



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 012167/2022

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

01/09/23

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Date

ML TWALA

In the matter between:

**STANDARD BANK OF SOUTH AFRICA LIMITED
APPLICANT**

(Registration Number: 1962/000738/06)

And

**THE MASTER OF THE HIGH COURT
JOHANNESBURG**

FIRST RESPONDENT

M.J.D. BREYTENBACH N.O. RESPONDENT	SECOND
K.C. MONYELA N.O.	THIRD RESPONDENT
R.F. LUTCHMAN N.O. (Second to Third respondents cited in their capacity as joint liquidators of Genflex (Pty) Ltd (in liquidation) Registration Number: 2002/019555/07)	FOURTH RESPONDENT
GENFLEX (PTY) LTD (in liquidation) RESPONDENT Registration Number: 2002/19555/07)	FIFTH
SOUTH AFRICAN MERCANTILE CORPORATION (PTY) LTD	SIXTH RESPONDENT
ALEXANDER FRASER & SON SA (PTY) LTD	SEVENTH RESPONDENT
ALEXANDER FRASER & SON LTD LONDON	EIGHTH RESPONDENT
PEECON PROPERTIES	NINTH RESPONDENT
SOUTH AFRICAN SECURITISATION	TENTH RESPONDENT
ZR PERTOLEUM MARKETING (PTY) LTD	ELEVENTH RESPONDENT
REDTREE CAPITAL (PTY) LTD	TWELFTH RESPONDENT
MIA GAS SUPPLIES (PTY) LTD	THIRTEENTH RESPONDENT
AP MERRIC T/A ENTERPRISE 2000	FOURTEENTH RESPONDENT
INTER AFRICA ENGINEERING (PTY) LTD	FIFTEENTH RESPONDENT
TEAM PLATING WORKS (PTY) LTD	SIXTEENTH RESPONDENT

**SOUTH AFRICAN REVENUE
SERVICE**

SEVENTEENTH RESPONDENT

RAS H.E.

EIGHTEENTH RESPONDENT

HODGKISS R.V.

NINTEENTH RESPONDENT

**ARMITAGE C.
RESPONDENT**

TWENTIETH

**BADENHORST J.J.
RESPONDENT**

TWENTY-FIRST

**STEWART-ROSS-FITZALAN C.A.
RESPONDENT**

TWENTY-SECOND

MBATHA Z.C.

TWENTY-THIRD RESPONDENT

**BONNIN C.N.
RESPONDENT**

TWENTY-FOURTH

ALBRECHT J.S.

TWENTY-FIFTH RESPONDENT

SWANEPOEL S.D.J.

TWENTY-SIXTH RESPONDENT

**ABSA BANK LIMITED
RESPONDENT**

TWENTY-SEVENTH

THOMAS D.

TWENTY-EIGHTH RESPONDENT

**DELPOR S.J.
RESPONDENT**

TWENTY-NINTH

SZALEK R.

THIRTIETH RESPONDENT

**HOLTZHAUSEN E.N.
RESPONDENT**

THIRTY-FIRST

JUDGMENT

Delivered: This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 1st of September 2023.

Summary: *Liquidation - Insolvency Act, 24 of 1936 – Section 45(3) – Peremptory provisions in lodging a dispute on a proven claim with the Master - Expungement of a proven claim by the Master – Master exercising administrative function – Master obliged to give reasons for his decision – sufficient ground required to expunge a proven claim.*

Companies Act, 61 of 1973 as amended – Section 407 – aggrieved party may raise a dispute of the claim with the Master – Master exercising administrative function obliged to furnish reasons for his decision – Master’s decision to expunge claim reviewed and set aside.

Review - Application under section 151 of Insolvency Act – Section 407(4) of the Companies Act -Court empowered to determine the whole matter afresh – Court has the power to review and to sit as a court of appeal – applicant’s claim confirmed with the respondents to pay the costs of the application.

