IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO	
(2) OF INTEREST TO OTHER JUDGES: YES / NO	
(3) REVISED	
_____	_____
DATE	SIGNATURE

CASE NO: 016482/24

In the matters between:-

JACQUES ANDRÉ FISHER N.O. First Applicant

SANDRA JOAN McKENZIE N.O. Second Applicant

WILLEM JACOBUS VENTER N.O. Third Applicant

[In their capacity, nomino officio, as the duly appointed joint liquidators of the insolvent estate of Classic Financial Services One (Pty) Ltd (Reg. No.: 2004/031623/07) (in liquidation)]

vs

JACOBA MAGDALENA GELDENHUIS Respondent

AND

CASE NO: 016697/24

JACQUES ANDRÉ FISHER N.O. First Applicant

SANDRA JOAN McKENZIE N.O. Second Applicant

WILLEM JACOBUS VENTER N.O. Third Applicant

[In their capacity, nomino officio, as the duly appointed joint liquidators

of the insolvent estate of Classic Financial Services One (Pty) Ltd

(Reg. No.: 2004/031623/07) (in liquidation)]

vs

DEWALD GELDENHUIS Respondent

Coram: Kooverjie J

Heard on: 11 April 2024

Delivered: 25 April 2024 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 12:00 on 25 April 2024.

ORDER

In respect of Case nr. 016482/24 it is ordered:-

1. The estate of the respondent is placed under provisional sequestration;

2. The respondent and any other party who wish 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 on 11 June 2024 at 10:00, or as soon thereafter as the matter may be heard.

3. The order be served on the respondent personally as well as on her employees and trade unions, if any.

4. This order be served on the Master of the High Court and the South African Revenue Services.

5. This order be advertised in the Government Gazette and the Citizen newspaper.

6. The costs of this application are costs in the sequestration.

In respect of case nr. 016697/24 it is ordered:-

1. The estate of the respondent is placed under provisional sequestration;

2. The respondent and any other party who wish 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 on 11 June 2024 at 10:00, or as soon thereafter as the matter may be heard.

3. The order be served on the respondent personally as well as on his employees and trade unions, if any.

4. This order be served on the Master of the High Court and the South African Revenue Services.

5. This order be advertised in the Government Gazette and the Citizen newspaper.

6. The costs of this application are costs in the sequestration.

JUDGMENT

KOOVERJIE J

[1] I have before me two sequestration applications, the first, instituted against Jacoba Magdalena Geldenhuis, under case nr. 016482/24 and, the second, instituted against Dewald Geldenhuis under case nr. 016697/24. The applicants seek provisional sequestration orders at this stage.

[2] In both matters the applicants, namely Jacques André Fischer, Sandra Joan McKenzie and Willem Jacobus Venter, instituted the said applications in their capacity as joint appointed liquidators of the insolvent estate of Classic Financial Services One (Pty) Ltd ("Classic"). The matters were heard simultaneously on the basis of the allegations- that the respondents' debts emanate from a common source, Classic.

[3] The liquidators claim their *locus standi* on the basis that both respondents in the respective matters are indebted to the insolvent entity, Classic. Classic has been liquidated and its director, Cobus Geldenhuis, was placed under sequestration.

[4] For the purposes of this judgment, Jacoba Magdalena Geldenhuis will be referred to as "Ms Geldenhuis", Dewald Geldenhuis will be referred to as "Mr Geldenhuis",

and Mr Willem Jacobus Geldenhuis will be referred to as “Cobus”. These individuals are family: Cobus is the father, Ms Geldenhuis the mother and Mr Geldenhuis, the son.

BACKGROUND

[5] The background becomes relevant in order to understand the nexus between the respondents’ and Classic. The Financial Sector Conduct Authority (“the FSCA”), investigated the affairs of Classic and its director, Cobus, prior to the institution of these applications sometime in 2022. It was established that Classic and its director, Cobus, were involved in an unlawful ponzi scheme. The investors were misled into believing that their monies were invested. A myriad of misrepresentations was made. The reality was that Cobus, the director, stealthily siphoned their investments into various accounts and used the funds for his own benefit. It was established that Classic had received investments in a total amount of R617,376,972.53. Cobus, in fact, conceded that he was the mastermind behind the unlawful ponzi scheme. It further came to light that Cobus used the license of Pecunia System (being the business of his son, Mr Geldenhuis) in order to validate Classic as a “registered financial services provider with the FSCA. Mr Geldenhuis alleged that his license was used without his knowledge.

