1. The application for leave to appeal is refused with costs.

S. E. WEINER
Judge of the High Court
Gauteng Division, Johannesburg

Heard: 29 June 2022
Judgment: 29 June 2022
Written Reasons: 19 July 2022

Appearances:

For Applicants: S.J. van Rensburg SC
Instructed by: Vathers Attorneys

For First Respondent: A.C. McKenzie
Instructed by: Vermaak Marshall Wellbeloved Inc.