ACAR v PIERCE AND OTHER LIKE APPLICATIONS 1986 (2) SA 827 (W)

Citation 1986 (2) SA 827 (W)

Court Witwatersrand Local Division

Judge Coetzee J

Heard August 13, 1985

Judgment August 16, 1985

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Flynote : Sleutelwoorde

Husband and wife - Actions by and against - Marriage in community of property - Sequestration of joint estate - Problems resulting from s 17 (4) of the Matrimonial Property Act 88 of 1984 - Court directing that deputy sheriff, when serving final order of sequestration, must also serve a copy of C order on solvent spouse - Such spouse then, within seven days, to lodge with Master a statement of his/her affairs (Form B of Schedule 1 to Insolvency Act 24 of 1936) and verifying affidavit - If trustee thereby establishes that joint estate falls under chaps 2 and 3 of Act 88 of 1984, steps to be taken to amend order to reflect such position - Spouse to be given opportunity to object to order or to move to have D it set aside - Application for sequestration prima facie not directed against a joint estate - Standard form of order set out.

Headnote : Kopnota

With reference to the provisions of s 17 (4) of the Matrimonial Property Act 88 of 1984, providing that "an application for the sequestration of a joint estate shall be made against both spouses", and the problem that a creditor applying for the E sequestration of a debtor's estate might not know what the marital status of the debtor is, the Court concluded that the most satisfac ory solution was one involving the trustee of the sequestrated debtor. When the deputy sheriff serves a final order of sequestration, including an order of acceptance of surrender of an estate, on the insolvent, he must in terms of s 16 (2) of Act 88 of 1984 also serve a copy on the solvent spouse, if any, not living apart under a judicial order of F separation, and this spouse must within seven days lodge with the Master a statement of his/her affairs as at the date of the sequestration order, corresponding substantially with Form B of the First Schedule to the Insolvency Act 24 of 1936, and containing the particulars required therein, verified by affidavit, in the form prescribed. In annexure 8 to the First Schedule, the form of an affidavit is specified, and this affidavit must contain the required information about the marriage of the insolvent and the deponent to the affidavit, if G any. This document, which must be completed within seven days of service of the final order, becomes available to the trustee upon his appointment and he will be able to establish quickly and effectively whether the spouse is one whose joint estate falls under chaps 2 and 3 of the Matrimonial Property Act. Once this is established, it is imperative that steps should be taken to amend the sequestration order to reflect this H position. The *onus* of doing this should logically then fall on the trustee to see that this happens, at the same time giving the spouse the opportunity of objecting to the sequestration order, or even moving to have it set aside.

The Court, in order to give effect to the above directions, framed additional paragraphs to be incorporated in the standard provisional order of sequestration issued in an application where the application was *prima facie* not one for the sequestration of a joint estate falling under the provisions of I chaps 2 and 3 of the Matrimonial Property Act 88 of 1984. The paragraphs so framed are set out in full in the judgment.

Case Information

Applications for provisional orders of sequestration. The facts appear from the reasons for judgment.

Z F Joubert, A B S Franklin, L J Saad, J Medalie, V G Fevrier, J *A H Karp* and *S E Marcus* for the various applicants.

COETZEE J

A *Cur adv vult*.

Postea (August 16).

Judgment

COETZEE J: This judgment is given in ten applications for B sequestration on this week's motion roll.

Much difficulty is being experienced in practice as a result of a judgment in the Transvaal Provincial Division in *J C du Toit v J C du Toit* J * delivered on 10 May 1985 by VAN DIJKHORST J. This judgment is being interpreted as holding that unless an C applicant furnishes information in his founding papers about the marital status of the respondent and, in suitable cases, joins the respondent's spouse as a co-respondent, no order can be made. This result was thought to flow from the provisions of s 17 (4) of the Matrimonial Property Act 88 of 1984 ("the Act") which reads as follows:

> D "An application for the surrender of a joint estate shall be made by both spouses, and an application for the sequestration of the joint estate shall be made against both spouses."