[6] In argument, both respondents vehemently argued that they had no knowledge of Classic's unlawful activities. Consequently, since they played no role in the unlawful scheme, it was argued that there Is no basis for pursuing claims against them. An insolvency enquiry (in terms of Sections 417 and 418 of the Companies Act 1973) followed whereupon further revelations came to light and which have not been placed in dispute, namely that: Ms Geldenhuis made payments from bank accounts held in the name of Classic into her account as well as into other accounts. She alleged that she did so with Cobus' knowledge and consent. Ms Geldenhuis in fact benefited from the investors' money in an amount of at least R27,936,577.44.

[7] At some point, Classic had managed to pay an amount over R454 million back to the investors. However an amount of R129,962,413.37 currently remains unaccounted for. It is these monies that the liquidators intend recovering.

[8] The liquidators specifically mandated a forensic investigation in order to locate the whereabouts of the investors' funds. The forensic analysis (prepared by Ms de Lange), illustrated that Mr Geldenhuis benefited from Classic in the region of over R5.6 million. It was shown that such monies were deposited from the bank account of Ms Geldenhuis. It was argued that Ms Geldenhuis' account was a conduit by which monies from Classic were transferred not only into Mr Geldenhuis' account, into Cobus' account as well as other accounts,

[9] Initially spreadsheets (preliminary calculations) were compiled which illustrated the inflow and the outflow of Classic's funds. Thereafter a report (Annexure 'A') was presented by the forensic accountant, Ms de Lange. The scope of the report was aimed at determining to what extent Ms Geldenhuis and Mr Geldenhuis were recipients of funds emanating from Classic. In other words, the calculations aimed at determining specifically when and to what extent Ms Geldenhuis had received funds from Classic, and further, whether the contention that, Mr Geldenhuis was paid from Ms Geldenhuis' winnings, was true.

APPLICATION FOR POSTPONEMENT

[10] Before I delve into the merits, I pause to mention that at the hearing of these matters, the respondents sought a postponement. They however did so without filing substantive applications, setting out the basis for such postponements. Nevertheless, in argument, the main thrust of their contentions were that *bona fide* disputes of fact exist regarding the respondents' indebtedness to Classic. It was contended that oral argument was necessary on these issues. It was pointed out that the amounts recorded in the spreadsheets and the report, Annexure 'A', remain speculative and inconclusive. More specifically, no reliance could be placed thereon as the calculations highlighting the indebtedness are not supported with source documents. It was argued that *"the recipient of the funds could not be determined from bank statements and the proof of payments and*

confirmation from financial institutions are required to confirm the recipients' identity".

[11] For starters, the respondents referred to the disclaimer paragraphs set out in Annexure 'A' in order to emphasize that the report remained inconclusive. For instance, the forensic accountant expressed that she did not have sight of all the relevant documentation and that she only considered the bank statements for the period 5 August 2021 to 5 September 2023.

[12] The said argument was further bolstered with the contention that not only were source documents not considered but that same were not availed to the respondent at the enquiry. In fact the auditor, appointed by the respondents, in his affidavit, identified the source documents to constitute "cheques" and "EFT's". He explained that by having regard to same one is able to ascertain with certainty that the monies were in fact deposited into the recipient's account.

[13] These arguments, based on speculation, were presented, despite an undertaking that the respondents' auditor would conduct an audit and verify the amounts paid from Classic into their accounts. They dismally failed to do so.

[14] I have further noted that at no point does the auditor, in his present affidavit, make reference to Annexure 'A'. It appears that he was oblivious of the methodology followed by the forensic accountant in the calculations set out, particularly

Annexure ‘A’. Consequently there exists no response substantiating why methodology used by the forensic accountant, in the report, could not be relied upon. The forensic accountant had in her possession the relevant bank statements to reconcile the respective inflows and outflows in a manner where she was able to confirm that the recipients identified received the funds. She also, in her affidavit, confirmed that her calculations and conclusions contained in her report were based on source documents (referring to bank statements).

[15] I reiterate that even if Mr Geldenhuis asserts that he was not furnished with the relevant documents during the enquiry, the truth is that before this hearing he had access to all bank statements, even those he may not have had. Furthermore, at all relevant times, his attorneys of record were in possession of not only his bank statements but that of Ms Geldenhuis as well. In my view, the respondents’ auditor had ample opportunity to constructively explain why the reconciliation of the respective bank statements were unreliable and further identify which source documents would disprove the calculations.