TWALA J

[1] This is an application in which the applicant seeks an order against the respondents in the following terms:

- 1.1 The respondents are called on to show cause why the decision of the first respondent dated 26 July 2022 in terms of which the first respondent disallowed the applicant's claim, claim number 61, in the estate of the fifth respondent (*"the decision of the first respondent"*), should not be reviewed and set aside in terms of the provisions of section 407(4)(a) of the Companies Act 61 of 1973 and/ or section 151 of the Insolvency Act 24 of 1936.
- 1.2 Reviewing and setting aside the decision of the first respondent.
- 1.3 Confirming the applicant's claim, claim number 61, in the liquidated estate of the fifth respondent.
- 1.4 Ordering that the costs of this application shall be paid by such respondents who oppose this application.

[2] Only the sixth, seventh and eighth respondents are opposing the application and have filed a substantial answering affidavit. It is convenient for the Court to refer to the sixth, seventh and eighth respondents as the respondents in this judgment. Where necessary, the respondents will be referred to by their respective numbers.

[3] The background facts to this case are mostly undisputed and are that, on the 18th of October 2016 the applicant and Genflex (Pty) Ltd (*"Genflex"*), now in liquidation and being the fifth respondent herein, concluded a factoring agreement for the purchase by the applicant of debts owing to Genflex. The

conclusion of the factoring agreement was preceded by the conclusion of a cession agreement which ceded the book debts of Genflex in favour of the applicant on the 6th of September 1994. However, Genflex filed for voluntary surrender and was eventually liquidated on the 4th of August 2017.

[4] On the 6th of December 2019, the applicant submitted its claim to the liquidators together with its supporting documents. Since the applicant's claim was withdrawn in the previous meeting of creditors, the applicant requested a special meeting of the creditors to be convened for it to present its claim as it was submitted after the second meeting of the creditors. The Master consented to the special creditors meeting to be convened for the 12th of November 2020 and appointed a Magistrate from the Palmridge Court, Mr Croukamp, who preside over the meeting. The respondents were represented at the meeting and presiding officer found that the applicant's claim had prima facie been proven as claim 61.

[5] On the 18th of April 2021, the respondents addressed a letter to the liquidators expressing a view that, upon examination of all the relevant facts, claim 61 of the applicant should be disallowed in terms of section 45(3) of the Insolvency Act. The respondents' view was, amongst others, based on the contents of paragraph 3 of the Commissioners report which was filed with the Master in Pretoria on 17th of September 2020. The Commissioner's report was challenging certain terms of the factoring agreement and the cession of 1994 and the validity of the applicant's claim. The commissioner's report was a report of the commission of enquiry held in terms of sections 417 and 418 of the Companies Act. On the 4th of May 2021 the liquidators wrote to the applicant and enclosed the contents of the letter of the 18th of April 2021 and invited the applicant to comment thereto.

- [6] On the 17th of May 2021 the applicant responded to the letter of the liquidators and advised that the procedure followed by the respondents was wrong for in terms of section 45(3) of the Insolvency Act, it is only the liquidators who have locus standi to lodge a dispute on a proven claim with the Master. The applicant continued to further explain the terms of the factoring agreement and the 1994 cession which were a source of discomfort to the respondents. However, the applicant took exception in the manner the Commissioner concluded his report and the issues raised therein. The applicant concluded that the Commissioner's prima facie view does not meaningfully and convincingly refute the claim.
- [7] On the 21st of October 2021 the liquidators submitted the second and final liquidation and distribution account which included claim 61 of the applicant. This prompted the respondents to address a letter to the liquidators on the 5th of November 2021 demanding the immediate withdrawal of the second and final liquidation and distribution account and that they launch a section 45 (3) application under the Insolvency Act with the Master. Realising that the liquidators are not responding to their demand, on the 8th of November 2021 the respondents addressed a letter directly to the Master purporting to be an objection to the inclusion of claim 61 of the applicant in the second and final liquidation and distribution account submitted by the liquidators.
- [8] In their letter of the 8th of November 2021, the respondents urged the Master to issue a directive to the liquidators that they immediately launch a section 45(3) application with the Master disallowing the applicant's claim 61. Furthermore, that the liquidators withdraw the second and final liquidation and distribution account and, that the Master only examine any account on the final and satisfactory resolution of the dispute of the applicant's claim 61.

Confronted by this situation, the Master responded by addressing a letter to the liquidators inviting them to, within 14 days of the date of his letter, comment on the contents of the letter from the respondents dated the 8th of November 2023.