To the majority of those creditors who do not have knowledge of their debtors' marital status, this ruling seems to have presented insuperable obstacles. In his judgment the learned E Judge says, *inter alia*, that there might be a possibility of getting the information from the Registrar of Births, Marriages and Deaths. He also refers to a possibility of a search in "die Akteskantoor". I have asked the Registrar of this Court to make enquiries from the Registrar of Births, Marriages and Deaths personally in Pretoria, and also from the Rand Townships F Registrar, as to whether these possibilities exist. The results of his investigations have been reported to me as follows. As far as the Registrar of Births, Marriages and Deaths is concerned, information whether a particular person is married or not, can be obtained, provided that:

(a) the full names of the husband

G *(b)* his date of birth; and

(c) the number of his identity document, are known.

It is then possible to say virtually immediately, as a result of their computerisation, whether a person by that name is registered as being a married person and how he is married.

H There is a further difficulty. Such answer will only reflect information which is at least three months old. Moreover, this information is not freely available to the public but will be available to officials such as the Registrar of the Court. If attorneys require such information for the purpose of litigation, they will have to get in touch with the Registrar. I He will have to certify that the information is required for that purpose, and only then might it become available.

As far as Deeds Registries as sources are concerned, the problem is that there are *eight* such offices in South Africa. There is no central registry, and as a person's antenuptial contract could be registered in any of the

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COETZEE J

eight offices, only a search through all eight offices might A reveal whether a person with particular names happened to have entered into an antenuptial contract. And what about the sizeable proportion of our population who were married abroad in foreign countries?

These things have only to be stated for it to be realised that these possibilities which the learned Judge had in mind do not B exist in practice. At best, if the basic information is known to a creditor to enable the Registrar of Births, Marriages and Deaths to render assistance, he will have information concerning a particular person who has particular names. There will still be no indication that that person with those names is in fact the person with similar names who is the C applicant's debtor. We have therefore to accept that, unless a creditor happens to have actual knowledge about his debtor's marital status, and his knowledge is reasonably accurate, there is no way in which these difficulties can be overcome. This makes it necessary to consider whether a practice which might solve these, what I regard as purely procedural, problems can possibly be evolved. But for this D purpose it is necessary to have clarity about the substantive law in this respect.

I think that the *ratio decidendi* of the judgment in *Du Toit v Du Toit (supra*) and which influenced the learned Judge, is to be found in the following passage (at pp 2 and 3 of the typed E judgment)[*] , which reads as follows:

> "By die lees van art 17 (4) val dit op dat die bewoording daarvan gebiedend is. By boedeloorgawe moet albei gades aansoek doen en by sekwestrasie moet albei gades respondente wees. Dit is trouens vanselfsprekend. Die Wetgewer het dit goedgedink om twee kapteins aan die stuur van die huweliksbootjie in gemeenskap van goed te plaas. Dit volg dat albei met hul skip moet ondergaan, indien hulle dit finansieel op die rotse laat loop. *Die vrou wat vry gekom het uit die maritale mag van die* F *man is nou, waar sy gelyke bevoegdhede het as hy ten opsigte van die gemeenskaplike boedel, onderworpe aan dieselfde onbevoegdhede by sekwestrasie*.
>
> Die posisie is analoog aan die by vennootskappe. Indien 'n vennootskapsboedel gesekwestreer word, word ook die afsonderlike boedels van die vennote gesekwestreer. Artikel 13 (1) Wet 24 van 1936. Die aansoek teen die vennootskap mag nie voortgesit word sonder dat ook die vennootskapsboedels G gesekwestreer word nie.Al die vennote moet voor die Hof wees. *Mosenthal Bros Ltd v Mahomed Ebrahim & Co* 1915 TPD 621."

(My italics.)