[16] Furthermore even if only a time period was examined, the applicants, have illustrated that the source of the funds in the respective respondents’ accounts was investors’ money. I have noted that the time period in which the analysis, as per Annexure ‘A’, was conducted was specified since Ms Geldenhuis asserted that during the period August 2021 to August 2023 she had won in excess of R5 million and it was from these winnings that she made payments to Mr Geldenhuis.

[17] On my understanding, the various bank statements of Classic (which included bank statements from the Nedbank, the Absa and the FNB accounts); the bank account of Ms Geldenhuis (namely the FNB account); the account of Mr Geldenhuis (namely his respective bank accounts), as well as the bank account of Cobus (which included his FNB, Capitec and Tyme Bank accounts) were reconciled in a manner where the specific inflows were linked to corresponding outflows. The representative from Emperors Palace was also consulted who confirmed the extent of Ms Geldenhuis' winnings and losses. This is clearly not an instance where *bona fide* disputes are present neither is it a situation where exceptional circumstances are present that would warrant an oral hearing.

[18] No good cause has been shown to justify the said postponements. It is evident that the respondents failed to tender a plausible version to counter the applicants' version. At this point this court has been presented with mere generalized denials.[1] In the premises, the postponements are refused.

ISSUES FOR DETERMINATION

[19] Hence I proceed on the merits. The issues for determination in this matter is firstly whether a case has been made out for the provisional sequestration of Jacoba Magdalena Geldenhuis ("Ms Geldenhuis"), and secondly, whether a case

[1] Kalil v Decotex (Pty) Ltd 1988 (1) SA 943 A

has been made out for the provisional sequestration of Dewald Geldenhuis ("Mr Geldenhuis").

THE SEQUESTRATION OF MS GELDENHUIS

[20] The applicant claimed that the respondent was a recipient of an amount of R27,936,577.44 of Classic's funds. By way of mere bald denials, the respondents' main contention remains that the calculations of the forensic accountant cannot be relied upon. The evidence, supported with the concession by Ms Geldenhuis that she was a recipient of a substantive amount of funds from Classic's bank account, remains undisputed.

[21] At the enquiry, Ms Geldenhuis explicitly conceded that substantial amounts from Classic's bank account were deposited into her account. The following facts are also not in dispute, that: she does not earn an income, and neither does she own immovable property or other assets. Classic was also not indebted to her in any manner.

[22] Moreover the allegation that the funds received from Classic were transferred on the instructions of Cobus, and the purpose was to only make payments on his behalf, is untenable. She was unable to account for the rest of the exorbitant amounts that were deposited into her account. In fact, the report illustrates that

84% of the funds in her bank account (for a specific period) was received from Classic.

[23] Even if Ms Geldenhuis was required to pay salaries of certain employees and to make certain payments on behalf of Cobus, including payments to SARS, she failed to furnish a cogent explanation what the purpose of the other funds were. She explained that she had access to Classic's banking account and even made payments into her own account. She undeniably benefited from Classic's funds.

[24] It is trite that at the provisional sequestration stage, the respondent is required to show that the debt is disputed on *bona fide* and reasonable grounds. Hence a plausible explanation must be placed before court to support such version.

[25] As things stand, over R129 million of investors' funds have to be accounted for. The reconciliation as per the report (Annexure 'A') uncovered that just over R27 million of Classic's funds were made into Ms Geldenhuis account.

[26] More specifically, as per the inflows set out in Annexure 'A', the calculation reflects that Ms Geldenuis received an amount of R25,596,577.44 from Classic, and an amount of R7,539,216.85 from Cobus. Her winnings from her gambling activities was calculated to be R5,240,000.00. She further received amounts of R1,541,500.00 and R90,000.00 from Mr Geldenhuis.

[27] Regarding the outflows it has been illustrated that she utilised an amount of R14,925,000.00 for her gambling activities, she paid Mr Geldenhuis an amount of R6,312,209.00, Cobus an amount of R4,241,625.24, Classic an amount of R510,000.00 and made further payments in an amount of R15 million (identified as day-to-day living expenses which included Mr D, Woolworths, Dischem, Clicks and airtime). Lastly she also withdrew cash in an amount of R439,000.00.

[28] With regard to her winnings, her gambling cards were reconciled with her FNB bank account. In respect of the summary of EFT payments, obtained from the gambling house, it was reflected that there was an inflow of R5,240,000.00 and the outflow was R14,925,000.00. The forensic analysis further reflected that although her winnings in that period, from 5 August 2021 to 5 September 2023, was R12,268,594.52, she had lost around R21,560,753.46. In effect, she suffered a net loss in an amount of R9,292,158.94 (over the period 7 August 2021 to 22 April 2023).

