

**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case: CT022SEP2015

In the matter between;

RELIGIOUS TECHNOLOGY CENTER

Applicant

a registered non profit Corporation, of
1710 Ivar Avenue, Suite 1100, Los Angeles California,
United States of America.

AND

DIANETICS CONSULTING ENGINEERS (PTY) LTD
Respondent

Registration 2013/171471/07

DECISION (Reasons and Order)

Presiding Member of the Tribunal: Lucia Glass

Introduction

- 1) This Default Judgment application is based on the provisions of Regulation 153 (1) of the Companies Act 71 of 2008 (the Act) read together with the provisions of Sections 11 and 160(3)(b)(ii) of the Companies Act, requesting a default order against the Respondent, in that the name of the Respondent DIANETICS CONSULTING ENGINEERS, contains the entirety of the Applicant's DIANETICS trademarks, and thus does not satisfy the requirements of section 11 of the Act.
- 2) In this Application the Applicant seeks an order from the Companies Tribunal to the effect that the respondent be ordered to choose a new name, in terms of Section 160(3)(b)(ii) of the Act.

Preliminary Issues

- 3) On the 30th September 2015, the Applicant had its Application for Relief, Form CTR 142 issued with the Companies Tribunal.
- 4) The Applicant instructed the Sheriff to serve the Application on the registered address of the Respondent. On the 1st of October 2015, at 17.30hr, and in terms of the Form CTR142, the Sheriff attempted service of the Application and the affidavit in support of it, on the Respondent within 5 business days after it was filed with the Tribunal.
- 5) The Sheriff one GI Sedile of Sheriff Johannesburg Central, renders a non return of service on the registered address of the Respondent, at 302 Tygerberg, 46-48 Primrose Terrace, Berea, Johannesburg wherein it is stated; 'defendant is unknown at the given address as informed by Nokuthule Dlamini a tenant'. The said Sheriff further states in his return of service that the original return together with the original process was despatched to the mandator.
- 6) A registered letter dated 30th September 2015 was despatched to the Defendant at its registered address for the attention of Phathutshedzo Ramatshimbila, attaching thereto a Notice of Motion and Founding Affidavit. This registered letter was returned to sender undelivered, which post office slip was attached to the founding affidavit.

Evaluation of the service of this application on the respondent

- 7) Service is to comply with the methods and times for delivery of documents as stated in Annexure 3 Table CR 3, of the Act, in that the application is to be delivered by handing the notice or a certified copy of the document of the document to a responsible employee of the company or body corporate at its registered office or its principal place of business within the Republic or if there is no employee willing to accept service, by affixing the notice or a certified copy of the document to the main door of the office or place of business.
- 8) The Sheriff rendered a return of non service because the defendant was not known at the registered address, as advised by the occupant.
- 9) As per Annexure 3 Table CR 3, of the Act, in the event where there is no employee willing to accept service, then the application is to be served, by affixing the notice or a certified

copy of the document to the main door of the office or place of business. I am not certain that the Sheriff was legally entitled to claim a proper return of service, if the Application was affixed to the door, due to the fact that the present occupier was not willing to accept the service, as in this scenario, it was not an employee who would not accept service but an occupier.

Findings

- 10) It is my view that this Application was not properly served on the defendant and that this Tribunal can not proceed to go into the merits of the case before it is convinced that the defendant was properly served in terms of the Act.
- 11) I am consequently satisfied that the respondent's lack of participation in these proceedings is due to a lack of service.
- 12) In terms of Sec 7 (3)(a) of the Companies Regulations, if it proves impossible to deliver a document in any manner provided for in the Act or these Regulations, and if any person other than the Tribunal is required to deliver the document, the person may apply to either the Tribunal or the High court for an order of substituted service. It is my view that this would be the correct manner to proceed to have this application served and adjudicated upon.

ORDER

The Application is dismissed due to lack of proper service on the defendant.

LUCIA GLASS

MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated this 22.2.16