As I find myself in respectful disagreement with these views, I must deal fully with the changes, if any, wrought by the Act in cases of insolvency of a husband married in community of H property. The italicised sentence in the above passage is, in my vi w, an incorrect statement of the law, as the wife postulated by the learned Judge was, even before the new era, already "... onderworpe aan dieselfde onbevoegdhede by sekwestrasie". This is an important considertion when one has to analyse the Act to establish the Legislature's intention in I the enactment of s 17 (4). This involves *a priori* an examination of the Insolvency Act in the light of the common law. Persons are not sequestrated, only their estates are. Those persons who are sequestrated (in ordinary parlance) are termed "insolvents". Insolvent estates are not rehabilitated, only insolvents are. Until their rehabilitation, "insolvents" are subject to an impressive list of J

COETZEE J

A duties and disabilities (onbevoegdhede). The wife married in community of property is as much an "insolvent" as her husband who alone figures in the sequestration order. This is the result of the definition of "insolvent" in the Insolvency Act. Unless inconsistent with the context:

> "'Insolvent', when used as a noun, means a debtor whose estate is under sequestration and includes such a debtor before the B sequestration of his estate, according to the context."

Hence, because the joint estate was sequestrated, even though that was not specifically so stated in the order, she is a person "whose estate is under sequestration", and hence an insolvent for the purposes of the Insolvency Act in every way. C There was a time when this effect was not appreciated, even by Masters of the Supreme Court. See for instance, *Ex parte Swart* 1963 (4) SA 546 (C), where such a wife applied for her rehabilitation and the Master reported that the application was not necessary as she was not insolvent and her name did not appear on the sequestration order. The application was granted.

In *De Wet NO v Jurgens* 1970 (3) SA 38 (A) the Appellate D Division held that, for the purpose of s 23 (8) of the Insolvency Act, such a wife was an "insolvent", but RABIE JA made it abundantly clear (see at 48C - H) as part of his reasoning, that she is for all purposes an "insolvent".

More recently VAN HEERDEN J (as he then was), in delivering the judgment of a Full Court of the Orange Free State Provincial E Division in *Ex parte Geeringh* 1980 (2) SA 788 (O), also interpreted the judgment of RABIE JA, in an application by such a wife for her rehabilitation, as meaning exactly that. He says this, at 788A - 789 *in fine* :

> "Ingevolge art 124 (1) van die Insolvensiewet 24 van 1936 kan 'n aansoek om rehabilitasie deur 'n *insolven* gerig word en vir sover die omskrywing van 'insolvent' as selfstandige naamwoord F in art 1 tans tersake is, slaan dit op 'n skuldenaar wie se boedel onder sekwestrasie is'. Die enigste vraag is derhalwe of die applikant 'n 'insolvent' in die omskrewe sin is. Bedoelde vraag is na my mening reeds deur die Appèlhof in *De Wet NO v Jurgens* 1970 (3) SA 38 (A) beantwoord. Ten aansien van die effek van sekwestrasie van 'n gemeenskaplike boedel sover dit die huweliksgenote aangaan, is naamlik die volgende gesê (te 48):
>
> G '... (Na) my mening moet die sekwestrasie van die gemeenskaplike boedel noodwendig meebring dat die man sowel as die vrou insolvent word. Die vrou het nie 'n afsonderlike boedel ten opsigte waarvan 'n sekwestrasiebevel uitgereik kan word nie... Die man en vrou het saam een boedel en as dit gesekwestreer word kan die een nie insolvent wees en die ander solvent nie.'
>
> Daar is 'n hele aantal oorwegings wat dui op die wenslikheid van die opvatting van die Appèlhof. Neem bv die geval waarin 'n H vrou, getroud in gemeenskap van goed, as openbare koopvrou optree en die enigste broodwinner van die gesin is. Indien sy nie as 'n insolvent vir die doeleindes van die Insolvensiewet beskou word nie:
>
> *(a)* Sou sy nie skuldig bevind kan word aan die pleging van 'n hele aantal van die insolvensiemisdade nie; so bv, sou sy nie binne die raamwerk van art 135 (3) betrek kon word nie indien sy as openbare koopvrou voor die sekwestrasie van die gemeenskaplike boedel skulde I aangegaan het sonder 'n redelike verwagting dat bedoelde skulde voldoen sou word.
>
> *(b)* Sou 'n vervreemding sonder teenwaarde deur haar as openbare koopvrou gemaak nie ingevolge die bepalings van art 26 aangeveg kon word nie.
>
> *(c)* Sou sy nie aan oa die bepalings van art 23 (4), (12) en (13) hoef te voldoen nie.
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> *(d)* Sou die bepalings van art 37 nie van toepassing wees op huurkontrakte wat sy as huurder in verband met haar J nering as openbare koopvrou aangegaan het nie.