[9] In their response to the Master on the 26th of November 2021, the liquidators changed their stance in the matter and advised the Master that, based on the contents of the letter of the respondents dated the 18th of April 2021, they agree with the respondents that the applicant's claim 61 is not reconcilable with the documentation attached thereto and requested that the Master expunge the claim. This galvanised the applicant to present and restate its case before the Master that the approach of the respondents in terms of their letter of the 8th of November 2021 was irregular as it is only the liquidators that are empowered to dispute a claim that has been proven by the presiding officer. Furthermore, the applicant stated and explained the legal basis and the quantum of the proven claim 61.

[10] Further comments were addressed to the Master by the respondents regarding the applicant's claim. On the 26th of July 2022 the Master communicated his decision that, since the liquidators has examined the claim as part of their fiduciary duties and agree with the respondents that the claim 61 of the applicant is irreconcilable with the documentation attached thereto and request the Master to expunge the claim in terms of section 45(3) of the Insolvency Act, the objection is sustained and the party who is aggrieved thereby may approach the Court for an order setting aside his decision. The reason for sustaining the objection is that there are concrete issues raised about the contents of the account. This prompted the applicant to initiate these proceedings.

[11] It is useful to restate the provisions of the Insolvency Act, 24 of 1936 (“the Act”) which are relevant to this case which states the following:

“45. *Trustee to examine claims:*

- (1) *After a meeting of creditors, the officer who presided thereat shall deliver to the trustee every claim proved against the insolvent estate at that meeting and every document submitted in support of the claim.*
- (2) *The trustee shall examine all available books and documents relating to the insolvent estate for the purpose of ascertaining whether the estate in fact owes the claimant the amount claimed.*
- (3) *If the trustee disputes a claim after it has been proved against the estate at a meeting of creditors, he shall report the fact in writing to the Master and shall state in his report his reasons for disputing the claim. thereupon the Master may confirm the claim, or he may, after having afforded the claimant an opportunity to substantiate his claim, reduce or disallow the claim, and if he has done so, he shall forthwith notify the claimant in writing: Provided that such reduction or disallowance shall not debar the claimant from establishing his claim by an action at law, but subject to the provisions of section seventy-five.*

[12] Section 407 of the Companies Act 61 of 1973 as amended provides the following:

“407 *Objections to account*

Cases

- (1) *Any person having an interest in the company being wound up may, at anytime before the confirmation of an account,*

lodge with the Master an objection to such account stating the reasons for the objection.

(2) If the master is of opinion that any such objection ought to be sustained, he shall direct the liquidator to amend the account or give such other directions as he may think fit.

(3) If in respect of any account the Master is of the opinion that any improper charge has been made Against the assets of a company or that the account is in any respect incorrect and should be amended, he may, whether or not any objection to the account has been launched with him, direct the liquidator to amend the account, or he may give such other directions as he may think fit.

(4)(a) The liquidator or any person aggrieved by any direction of the Master under this section, or by their refusal of the Master to sustain an objection Lodged thereunder, may within 14 days after the date of the Master's direction and after notice to the liquidator apply to the court for an order setting aside the Master's decision, and the court may on any such application confirm the account in question or make such order as it thinks fit.

(b) If any such direction given by the Master under this section affects the interests of person who has not lodged an objection with the Master, such account as amended shall again lie open for inspection in the manner and with the notice as prescribed in section 406 call mom unless the person affected consents in the writing to the immediate confirmation of the account.”

[13] It is now settled that, in interpreting statutory provisions, the Courts must first have regard to the plain, ordinary, grammatical meaning of the words used in the statute. While maintaining that words should generally be given their grammatical meaning, it has long been established that a contextual and purposive approach must be applied to statutory interpretation. Section 39 (2) of the Constitution of the Republic of South Africa enjoins the Courts, when interpreting any legislation, and when developing the common law or customary law, to promote the spirit, purport, and objects of the Bill of Rights.