[29] There is no doubt that Ms Geldenhuis' bank account was used as a conduit by herself and for the benefit of Cobus. A substantive portion of the monies deposited into Ms Geldenhuis' account were investors' funds and the liquidators have a mandate to locate the whereabouts of these funds as they have to account same to the investors' claims.

[30] The salient requirements of provisional sequestration are set out in Section 10 of the Insolvency Act. In essence, a court may grant a provisional sequestration order if it is satisfied that a *prima facie* case has been made that:

30.1 a creditor has a claim against the debtor;

30.2 the debtor has committed an act of insolvency or is insolvent; and

30.3 there is reason to believe that it will be to the advantage of a creditor/s that the debtor's estate is sequestrated.

[31] In my view, all three requirements have *prima facie* been met in that firstly, she benefited from Classic being the investors' money; secondly, she confirmed on various occasions that she is unable to pay the amounts back. This entails that she is factually insolvent and unable to make payment upon the debt being due. She holds no realizable and tangible assets and neither is she employed; and lastly, it would be to the advantage of the creditors, particularly the investors, if they are able to recover their investments.

[32] The advantage to the creditors, in the event her estate is sequestrated, would make provision for the following:

32.1 the trustees would be able to investigate the whereabouts of any assets as well as dissipated monies, other investments, and her cash deposits which may have been hidden by her or by Cobus;

32.2 it is not in dispute that Ms Geldenhuis transferred funds from Classic and made payments to third parties. This inevitably had the effect of prejudicing the creditors;

32.3 the applicants' trustees will be in a position to take control of the respondent's estate. They will have access to all financial information including bank accounts which have not as yet been considered, as well as trading accounts, and other investment accounts, if any;

32.4 more importantly, the sequestration of the respondent will bring about a conversion of the claims in her estate which would ensure that it is wound up in an orderly manner and that all the creditors of the respondent are treated equally.

[33] I noted Ms Geldenhuis' explanation that she deposited certain amounts of her winnings to Mr Geldenhuis. It appears that a substantial portion of these monies were cashed out. She claimed to have given it to Cobus, and in certain instances, to Mr Geldenhuis. It is necessary to determine where these monies are. In particular, she had winnings of over R31 million since 2015. The trustees are mandated to investigate all avenues in order to recoup the monies that belong to innocent investors.

THE SEQUESTRATION OF MR GELDENHUIS

[34] It is common cause that Mr Geldenhuis was a director and shareholder of a company known as Pecunia Systems, which entity was licensed as a financial service provider in terms of the Financial Sector Regulation Act.

[35] The forensic analysis revealed that Mr Geldenhuis received an amount of R60,000.00 directly from Classic and a total amount of R5,630,200.00 from Ms Geldenhuis.

[36] It was further alleged that the R60,000.00 he received were rental payments owed to him by his parents. At the hearing the court was informed that Mr Geldenhuis had placed the R60,000.00 as security and was willing to pay over this amount in order to absolve himself as a debtor of Classic. It should be reiterated that even if the rental arrangement was in place, no explanation was proffered as to why the rental was paid from Classic's bank account and not from their personal accounts.

[37] The applicants argued that as things stood at the time of the hearing, the amount of R60,000.00 had still not been paid. In my view, even if the R60,000.00 becomes a non-issue and is paid, Mr Geldenhuis is still required to show that he did not benefit from the proceeds of fraud pertaining to the other R5.6 million.

[38] The main defence of Mr Geldenhuis was that the funds he received from Ms Geldenhuis were from her gambling wins. To the contrary it has been illustrated,

as per Annexure ‘A’, that in fact the funds deposited into Mr Geldenhuis’ account originated from Classic.

[39] The applicants have, in showing that their version has credence, demonstrated that shortly after Ms Geldenhuis received payments from Classic, she divested substantial amounts into Mr Geldenhuis’ account. In their replying affidavit, the applicants specifically highlight the respective payments from Classic:

39.1 On 23 September 2021 she received a total amount of R300,000.00 from Classic; on 25 September 2021 she paid an amount of R200,000.00 to Mr Geldenhuis and then again on 27 September 2021 she paid a further R50,000.00;

39.2 On 15 and 22 December 2021 she once again received an amount of R850,000.00 from Classic. Thereafter on 23 December 2021 she paid R500,000.00 to Mr Geldenhuis;

39.3 On 12 May 2022 she received an amount of R425,000.00 from Classic and on the same day she paid Mr Geldenhuis an amount of R104,000.00;

39.4 On 10 June 2022 she received a payment of R118,000.00 from Classic and then on 15 June 2022 she paid Mr Geldenhuis an amount of R160,000.00.