COETZEE J

> *(e)* Sou die kurator nie volgens art 23 (5) aanspraak kon A maak op surplusinkomste wat sy na sekwestrasie as openbare koopvrou mag verdien nie.
>
> *(f)* Sou aksies wat teen haar ingestel kon word, en inderdaad voor sekwestrasie ingestel is, nie deur die sekwestrasie opgeskort word ingevolge art 20 (1) *(b)* nie.

Dit is natuurlik waar dat 'n vrou, getroud in gemeenskap van goed, oor bates kan beskik wat nie in die gemeenskaplike boedel B val nie, maar dit is hoegenaamd nie vreemd dat die gemeenskaplike boedel, maar nie haar aparte boedel nie, onder sekwestrasie mag verkeer. 'n Insolvent kan na die sekwestrasie van sy boedel, 'n nuwe aparte boedel opbou wat op sy beurt gesekwestreer kan word, en ook 'n man, wat in gemeenskap van goed getroud is, kan oor aparte bates beskik. (Raadpleeg, bv *Ex parte Bear and Sack* 1926 WLD 240; *Cuming v Cuming and Others* C *1945 AD at 201.)*

Indien eenmaal aanvaar word dat 'n vrou getroud in gemeenskap van goed insolvent word as gevolg van die sekwestrasie van die gemeenskaplike boedel, blyk daar geen rede te wees om aan die woord 'insolvent' in art 124 (1) van die Insolvensiewet 'n beperkte betekenis toe te skryf sodat dit nie op sodanige vrou betrekking het nie. Inteendeel is daar gegronde redes waarom die Wetgewer sou beoog het dat sy aansoek vir haar D rehabilitasie kan doen."

I find myself in respectful agreement with everything that I have quoted from the judgment of VAN HEERDEN J. It is therefore abundantly clear that in this respect, from the point of view of the substantive law, there is no change at all.

As VAN DIJKHORST J points out, there are now three categories E of marriages in community of property, namely:

1. Those entered into before the Act in respect of which no steps were taken by the spouses to cause the provisions of chaps 2 and 3 to apply to the marriage.
2. Those entered into before the Act but in respect of which the spouses have caused these chapters to apply F to their marriage by registration of a notarial contract to that effect, which must be registered within two years of the commencement of the Act, in which case these provisions apply only from the date of registration.
3. Those entered into after the commencement of the Act.

In respect of the first category, there is no change, but in G respect of the last two categories, two vital changes in *other* respects have taken place. The marital power has been abolished, and no longer is the husband the sole administrator of the joint estate. The spouses now have equal powers in respect of their joint estate and its management.

These changes have produced important results of purely H procedural character, namely in the field of joinder of parties. A person who has a direct and substantial interest in the issue, such that a judgment upon it cannot be sustained without necessarily prejudicing that interest, is a necessary party to the proceedings and should be joined. A defect in proceedings of this nature can be raised *mero motu* by the I Court, *if that becomes apparent from the papers or during the proceedings*. (See *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 659.) Hence, even in the absence of a statutory provision such as s 17 (4), a Court would certainly raise the lack of proper joinder of the wife where it appears from the papers that a marriage falling into either of the second or third categories above exists, because she now J has a

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COETZEE J

A direct and substantial interest in the issue. In addition, she now has the requisite *locus standi* to enable her to protect that interest, and she has a right to be heard.

