

INSOLVENT ESTATE: YOLANDA ELIZABETH SMALBERGER

Previously residing at 5A van der Riet Street, Mossel Bay

MASTER'S REFERENCE NO. C166/2011

**TRUSTEE'S REPORT TO BE SUBMITTED AT THE SECOND MEETING OF CREDITORS TO
BE HELD BEFORE THE MAGISTRATE, MOSSEL BAY, ON 28 SEPTEMBER 2011 AT 9H00**

ORDERS OF COURT AND MEETINGS

The Estate was voluntarily surrendered in the Western Cape High Court (Eastern Circuit Local Court, George) on 11 March 2011. The undersigned were appointed as Provisional trustees by the Master of the Western Cape High Court, Cape Town, on 13 June 2011.

One claim amounting to R805,461.77 was proved at the First Meeting of creditors which was held before the Magistrate, Mossel Bay, on 20 July 2011.

The undersigned applied for their appointment as trustees and were duly appointed by the Master of the Western Cape High Court, Cape Town, on 18 August 2011.

Unless advised to the contrary in writing only secured claims will be submitted for proof at the Second Meeting of creditors as there is a danger of a contribution being levied on concurrent creditors who prove claims.

ASSETS AND LIABILITIES

The Insolvent has lodged a Statement of Affairs as is required in terms of Section 16 of the Insolvency Act and we are able to report on her financial position as follows:-

ASSETS

IMMOVABLE PROPERTIES

NOTE

VALUATION / REALISATION

Immovable Properties

- | | | |
|--|---|---------|
| - Erf 18388, Mossel Bay (Unit 22, Heiderand, Mossel Bay) | 1 | 600,000 |
| - Erf 3763, Mossel Bay (5 Van der Riet Street, Mossel Bay) | 2 | 800,000 |

Movable Property

- | | | |
|--|---|-----|
| - Members interest in Mosselbaai Reisburo CC | 5 | NIL |
|--|---|-----|

Vehicles

- | | | |
|--|---|---------------|
| - 2010 BMW 320i (Realisation Value) | 3 | 233,000 |
| - 2005 Mitsubishi Colt 2.8 TDI (Realisation Value) | 4 | <u>92,000</u> |

R1,725,000

LIABILITIES

Secured Creditors

- | | | |
|---|---|---------|
| - ABSA Bank Limited (" <i>ABSA</i> ") | 1 | 560,000 |
| - First Rand Bank Limited (" <i>First Rand</i> ") | 2 | 805,000 |
| - BMW Financial Services (" <i>BMW</i> ") | 3 | 347,000 |
| - Wesbank | 4 | 80,000 |

Preferent Creditors

Unknown

Concurrent Creditors

80,000

R1,872,000

NOTES

1. Erf 18388, Mossel Bay is subject to a first mortgage bond in favour of ABSA to whom the insolvent is indebted in the sum of R560,000. The insolvent received a number of private treaty offers before her estate was voluntarily surrendered. These offers ranged from R330,000 to R350,000. Therefore it would appear very unlikely that this property will fetch the valuation amount of R600,000, hence no equity would arise from the sale of this property for the benefit of unsecured creditors. The undersigned will dispose of the property either by public auction or private treaty after the second meeting of creditors.
2. Erf 3763, Mossel Bay, is subject to a first mortgage bond in favour of First Rand to whom the insolvent is indebted in the amount of R805,000. As the bondholder's claim exceeds the value of the property, no equity would accrue from the sale of the

property for the benefit of unsecured creditors. The undersigned will dispose of the property either by public auction or private treaty after the second meeting of creditors.

3. The 2010 BMW 320i is subject to an instalment sale agreement in favour of BMW. BMW realised their own security in accordance with the provisions of Section 83(8)(d) of the Insolvency Act. No equity has arisen from the sale of the vehicle for the benefit of creditors.
4. The 2005 Mitsubishi Colt vehicle is subject to an instalment sale agreement in favour of Wesbank. The trustees made application to the Master of the High Court in terms of the provisions of Section 80bis(1) of the Insolvency Act read with Section 18(3) of the Insolvency Act for consent to dispose of this vehicle by private treaty. Consent was granted on 1 August 2011 and the vehicle was subsequently sold for R92,000. Any equity arising from the sale of the vehicle will be utilised for various costs in accordance with the provisions of Section 89 of the Insolvency Act and therefore there will not be any benefit to creditors arising from the sale.
5. The value of the members' interest in the close corporation is nil as the close corporation has ceased trading.

UNCOMPLETED CONTRACT FOR THE ACQUISITION OF IMMOVABLE PROPERTY

No notice has been served on the undersigned in terms of Section 35 of the Insolvency Act and the Insolvent was not as far as I am aware a party to any contract for the purchase of immovable property interrupted by Insolvency.

LEASES

There were no known lease agreements in existence as at the date of provisional sequestration.

LEGAL PROCEEDINGS PENDING AND/OR THREATENED

The undersigned is not aware of any legal proceedings by or against the Insolvent which may have been pending at the date of sequestration other than those for the normal recovery of debt.

LEAVE TO TRADE OR BE EMPLOYED

No application has been received in this regard.

SUBSISTENCE ALLOWANCE

No application has been received from the Insolvent for a subsistence allowance and no such allowance has been granted.

BOOKS AND RECORDS

As the Insolvent did not trade in her personal capacity she was not required to keep books and records.