[14] In *Department of Land Affairs v Goedgelegen Tropical Fruits (Pty) Ltd* [2007] ZACC 12; 2007 (6) SA 199 (CC); 2007 (10 BCLR 1027 (CC); (6 June 2007) the Constitutional Court dealt with the interpretation of the provisions of a statute and stated the following:

“[53]: It is by now trite that not only the empowering provisions of the Constitution but also of the Restitution Act must be understood purposively because it is remedial legislation umbilically linked to the Constitution. Therefore, in construing ‘as a result of past racially discriminatory laws or practices’ in its setting of section 2 (1) of the Restitution Act, we are obliged to scrutinise its purpose. As we do so, we must seek to promote the spirit, purport and objects of the Bill of Rights. We must prefer a generous construction over a merely textual or legalistic one in order to afford claimants the fullest possible protection of their constitutional guarantees. In searching for the purpose, it is legitimate to seek to identify the mischief sought to be remedied. In part, that is why it is helpful, where appropriate, to pay due attention to the social and historical background of the legislation. We must understand the provision within the context of the grid, if any, of related provisions and of the statute as a whole

including its underlying values. Although the text is often the starting point of any statutory construction, the meaning it bears must pay due regard to context. This so even when the ordinary meaning of the provision to be construed is clear and unambiguous.”

[15] More recently, in *Independent Institution of Education (Pty) Limited v KwaZulu Natal Law Society and Others* [2019] ZACC 47 the Constitutional Court again had an opportunity of addressing the issue of interpretation of a statute and stated the following:

“[1]: It would be a woeful misrepresentation of the true character of our constitutional democracy to resolve any legal issue of consequence without due deference to the pre-eminent or overarching role of our Constitution.

[2]: The interpretive exercise is no exception. For, section 39(2) of the Constitution dictates that ‘when interpreting any legislation ... every court, tribunal, or forum must promote the spirit, purpose and objects of the Bill of Rights’. Meaning, every opportunity courts have to interpret legislation, must be seen and utilised as a platform for the promotion of the Bill of Rights by infusing its central purpose into the very essence of the legislation itself.”

[16] The Court continued and stated the following:

“[18]: To concretise this approach, the following must never be lost sight of. First, a special meaning ascribed to a word or phrase in a statute ordinarily applies to that statute alone. Second, even in instances where that statute applies, the context might dictate that the special meaning be departed from. Third, where the application of the definition, even where the same statute in which it is located applies,

would give rise to an injustice or incongruity or absurdity that is at odds with the purpose of the statute, then the defined meaning would be inappropriate for use and should therefore be ignored. Fourth, a definition of a word in the one statute does not automatically or compulsorily apply to the same word in another statute. Fifth, a word or phrase is to be given its ordinary meaning unless it is defined in the statute where it is located. Sixth, where one of the meanings that could be given to a word or expression in a statute, without straining the language, 'promotes the spirit, purport and objects of the Bill of Rights', then that is the meaning to be adopted even if it is at odds with any other meaning in other statutes.

[38]: It is a well-established canon of statutory construction that 'every part of a statute should be construed so as to be consistent, so far as possible, with every other part of that statute, and with every other unrepealed statute enacted by the Legislature'. Statutes dealing with the same subject matter, or which are in part material, should be construed together and harmoniously. This imperative has the effect of harmonising conflicts and differences between statutes. The canon derives its force from the presumption that the Legislature is consistent with itself. In other words, that the Legislature knows and has in mind the existing law when it passes new legislation, and frames new legislation with reference to the existing law. Statutes relating to the same subject matter should be read together because they should be seen as part of a single harmonious legal system.

[41]: The canon is consistent with a contextual approach to statutory interpretation. It is now trite that courts must properly contextualise statutory provisions when ascribing meaning to the words used

therein. While maintaining that word should generally be given their ordinary grammatical meaning, this Court has long recognised that a contextual and purposive must be applied to statutory interpretation. Courts must have due regard to the context in which the words appear, even where the words to be construed are clear and unambiguous.

[42]: This Court has taken a broad approach to contextualising legislative provisions having regard to both the internal and external context in statutory interpretation. A contextual approach requires that legislative provisions are interpreted in of the text of the legislation as a whole (internal context). This Court has also recognised that context included, amongst others, the mischief which the legislation aims to address, the social and historical background of the legislation, and, most pertinently for the purposes of this, other legislation (external context). That a contextual approach mandates consideration of other legislation is clearly demonstrated in Shaik. In Shaik, this Court considered context to be ‘all-important’ in the interpretative exercise. The context to which the Court had regard included the ‘well-established’ rules of criminal procedure and evidence and, in particular, the provisions of the Criminal Procedure Act.”