The inevitable conclusion is that the Legislature did not, by enactment of s 17 (4), intend to effect any alteration to the B status of a wife whose marriage falls into the second or third categories as far as insolvency is concerned. At all times her status consequent upon the sequestration of the joint estate was *ipso iure* that of an insolvent, and exactly equivalent to that of her insolvent husband. All that the Legislature intended to do, was to reinforce her position purely procedurally, stating what is in any event the legal C result of these changes of substance, namely that she must be cited as applicant or respondent in surrenders of estates and sequestration applications respectively, in appropriate cases.

The analogy with partnerships is very limited, and not a particularly useful one either. In the case of a joint estate there is only one estate involved; and by operation of law its D two owners become "insolvents". In partnerships, on the other hand, there are multiple and separate estates which are involved, and the partnership itself never becomes an "insolvent"; hence the necessity, as provided for by the Insolvency Act, to sequestrate simultaneously partnership estates. This is not simply a procedural matter but a vital E component of the law of insolvency as applied to partnerships.

Similar problems can, however, arise where a creditor is aware of the existence of only certain partners or mistakenly believes that others are partners. This actually happened in *Rabie & Co v Langford* 1938 EDL 422. A creditor obtained judgment against two persons trading in partnership, without F objection. On seeking to sequestrate the partnership, they alleged that there was a third partner, which that person denied. Thereupon the Court sequestrated the partnership and the two partners, leaving it to the trustee to determine whether the third person was also a partner, and to take appropriate action if required.

G The case of *Mosenthal Bros Ltd v Mahomed Ebrahim & Co* 1915 TPD 621 only decided that a firm, by its firm name, cannot be sequestrated, if the Court does not know who the partners are. This is how the case was understood also by TINDALL J in *Jackson v Smith* 1928 TPD 773 at 797. There the partnership had been cited as "Jackson Bros" without specifying the names of partners.

Returning to the sequestration of individuals, a few points H should be noted. There is of course no presumption of marriage. There is only a common law presumption that, in the case of a husband who was domiciled as a fact in South Africa at the time of the marriage, the marriage is in universal community of property. See *Edelstein v Edelstein NO and Others* I *1952 (3) SA 1 (A) at 10. In the light of the tendency of the Appellate Division to move away from the notion of similar so-calld presumptions arising from selected facts, because they involve piece-meal processes of reasoning and rebuttal (see Arthur v Bezuidenhout and Mieny* 1962 (2) SA 566 (A) at 574, and *S v De Bruyn and Another* 1968 (4) SA 498 (A) at 507), hardly any presumption can operate helpfully *in casu* and can for J practical purposes be disregarded. Even if it is known or established that a person is married, the common law presumption is now

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COETZEE J

of no assistance because there is no telling in which category A the marriage falls. A creditor is entitled to approach the Court for sequestration of his debtor's estate, and this right can clearly not be whittled down merely because it is not known whether the debtor is married or what the marital regime is. On the face of it, and without the aid of any presumption, the Court cannot assume that it is possibly dealing with that kind B of joint estate in which the other spouse ought to be joined. That is, if there is a spouse. Particularly in the light of the considerable difficulties in discovering the true position, the Court should, to my mind, not insist on particular enquiries in this regard as a prerequisite to success. It is another matter when it appears from the papers C that the respondent *is* married, moreover that the marriage *probably* falls into the second or third categories. Then clearly, a Court would insist on at least clarification, if not joinder. But not before.

It seems clear that s 17 (4) was introduced for the benefit of the wife and not to impose disabilities which had not existed D before; to ensure that, now that she has a right to be heard in the protection of an interest, she must be cited. The wording of this section is also a pointer. The required joinder is limited to the case where an application is made "for the sequestration of a joint estate"; not just every and any estate. An application for the sequestration of the estate of John Jones, without any indication as to whether there is a Mrs E Jones who has a justiciable interest, is not one "for the sequestration of a joint estate", and the statutory provision does not operate to prevent the application being granted. If it should eventually turn out that there is a Mrs Jones who is such a person, it does not mean that anything done up to that stage is invalid. The effect of non-joinder is not nullity. F Only that any person with an interest cannot subsequently be defeated by the *exceptio res judicata* (see the *Amalgamated Engineering Union* case *supra*, particularly at 649 - 654). Insolvency stands on a somewhat different footing, peculiar to itself in this regard, because a wife may, irrebuttably, be an "insolvent" by mere definition and therefore operation of law, G without having been cited in the proceedings. Her rights of property, even if she is married out of community of property or simply living as a concubine with the respondent, could similarly be vitally and detrimentally affected. See s 21 of the Insolvency Act.