CAUSES OF INSOLVENCY

According to the application for the voluntary surrender of the estate, the insolvent and her mother were members of a close corporation known as Mosselbaai Resisburo CC and which traded as a travel agency. They each held a 50% members interest and had an arrangement in terms of which they had to have equal say and input regarding the running of the business. In 2010, the insolvent's mother started drawing money from the business which it could not afford. This eventually led to a breakdown of communication between mother and daughter.

The insolvent stood surety for many of the close corporation's debts and was forced to obtain loans to try and keep up with her monthly expenses. The insolvent's mother abandoned the business at the end of 2010 and the insolvent was left in a dire financial position.

CONTRAVENTIONS AND OFFENCES

The Insolvent does not appear to have contravened any of the provisions of the Insolvency Act.

DIVIDEND PROSPECTS

The abovementioned secured creditors will receive the nett proceeds arising from the sale of their respective securities. At this stage, there appears to be no prospect of a dividend to preferent and concurrent creditors and a contribution may well be levied on creditors who prove claims.

DATED AT CAPE TOWN
THIS 12th DAY OF
SEPTEMBER 2011



S MOODLIAR
JOINT TRUSTEE

DATED AT
THIS 16th DAY OF
SEPTEMBER 2011



M BALISO
JOINT TRUSTEE

INSOLVENT ESTATE : YOLANDA ELIZABETH SMALBERGER

MASTER'S REFERENCE NO : C166/2011

**RESOLUTIONS TO BE SUBMITTED AT THE SECOND MEETING OF CREDITORS TO BE
HELD BEFORE THE MAGISTRATE, MOSSEL BAY ON 28 SEPTEMBER 2011 AT 9H00**

IT IS HEREBY RESOLVED :

1. That the report of the Trustee(s) and his/their actions as referred to therein be and are hereby approved, ratified and confirmed.
2. That the actions of the provisional trustee(s) and trustee(s) in engaging the services of attorneys and/or counsel on such matters as he/they found necessary in the administration of the insolvent estate to date, are hereby approved, ratified and confirmed. That the costs thereof be paid out of the funds of the insolvent estate as part of the costs of administration. That the trustee(s) be authorised to conclude written agreements with their attorneys in terms of the provisions of Section 73 of the Insolvency Act No. 24 of 1936 (as amended) dispensing with the need for preparation of bills and the taxation thereof, and that the actions of the provisional trustee(s) and trustee(s) in concluding such written agreements to date, are hereby approved, ratified and confirmed.
3. That the Trustee(s) be and is/are hereby authorised to engage whatever further legal assistance he/they may require in the interests of the estate and that the costs thereof be paid out of the funds of the estate as part of the costs of administration.
4. That the Trustee(s) be and is/are hereby authorised to institute or defend legal actions in order to collect debts owing to the estate or in respect of any other matter affecting the estate including the holding of enquiries or examinations in terms of the Insolvency Act, 1973, as amended, as he/they may deem fit, and for such purposes to employ the services of attorneys and/or counsel of his/their choice and to pay the costs out of the funds of the estate as part of the costs of administration.
5. That the Trustee(s) be and is/are hereby authorised to settle or compromise any legal proceedings whether instituted or to be instituted by or against the estate, on

such terms and conditions and for such amount as he/they in his/their discretion may deem fit.

6. That the Trustee(s) be and is/are hereby authorised to sell any movable or immovable property of the estate of whatsoever description and including outstanding debts by public auction, public tender or private treaty in such manner, upon such terms and conditions and for such amounts as he/they may deem fit.
7. That the Trustee(s) be and is/are hereby authorised to consent to the cancellation of any bond passed in favour of the estate.
8. That the Trustee(s) be and is/are hereby authorised to agree to any reasonable offer of composition made to the estate by any debtor, to accept payment of any part of any debt due to the estate in settlement thereof, to grant an extension of time for the payment of any debt and to abandon such amounts due to the estate as he/they has/have been unable to recover or dispose of as he/they may deem fit.
9. That the Trustee(s) be and is/are hereby authorised to engage the services of auctioneers or agents to sell the assets of the estate and to determine the conditions of sale and manner of advertising his/their discretion.
10. That the Trustee(s) be and is/are hereby authorised and empowered in his/their discretion to compromise or admit any claim against the estate, whether liquidated or unliquidated, arising from any guarantee of any other cause whatsoever, as a liquidated claim in terms of Section 78(3) of the Insolvency Act, as amended, at such amount as may be agreed upon between the creditor(s) concerned and the Trustee(s) provided that proof thereof has been tendered at a meeting of creditors.
11. That the Trustee(s) be and is/are hereby authorised to transfer to the purchaser thereof any immovable property sold by the estate prior to its liquidation or to agree to the cancellation of any such sale and to re-sell such property or to agree to the substitution of a new purchaser under any existing Deed of Sale.
12. That the Trustee(s) be and is/are hereby authorised to abandon any asset or assets of the estate where no purchaser for the asset(s) can be found.
13. That the Trustee(s) be and is/are hereby authorised to terminate leases in respect of premises or of any other object entered into by the estate.
14. That the Trustee(s) be and is/are hereby authorised to, if necessary, borrow moneys with or without providing security therefor and that the interest payable on such loans shall be paid as costs of administration of the estate.
15. That the Trustee(s) be and is/are hereby authorised to engage the services of bookkeepers, accountants, auditors or any other person for any purpose in and about the affairs of the estate which he/they may require and the costs so incurred to be paid as costs of administration of the estate.

16. That the future administration of the estate be left in the hands of and to the discretion of the Trustee(s).

qq CREDITORS

PRESIDING OFFICER