

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT016SEPT2015

In the matter between:

**LAUREN SHEILA THOMPSON**

**Applicant**

**And**

**ROGER MORTLOCK**

**Respondent**

**Coram: Kganyago M.F**

**DECISION HANDED DOWN ON THE 17TH DECEMBER 2015**

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**DECISION**

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- [1] The applicant in this matter has brought an application in terms of section 69(8)(b)(iii) & (iv) read together with section 70(1)(b)(v), 71(2)(a), 3(a)(i)(b) of the Companies Act, 71 of 2008 ("the Act"). The applicant is seeking to remove the respondent as a director and shareholder of Capital 5 Consulting (Pty) Limited.
- [2] The applicant and the respondent are registered as joint and equal directors and shareholders of the Capital 5 Consulting (Pty) Ltd ( "the Capital 5" ).
- [3] The applicant is alleging that the respondent has acted in a manner of delict, gross negligence, dishonesty and neglect of the business. The applicant is further alleging that the applicant has entered into an agreement with a business

of conflict with the interest of the applicant business. According to applicant, the respondent has deliberately used Capital 5 and its products to gain a Distribution Agreement with the supplier in the name of another company, Community Crafts Private Ltd in India under the pretence that it was eventually moved to Capital 5, and that they were to be a facilitator only.

[4] The applicants contends that the respondent and Community Crafts have now excluded the applicant as a Director in Capital 5 from any future gain of this agreement that was initiated by the applicant.

[5] The applicant alleges that from the 04th June 2015, the respondent was requested to submit his resignation from Capital 5 but has failed to do so. On the 30th August 2015, a mediation was held at the offices of Nemises Accounting but that did not yield any fruits.

[6] On the 21st September 2015, the applicant sent form CTR 142 to the applicant by email. On the 2nd October 2015 the said form CTR 142 was hand delivered on the respondent where he signed an acknowledgement of receipt. The respondent has failed to serve or file any opposing papers. The applicant is now applying for a default order.

[7] Section 71(2) (a) of the Act read as follows:-

*“(2) Before the shareholders of a company may consider a resolution contemplated in subsection (1)-*

*(a) the director concerned must be given notice of the meeting and the resolution, at the least equivalent to that which a shareholder is entitled to receive, irrespective of whether or not the director is a shareholder of the company; and*

*(b) the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative to the meeting before the resolution is put to vote.”*

[8] The applicant is seeking that the respondent should be removed as a director and shareholder of Capital 5 Consulting (Pty) Limited. In order to enable the Tribunal to determine that, the Tribunal must be satisfied that the director concerned has been given notice of the meeting together with a copy of the proposed resolution. The member concerned must also be given written reasons to enable him/her to prepare and present a response. The director concerned must be given a reasonable opportunity to make a presentation before a determination is made.

[9] The applicant in the present case has failed to attach proof in her application that the procedure outlined in paragraph 8 above has been followed. What the applicant has stated in her papers, is that the respondent was requested to submit his resignation since 04th June 2015. It is not clear whether the request came out after a proper meeting was held or not. The applicant further stated that there was another meeting that was held on the 30th August 2015, but no minutes of that meeting has been attached to her affidavit.

[10] Under the circumstances, I am not persuaded that the applicant has made a good case for the disqualification and removal of the applicant as a director and shareholder.

## **ORDER**

[11] In the result I make the following order.

11.1 The applicant's default order is refused.

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**M.F KGANYAGO**

**MEMBER OF THE COMPANIES TRIBUNAL**