Consequently, in sequestration proceedings, because of the H peculiar operation of this statute, the ordinary legal results of non-joinder, that is that the judgment is *res inter alios acta*, is really cold comfort to her. This consideration operates to persuade one to attempt to ensure that a person who might so suffer prejudice has at least the opportunity of being heard at a time when the prejudice can still be cured and I redressed.

The difficulty is that a balancing act has to be performed. On the one hand, an applicant with a *prima facie* case against the respondent is entitled to an order without having obstacles, which are possibly quite irrelevant, being placed in his way. On the other hand, because of the peculiar statutory results of sequestration, one must be careful, lest on the off-chance of a spouse lurking in the wings, her rights are not limited to a Pyrrhic victory in an *exceptio res* J *judicata* at some future time.

COETZEE J

A I have discussed these problems in depth with five other senior Judges now doing duty in this Division. This concerns the practice which should be adopted to safeguard the rights of such a possible respondent, without prejudicing the rights of a creditor, who *prima facie* is entitled to a sequestration order against his debtor. We have discussed many possibilities. It B does not seem that there is a perfect solution. The most satisfactory one seems to be one in which the trustee is involved in the problem. When the deputy sheriff serves a final order of sequestration, including an order of acceptance of surrender, on the insolvent, he must in terms of s 16 (2) also serve a copy on the solvent spouse, if any, not living apart C under a judicial order of separation, and this spouse must within seven days lodge with the Master a statement of his or her affairs as at the date of the sequestration order, corresponding substantially with Form B of the First Schedule of the Insolvency Act and containing the particulars required therein verified by affidavit, in the form prescribed.

When one turns to this Schedule, one finds that, in annexure 8 D thereof, the form of an affidavit is specified, and this affidavit must contain the required information about the respondent's and the deponent's marriage, if any. This document, which must be completed within seven days of service of the final order, becomes available to the trustee upon his appointment, and he will be able to establish quickly and effectively whether the spouse is one whose joint estate falls E under chaps 2 and 3 of the Act. Once this is established, it is imperative that steps should be taken to amend the sequestration order to reflect this position. The *onus* of doing this should logically then fall on the trustee to see that this happens, at the same time giving the spouse an opportunity to object, or even to move to have the sequestration order set F aside. With that in mind, we have framed additional paragraphs, which are to be embodied in the present standard provisional sequestration order which is issued, where an application is, *prima facie* not one for the sequestration of a joint estate falling under the provisions of chaps 2 and 3 of the Act. These extra paragraphs must appear in the standard order which I shall now read out:"It is ordered:

1. That the estate of the abovenamed respondent be and is hereby placed under provisional sequestration in the hands of the Master, and that a rule *nisi* do issue calling upon the respondent to appear and to show cause, if any, to this Court on the... day of... 19... at 10 am why a final order of sequestration H should not be granted against the estate.
2. The trustee (including a provisional trustee) must as soon as it is reasonably possible after his appointment, establish whether the respondent is married and, if so, whether chaps 2 and 3 of the Matrimonial Property Act 88 of 1984 ('the Act') apply I to their marriage.
3. If the respondent is married in community of property and the Act as aforesaid applies to the marriage, the trustee must:

(i) reinstate this matter on the roll by notice of motion, for the purpose of joining the respondent's spouse as a second respondent and amending the provisional or the final J order of sequestration (as the case may be) appropriately;

COETZEE J

(ii) serve his notice of motion on the A applicant's attorney, the respondent, and on the respondent's spouse at least seven days before the hearing. To the copy to be served on the respondent's spouse must be attached copies of the original notice of motion and supporting papers together with B the relevant order of Court."