- [17] The provisions of s 45(3) of the Act are plain, clear, and unambiguous. It is open only to the trustee of the insolvent estate, the liquidator in this case, if he disputes a claim which has been proven against the estate at a meeting of creditors, to report that fact in writing to the Master and state his reasons therefor. The section does not empower anyone else to lodge a dispute or objection with the Master including the creditors with proven claims against

the estate, but only the liquidator shall report the dispute or lodge an objection with the Master in writing and give reasons for disputing a proven claim.

[18] I agree with the applicant that there was no dispute of claim 61 lodged with the Master by the liquidators in terms of s 45(3) in this case. It is the respondents who lodged a request to the Master to issue a directive that the liquidators lodge a s 45(3) application to expunge claim 61 of the applicant after it appeared on the second and final liquidation and distribution account submitted to the Master by the liquidators. I hold the view therefore that the approach by respondents to lodge a request with the Master that the liquidators be directed to bring a s 45(3) application was irregular – hence the Master called upon the liquidators to comment on that request.

[19] Given that the Master called for comment from the liquidators regarding the respondents' request, the liquidators failed to comply with the peremptory provisions of s 45(3) in that they did not lodge a dispute in writing against claim 61, which claim had been proven by the presiding officer nor did they furnish their reasons for aligning themselves with the dispute raised by the respondents. It is not sufficient for the liquidators to say they agree and align themselves with the contents of the letter from the respondents dated 8th of November 2021 and the reasons contained therein. It is not a question of preferring form over substance but the peremptory provisions of s 45(3) demand that the liquidators shall report the dispute to the Master and submit their reasons therefore and that did not happen in this case. The liquidators even failed to file an affidavit in these proceedings to explain why they were aligning and agreeing with the respondents.

- [20] Even if it were to be accepted that the liquidators' alignment with and agreeing to the contents of the letter of the respondents amounted to the lodging of a dispute in writing with the Master, they failed to fully comply with the peremptory provisions of s 45(3) in that they did not state their reasons for aligning themselves with the respondents' contentions. It should be recalled that the liquidators had filed the second and final liquidation and distribution account which included claim 61 and at the time were aware of the concerns of the respondents as stated in their letter of the 18th of April 2021.
- [21] I am of the considered view that there was a duty on the liquidators to explain their sudden about turn and agreeing with the respondents to apply for the expungement of the applicant's claim 61. The liquidators made an about turn on the 26th of November 2021 without furnishing reasons therefore when they initially allowed claim 61 and included same in their second and final liquidation account submitted to the Master on the 21st of October 2021. It follows ineluctably therefore that the non-compliance with the peremptory provisions of s 45(3) by the liquidators vitiated the process.
- [22] Assuming that the objection to the second and final liquidation and distribution account was lodged in terms of the provisions of s 407(1) of the Companies Act by the respondents who are aggrieved by the inclusion of claim 61 of the applicant therein, the Master, as a functionary performing its administrative function, was bound to furnish adequate reasons for his decision to uphold and sustain the objection. It is not sufficient or a reason at all for the Master to say that there appear to be a concrete issue raised in the contents of the account without stating what that concrete issue is.

[23] In *Constantia Insurance Company Limited v The Master of the High Court Johannesburg and Others (512/2021) [2022] ZASCA 179 (13 December 2022)* the Court stated the following:

“[18] When the reduction or expungement of a claim is contemplated, the Master would generally have before him or her not only the report of the trustee/liquidator, but also the material submitted to substantiate the claim. the Master is enjoined to apply his or her mind objectively to all the relevant material thus placed before him or her. Whilst the Master is not required to determine whether the insolvent estate is in fact not indebted (or indebted) to the claimant, he or she should not reduce or expunge a claim unless there is a sufficient ground for doing so.”

[24] I am unable to disagree with the applicant that the Master did not have sufficient information upon which to decide the validity of the applicant's claim 61. The claim was proven by the presiding officer after considering all the relevant documents submitted before him and the respondents, who were represented in the proceedings, failed and or were not prepared to cross examine the witnesses when the matter was initially postponed affording the respondents an opportunity to cross examine the witnesses.

