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The Admission of Claims in Insolvency Proceedings

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BACKGROUND

In *FirstRand Bank Limited v Master of the High Court, Pretoria and Others* [2023] ZAGPPHC 1166 (**"the FirstRand Case"**), the Gauteng Division of the High Court, Pretoria (**"the Court"**) considered whether the Master of the High Court (**"the Master"**) was correct in rejecting a creditor's claim while simultaneously accepting other creditors' claims that had been lodged out of time during the insolvency proceedings.

WHAT ARE THE PRINCIPLES CONFIRMED BY THE COURT?

The Court confirmed that, once a provisional sequestration order has been granted, a *concursus creditorum* is established, with the result that no creditor may thereafter receive payment to the prejudice of the general body of creditors. The rights of creditors are determined as at the date of sequestration, and no individual creditor may accept payment thereafter to the detriment of the *concursus creditorum*.

The Court further held that the presiding officer at a meeting of creditors is required only to determine whether a claim has been *prima facie* proved and is not called upon to adjudicate the merits of the claim. In this regard, the Master exceeded his powers by rejecting FirstRand's claim on the basis of factual findings concerning the alleged acceptance of payment, rather than confining the enquiry to whether the claim had been *prima facie* established.

ADMISSION OF LATE CLAIMS

The Court reiterated that section 44(4) of the Insolvency Act is peremptory, requiring creditors to lodge their claims no later than 24 hours before the advertised time of the meeting of creditors. A presiding officer has no discretion to admit a late claim unless satisfied that, through no fault of the creditor, the required evidence in support of the claim could not be delivered within the prescribed period. As this jurisdictional requirement had not been met, the Court reviewed and set aside the admission of the late claims.

CONCLUSION

The FirstRand case reaffirms that the rights of creditors are determined as at the date of sequestration and that the Master's role at a meeting of creditors is limited to determining whether a claim has been *prima facie* proved, rather than adjudicating its merits. The judgment further underscores the peremptory nature of section 44(4) of the Insolvency Act, which requires strict compliance with the prescribed time periods for lodging claims. The decision serves as a reminder to creditors and insolvency practitioners of the importance of ensuring that claims are properly supported and lodged timeously to avoid disputes regarding their admission and the risk of subsequent review proceedings.

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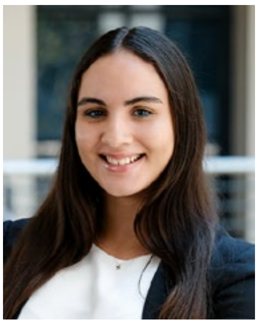

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