[40] The report revealed that it was only in one instance where payment to Mr Geldenhuis was made from the winnings. In this instance, prior to the winnings, the amount in her bank account was in the region of R497,428.00. Upon receipt

of her winning of R1,9 million she made a deposit of R1 million into Mr Geldenhuis' account.

[41] It was further illustrated for the period September 2021, although there was an inflow from Emperors Palace of R940,000.00, she also received other deposits. On 25 September 2021 she made a payment from her account of R200,000.00 to Mr Geldenhuis. Even if one were to find this instance to be also a payment from the winnings, one has to consider the rest of the payments against the backdrop of the bigger picture.

[42] From these facts, even if she won in total R1,9 million and then R940,000.00, the undisputed conclusion one arrives at is that substantial amounts which emanated from Classic were deposited into his account. Ultimately the question that begs an answer is: how was she able to pay Mr Geldenhuis over R6 million when her winnings were less than this amount? In summary, she received over R27 million from Classic. From the bank statement it was reflected that for a period of 8 August 2021 to 5 September 2023 – although she won an amount of R5,240,000.00 she gambled away an amount of R14,925,000.00. This shows a loss of R9,685,000.00.

[43] Even if I am to accept his version that he was oblivious of his father's Ponzi scheme, the undeniable fact remains that Mr Geldenhuis was a beneficiary of fraudulent proceeds. All that the applicants have to show, at this stage, is that Mr

Geldenhuis is indebted to Classic and that he is unable to pay the debt. The exercise on calculating the accurate amount does not affect these proceedings. The applicants have to merely prove that Mr Geldenhuis was a beneficiary of fraudulent proceeds.

[44] Hence, apart from the R60,000.00 issue, it cannot be gainsaid that he was a recipient of funds from Classic's bank account via Ms Geldenhuis' bank account. He claimed to have paid her around R1.8 million, but the remaining amount of over R3.8 million has not been accounted for. Mr Geldenhuis remains a recipient of Classic's funds and had explicitly expressed that he too was unable to pay the debts. On this basis, the second requirement is also met. It was at the enquiry, that Mr Geldenhuis advised that he was unable to repay the debt, and claimed that he could repay the monies in instalments, if demanded.

[45] More notably, it cannot be denied that he has been disposing of certain of his movable assets, namely his motor vehicles and watches. At some point, his immovable property was also put up for sale. It is considered to be an act of insolvency, in terms of Section 8(c) of the Insolvency Act[2], if assets are removed or an attempt is made to remove a debtor's property from the sight of creditors, thereby prejudicing them or preferring one creditor above another. In this instance, Mr Geldenhuis began disposing of his assets after the FSCA investigation commenced in 2022. Surely at this point he must have been aware

[2] In terms of Section 8(c) it is an act of insolvency if a debtor makes or attempts to make disposition of any of his property which would have the effect of prejudicing his creditors or of preferring one creditor above another.

that Classic was in trouble. The chronology reflects that Classic was wound up in May 2023 and the liquidators were appointed in June 2023 respectively. The motor vehicles were sold in January 2023, February 2023 and June 2023. It was pointed out that Mr Geldenhuis is still in possession of valuable art works and other luxury items which have as yet not been disclosed.

[46] It would similarly be to the advantage of creditors if the trustees determine what other assets are in his estate and to ensure that his creditors are not prejudiced. In this instance, I find that a *prima facie* case for his provisional sequestration is made.

[47] At the final sequestration stage, Mr Geldenhuis would be given an opportunity to rebut the applicants' case and show that his assets have a value exceeding his liabilities.[3] I further add that in both instances the relevant security was furnished and filed with the Master of the High Court in terms of the Insolvency Act.

COSTS

[48] Save for the costs order that the costs be costs in the cause, which I granted on 22 March 2024, the appropriate orders in these circumstances are that the costs be costs in the sequestrations.

[3] ABSA Bank Ltd vs Rhebokskloof (Pty) Ltd and Others 1993 (4) SA 436 C at 444 D-E

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H KOOVERJIE

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the applicant:	*Adv. DM Leathern SC*
	Adv M Jacobs
Instructed by:	*Coombe Commercial Attorneys*
Counsel for the Respondent:	*Adv A van der Walt*
Instructed by:	*Krige Attorneys Inc.*
Date heard:	*11 April 2024*
Date of Judgment:	*25 April 2024*