It should be perfectly obvious that, once the trustee takes this action, his own notice of motion is only a rather brief document containing the necessary information, which is set forth in paras 2 and 3 of this new standard order. A supporting affidavit need be equally brief so that not much extra costs C are incurred. It is important though that to the copy to be served on the respondent's spouse only the copies of the original notice of motion and supporting papers together with the relevant order of Court be attached. One is now *ex post facto* attempting to do what ought to have been done in the first instance, namely to cite her and to serve these papers on D her. As the purpose of the motion now brought by the trustee, is one to have her name reflected as a respondent, she obviously will be entitled to examine the original papers to determine what position to take up and whether she ought, on her own behalf and independently of her husband, do what she is now entitled to do, ie to go to Court and ask that the order be set aside as if she were doing so on the original return day of E the order.

I shall now deal, *seriatim*, with each of the ten applications and indicate briefly why a particular order issues in each case. I refer to them merely by their numbers on the motion roll.

F 1. No 281/1985:

It appears from the papers that the applicant seems to have much knowledge about the respondent. In para 4 he gives a comprehensive account of the respondent's assets, his business and details of the difficulties of the respondent. It seems perfectly clear that he knows the respondent rather well. The respondent furthermore gave this information in all its G particularity to him.

I think that in a case such as this one ought to take up the attitude that the applicant obviously knows enough about the respondent to have been able to place information before the Court regarding his marital status. This does not mean that H this would be required in every case where the applicant knows something about the respondent. In this particular one, where for some five pages the affidavit contains detailed information about the affairs of the respondent, it is a fair inference that he could and should have given the Court information about I the respondent's marital status.

Nor does it mean that any kind of *onus* is placed on him to make enquiries in official quarters. It is only done as a matter of practice to avoid unnecessary costs and unnecessary efforts by the trustee in terms of the new standard order.

This case, therefore, will stand down until next week for that purpose. If the applicant cannot discover this information, he J will then get his order. But he must say so.

COETZEE J

A 2. No 284/1985:

Die applikante is die eertydse prokureurs van die respondent. Hulle het skynbaar intieme kennis van die respondent se sake. 'n Lang lys van die presiese bedrae van sy skulde word uiteengesit. Hierdie is insgelyks 'n geval soos die vorige waar B onder sulke omstandighede die applikant, aangesien dit blyk by deurlees van die stukke dat hy redelik intieme kennis dra van die respondent se sake, dit aangeneem kan word dat hy ook kennis dra van die respondent se huweliks-regime.

Die saak sal vir dieselfde doel oorstaan.

3. No 285/1985:

C Hierdie skuld spruit uit 'n sessie van 'n vorderingsreg ten gunste van ene Hildebrand. Weer eens word volledige informasie verstrek betreffende die respondent se bates, maar hierdie keer blyk dit nie dat die kennis spruit uit enige besondere verhouding wat die applikant met die respondent gehad het nie; eerder dat dit kom uit aanhangsel C, 'n brief wat deur die D respondent geskryfis aan die applikante en waaraan hy 'n lys van sy skulde geheg het.

Verdere informasie, wat ook in para 8 bevat word, is duidelik verkry uit aanhangsel A, wat die sessie self is. Dit klink dus asof *prima facie* hierdie nie 'n geval sou wees waar die applikant waarskynlik enige besondere kennis van die respondent E het nie, maar sy kennis verwerf het uit dokumente en dus 'n geval waar die Hof nie daarop sal staan om besonderlike inligting betreffende die huweliks-regime van die respondent te

verlang nie. 'n Standaard-bevel soos wat ek reeds uitgelees het, terugkeerbaar op 17 September 1985, word uitgereik.

F 4. No 288/1985:

This debt arose from an ordinary commercial transaction. The applicant is a trader and the respondent became its debtor in the sum of R10 128,30; a trade debt in other words.

The application is based on a *nulla bona* return and very little is said about advantage to creditors, save that the applicant G states that, when credit was given to the respondent, the respondent informed representatives of the applicant that he was possessed of assets and that he was the owner of plots from which he conducted business as a building contractor. It would, therefore, appear that he probably has assets which were not pointed out to the Sheriff and this is the kind of advantage H which is envisaged in the Insolvency Act.