[25] Even the Commissioner's report was not placed before the Master when the decision was taken since it was filed with the Master in Pretoria. By failing to furnish his reasons for the expungement of the claim 61 of the applicant, the inescapable conclusion is that the Master did not apply his mind objectively to the material placed before him. The letter of the respondents dated the 8th of November 2021 was based on the Commissioner's report but that report was not placed before the Master for him to have a conspectus of

the contents of the whole report. It is not a sufficient ground for the Master to expunge the claim of the applicant by merely saying that there are concrete issues raised about the content of the claim without mentioning those issues and why he was concluding in the way he did.

[26] It should be recalled that the Master is a statutory office which performs certain administrative functions related to the administration of estates, trusts, insolvencies, and guardianships. Furthermore, it is enshrined in the bill of rights to the Constitution of the Republic that everyone has a right to administrative action that is lawful, reasonable, and procedurally fair. By implication, the Master, as an administrative authority, who is duty bound to give reasons for his decision that affects the rights and interests of any person. It is my respectful view therefore that, whether the dispute or objection to the applicant's claim 61 was lodged in terms of s 45(3) of the Insolvency Act or 407(1) of the Companies Act, the Master failed in his duty to furnish any or adequate reasons for his decision to disallow and or to expunge claim 61 of the applicant.

[27] There is no merit in the argument that the applicant should not have brought this application for the Act provides for a party who is aggrieved by the decision of the Master in disallowing his claim to approach the Court to enforce its right by way of action. When a functionary performs its administrative functions, it is obliged to furnish its reasons for the decision that it takes which affects the rights of a litigant. I hold the view therefore that the applicant has a right to administrative action that is reasonable and procedurally fair and therefore is entitled to institute proceeding to review and set aside the decision of the Master where the Master fails to furnish any

or adequate reasons for his decision. The inescapable conclusion is therefore that the Master's decision is reviewed and set aside.

[28] Furthermore, it is apposite to restate the provisions of section 151 of the Act which provide as follows:

“151 Review

Subject to the provisions of section fifty-seven any person aggrieved by any decision, ruling, order or taxation of the Master or by a decision ruling or order of an officer presiding at a meeting of creditors may bring it under review by the court and to that end may apply to the court by motion, after notice to the Master or to the presiding officer, as the case may be, and to any person whose interests are affected: provided that if all or most of the creditors are affected, notice to the trustee shall be deemed to be notice to all such creditors; and provided further that the court shall not re-open any duly confirmed trustee's account otherwise than as is provided in section one hundred and twelve.”

[29] In *Constantia Insurance Company Limited* quoted above, the Court dealing with the provisions of s 151 stated the following:

[19] It follows that the Master misdirected herself by applying the wrong test. But it did not follow that the review of the Master's decision had to succeed. The review was brought in terms of s 151 f the Insolvency Act. In Nel and Another NN) v The Master (ABSA Bank Ltd and Others intervening) [2004] ZSCA 26; 2005 (1) SA 276 (SCA) para 22 -23, this court confirmed that in a review of this kind a curt enters into and decides the whole matter afresh. For this purpose, it has powers of both appeal

and review and may receive new evidence. In a review under s 151 of the Insolvency Act, a party may therefore raise an issue that was not placed before the Master. Whether an issue was properly raised in the review application must, be determined on the ordinary principles applicable to motion proceedings.”

[30] The respondents urged the Court that, should it find in favour of the applicant, it should refer the matter back to the Master for reconsideration as it is undesirable for the Court to usurp the powers conferred on the Master to confirm the liquidation and distribution account. I do not agree. The office of the Master is a creature of statute and can exercise only the powers granted and conferred upon it by the statute creating it. The Master has therefore no power and authority to determine legal issues. Issues of interpretation of contracts or documents are legal matters and fall strictly within the domain of the Court.

[31] It should be recalled that claim 61 of the applicant is based on the cession agreement concluded in 1994 and the factoring agreement concluded in 2016 between the applicant and Genflex. It is the interpretation of these agreements that were a source of discomfort to the Commissioner on whose report the letter of the respondents of the 8th of November 2021 is based. Furthermore, it is on record that the Master within whose jurisdiction this case is (Johannesburg), never received the Commissioner’s report for it was filed with the Master in Pretoria. It accordingly follows that, no purpose will be served by referring this case back to the Master for reconsideration for he does not have jurisdiction to determine the issues at hand.

[32] It is apposite at this stage to restate the clauses of the factoring agreement which has caused discomfort to the respondents and the Commissioner which provide as follows:

“2. *Recital*

The supplier has offered to sell to Standard for the consideration and on the terms and conditions set out in this agreement the suppliers right, title and interest in and to existing debts which are oh to the supplier and future debts which will be owing to the supplier by its customers from time to time in the ordinary course of business.

6. *Purchase Price of Purchased Debts*

Subject to the proviso to 7.1, the purchase price of each purchased debt shall be an amount equal to the face value of the debt minus the fixed factoring charge (if applicable) and minus the variable factoring charge.

7. *Payment of Purchase Price*

7.1 *The purchase price of the purchased debt shall be payable by Standard to the supplier on or before the maturity date of the debt, on the basis that –*

7.1.1

7.2 *The parties record that -*

7.2.1

7.2.2 *they have accordingly agreed that –*

7.2.2.1 *any payment made by Standard to the supplier in terms of clause 7.1.2 shall be regarded as a payment on account of the purchase price of the purchased debt;*

7.2.2.2 *the supplier shall refund to Standard an amount equal to the variable factoring charge or pushing their off in respect of a purchased debt as and when that charge or pushing their off is calculated by Standard from time to time, in terms of class 7.2.1;*

7.2.2.3 *in any event, on the maturity date of the purchased debt in question the supplier shall refund to standard an amount equal to the difference between the aggregate of the amounts paid to the supplier on account of the purchase price of the debt and the actual purchase price of the debt.*

13. *Cession of Debts by Supplier*

13.1 *As security for the due payment of any present or future indebtedness of the supplier to Standard and to the extent that a debt (whether presently existing or which comes into existence after signature of this agreement) may not have been or be purchased by Standard in terms of this agreement for any reason whatsoever or to the extent that standard may not have acquired or acquire ownership of a deb intended to be purchased in terms of this agreement for whatsoever reason, this supplier hereby –*

13.1.1 *irrevocably and in rem suam cedes, assigns and makes over to Standard all its right, title and interest*

13.1.1.1 *in and to such debt; and*

13.1.1.2 *in and to all negotiable instruments, guarantees, suretyship or securities (including bonds, pledges or sessions) held by the supplier in respect of any such debt.”*

13.1.2 *acknowledges that the session referred to in clause 13. 1.1 shall be security for such sum or sums of money which the supplier may now or at anytime in the future owe to Standard in terms of this agreement or for whatever other cause and whether such indebtedness be a direct, indirect or contingent obligation of the supplier to Standard;*

13.1.3 *acknowledges that the security given to standard in terms of this clause 13 shall be in addition to and shall not in any way prejudice nor shall it in any way be affected by any other security which the supplier may have furnished to or may in the future tender to the Standard Bank of South Africa Limited in terms of or pursuant to this agreement or otherwise;*

13.1.4 *acknowledges that the cession referred to in clause 13. 1.1 shall continue and remain in full force and effect for the duration of this agreement, and after its termination, for as long as the supplier is indebted to Standard.*

13.2

21. *Certificate of Balance*

A certificate signed by any manager or officer of Standard, whose appointment need not be proved, as to the amount owing to Standard by the supplier and or the surety at any time, the fact that such amount is due and payable, the rate of interest payable thereon, the date from which interest is reckoned and as to any other fact shall be binding on the supplier and or surety and shall be prima facie proof of the facts stated therein and shall for the purposes of provisional sentence or summary judgment or any other proceedings in any competent court be valid as a liquid document.”

[33] In *Tshwane City v Blair Atholl Homeowners Association* 2019 (3) SA 398 (SCA) the Supreme Court of Appeal stated the following:

*“[61] It is fair to say that this Court has navigated away from a narrow peering at words in an agreement and has repeatedly stated that words in a document must not be considered in isolation. It has repeatedly been emphatic that a restrictive consideration of words without regard to context has to be avoided. It is also correct that the distinction between context and background circumstances has been jettisoned. This court, in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) ([2012] All SA 262; [2012] ZSCA 13), stated that the purpose of the provision being interpreted is also encompassed in the enquiry. The words have to be interpreted sensibly and not have an unbusinesslike result. These*

factors have to be considered holistically, akin to the unitary approach.