There is nothing which indicates that the applicant has possibly particular knowledge regarding the respondent's marital regime, if any. The applicant is entitled to a sequestration order which will issue in the new standard form, returnable on 17 September 1985.

I 5. No 293/1985:

The applicant is the cessionary of a trade debt which the respondent incurred to Springbok Timber and Hardware Co (Pty) Ltd in 1984 and 1985. The applicant is a female and the proprietress of a business known as Conmark, which traded as picture sellers and framers. This is an ordinary trade credit J case. An order of sequestration in the standard form, returnable on 17 September 1985, will issue.

COETZEE J

A 6. No 295/1985:

The applicant is a firm of attorneys practising in Florida. The respondent is indebted to the applicant in respect of professional legal services rendered during 1985.

It appears again as in one of the earlier cases that the applicant also knows much about the respondent's personal B affairs. It was able to give very full and detailed particulars about these, with the aid of certain annexures, but also obviously from knowledge that it has of the respondent.

This is a case where it is reasonable to assume that the applicant would be possessed of the required knowledge. The papers ought to be augmented. It will stand down for that C purpose.

7. No 297/1985:

This also seems to be a trade credit case and there is no reason to think, from any of the facts disclosed in the supporting affidavit, that the applicant knows anything about the respondent beyond the mere fact of his address, full names D and the details of the debt.

A sequestration order in the standard form, returnable on 17 September 1985, will issue.

8. No 298/1985:

In this case a supplementary affidavit has now been filed. This borderline case could possibly have been regarded as one where E the applicant knew enough to be able to give the required information. Yet it is one where one could have no more than a suspicion of this kind which would not have been sufficient to require further information. In the ordinary course, a sequestration order would probably have issued.

The supplementary affidavit, however, makes it clear that applicant has knowledge of the fact that the respondent is F married out of community of property and with an antenuptial contract and that the marriage still subsists.

Hence this is a case where only para 1 of the standard order will issue, returnable 17 September 1985.

G 9. No 303/1985:

The respondent is indebted to the applicant in respect of monies lent and advanced during April 1985.

The applicant seems to have much knowledge about the respondent as a result of various things that the respondent told him. He actually asked the respondent to put all these facts in a H letter. But, in addition to that, the respondent's affidavit is attached to the papers in which he confirms his insolvent circumstances, that he is unable to meet his commitments and that he consents to an order being made against him. He also formally waives and abandons any rights that he might have to I oppose the application.

This is obviously a case where the respondent is co-operating with the applicant. The respondent's affidavit ought to be supplemented to show precisely what his marital status is and, if married, what the marital regime is.

10. No 321/1985:

In hierdie geval is 'n verdere eedsverklaring ook deur die J respondent ingehandig.

COETZEE J

A Hy sê dat hy getroud is buite gemeenskap van goedere met 'n besondere dame en hy heg ook 'n afskrif van sy huweliksvoorwaardekontrak. Om 'n huweliksvoorwaardekontrak aan te heg was eintlik oorbodig. Waar 'n respondent sê dat hy aldus getroud is, hoef verdere stawende dokumente nie aangeheg te B word nie. Dit veroorsaak net koste onnodiglik.

In hierdie geval sal daar dus ook 'n sekwestrasiebevel slegs in terme van para 1 van die standaardbevel uitgereik word, terugkeerbaar op 17 September 1985, en geen koste word toegelaat ten opsigte van die aanhangsels by die verdere eedsverklaring van Deetlefs nie.

C Attorneys for the various Applicants: *T G Fine; Damant, Bostock & Co; Sasto, Louis & Fizzotti; Feinsteins; Postan & Van der Merwe; Ernest Beder, Friedland & Friedland; Alan Horwitz & Tevis Shapiro; Wertheim Becker;* and *J S G Coetzee*.

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* *Reported at 1985 (3) SA 1007 (T) - Eds.
* At 1008G - J of the report - Eds.

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