[34] The words used in the above clauses of the factoring agreement are plain, clear, and unambiguous. The applicant purchased the debts which were in the present owing to and future debts which will from time to time become owing to Genflex in the ordinary course of business. In terms of clause 13 Genflex ceded all its right, title, and interest in and to such debts and all negotiable instruments held by it in respect of any such debts. Furthermore, Genflex acknowledged that the cession shall be security in addition to and shall not in any way prejudice nor shall it in any way be affected by any other security which Genflex may have furnished to or may in the future tender to the Standard Bank of South Africa Limited in terms of or pursuant to this agreement or otherwise.

[35] It is apparent that at the time the Commissioner concluded and filed his report with the Master in Pretoria on the 17th of September 2020, the applicant had not yet filed its claim with the liquidators nor had the claim been proven at a creditors meeting. The claim of the applicant was only proven at a special meeting of the creditors convened for that purpose on the 12th of November 2020. At this meeting the respondents were afforded an opportunity to interrogate the validity of the applicant's claim, but failed to successfully assert any interpretation to the relevant clauses of the factoring agreement to the effect that the applicant's claim was invalid. Since there was no evidence tendered in opposition of the claim of the applicant before the presiding officer, the conclusion was that the claim has been prima facie proven.

- [36] In terms of clause 7.2.2.3 of the factoring agreement the applicant purchased the debt of Genflex at a purchase price which is less than the value of the debt. On the maturity date of the debt Genflex is to pay the applicant the difference between the purchase price and the actual value of the debt. A certificate of balance which was issued by a manager of the applicant as provided for in clause 21 of the factoring agreement is prima facie proof of the amount owing to the applicant. There is no dispute between the applicant and Genflex, duly represented by the liquidators, that the agreement came into existence and that the parties performed in terms of the agreement long before Genflex went into liquidation.
- [37] It should be recalled that the respondents are interested parties as proven creditors in the liquidated estate of Genflex. However, the respondents are not parties to the factoring agreement. Genflex ceded all its book debts to secure its indebtedness against the applicant including the non-financed debt. The parties performed their obligations in terms of the factoring agreement and certain payments were made in 2016 in the sums of R4.5 million, R277 525.86 and R813 336.69 pursuant to the conclusion of the factoring agreement. It is therefore not open to the respondents to challenge the validity of the agreement which was concluded freely and voluntarily between the applicant and Genflex. The report of the Commissioner upon which reliance is placed by the respondents concluded by deferring the determination of the validity of the applicant's claim to the meeting of the body of creditors.
- [38] As part of the claim documents, the applicant submitted a certificate of balance which is regarded as prima facie proof of the indebtedness of Genflex in terms of the agreement between the parties. The Commissioner raised an issue regarding the calculation of the indebtedness of Genflex and

requested information from the applicant. However, the information was not provided to him until he concluded his report. Since he could reach any conclusions about the validity of the claim and its quantum, he concluded that the claim must be proven in a creditors meeting.

[39] The Commissioner had no reason to raise his concerns about the calculation of Genflex's indebtedness to the applicant for the agreement between the parties was that the certificate of balance is prima facie proof thereof. The presiding officer at a special creditors meeting convened for that purpose was furnished with all documentation in support of the claim of the applicant and he was satisfied prima facie of the validity and quantum of the claim – hence he approved the applicant's claim 61. The attack on the applicant's claim 61 by the respondents based on the Commissioner's report is accordingly misguided and without merit.

[40] In the circumstances, I make the following order:

1. The decision of the first respondent (Master) dated the 26 of July 2022 in terms of which the first respondent disallowed the applicant's claim number 61 in the liquidated estate of the fifth respondent is reviewed and set aside.
2. The applicant's claim number 61 in the liquidated estate of the fifth respondent is confirmed.
3. The sixth, seventh and eighth respondents are, jointly and severally, the one paying the other to be absolved, to pay the applicant's costs of the application.

JUDGE OF THE HIGH COURT OF SOUTH AFRICA**GAUTENG LOCAL DIVISION**

Date of Hearing: 24th of July 2023

Date of Judgment: 1st of September 2023

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