

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT009Aug2015

In the matter between:

Hippo Comparative Services (Pty) Ltd

Applicant

and

Hippo Car Hire (Pty) Ltd

Respondent

Coram: Delport P.A.

Decision handed down on 9 December 2015

Decision

INTRODUCTION

- [1] The applicant "...objects to the name of the Respondent in terms of Section 160 of the Companies Act of 2008 and submits that the name of the Respondent is undesirable and calculated to cause damage." (para 44 of the founding affidavit).
- [2] The applicant initially lodged an application and afterwards applied for a default order, due to circumstances that will become clear as set out hereunder.
- [3] Regulations 142 and 153 of the Companies Act (GNR 351 of 265 April 2011) ("Companies Act regulations" / "regulations") in terms of the Companies Act 71 of 2008 ("Act" / "Companies Act") regulate the application to the Companies Tribunal ("Tribunal") as well as the application for a default order under certain circumstances.

BACKGROUND

- [4] The applicant is Hippo Comparative Services (Pty) Ltd.
- [5] The respondent is Hippo Car Hire (Pty) Ltd, a company incorporated under registration number 2012/183443/07.
- [6] A copy of the CTR 142 application was, according to the affidavit supporting the application for a default order, filed with the Tribunal on 17 August 2015 and delivered by the sheriff to the registered address of the respondent on 19 August 2015.
- [7] The records of the Tribunal however show that the application was filed on 13 August 2015.
- [8] The “company name dispute” was delivered by TNT couriers to the physical address of the respondent as indicated in the records of the Companies and Intellectual Property Commission (para 8 of the founding affidavit).
- [9] It seems as if the “company name dispute” refers to the form CTR 142 and the founding affidavit as required by reg 142(2). This is, however, not clear, but is, for reasons that will be apparent later, not relevant.
- [10] Whether the delivery was properly done in terms of s 220 of the Companies Act or in terms of table CR3 of Annexure 3 of the regulations need not be decided here.
- [11] The respondent initially opposed the application, at a stage outside the period allowed in reg 153, and also applied for condonation.
- [12] In an affidavit by the managing (only) director of the respondent filed with the Tribunal on 19 November 2015, the respondent withdrew its opposition to the application.
- [13] Hence the ruling by the Tribunal will be on the application of the applicant alone.

APPLICABLE LAW

- [14] Regulation 142(2) provides that a “person may apply to the Tribunal...”
- [15] A “person” is defined in s 1 of the Companies Act as to include a “juristic person”. A “person” is defined in s 1 of the Interpretation Act 33 of 1957 as including “any company incorporated or registered as such under any law”.
- [16] As juristic person the company cannot act on its own and needs to do it through natural persons, ie the *board* of directors.
- [17] Section 66(1) of the Companies Act provides as follows:
- “66. Board, directors and prescribed officers.—**(1) The business and affairs of a company must be managed by or under the direction of its board, which has the authority to exercise all of the powers and perform any of the functions of the company, except to the extent that this Act or the company’s Memorandum of Incorporation provides otherwise.”
- [18] “The directors’ powers under s 66 enable them to cause the company to participate in legal proceedings. For this purpose they must authorise the institution of the proceedings and the prosecution thereof (*Ganes v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624). They must also authorise one of their number or someone else (eg a manager or the secretary) to represent the company in such proceedings. The authorisation may be particular (ie with reference to a single case) or general (ie with reference to any case or any class of case, eg actions against debtors for payment) (see *Louw v WP Koöperasie Bpk* 1991 (3) SA 593 (A) at 602–603). There must be evidence before the Court that the person purporting to represent the company has been authorised accordingly with regard to the particular proceedings (*Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* 1957 (2) SA 347 (C) at 351–352; *Yiba and Others v African Gospel Church* 1999 (2) SA 949 (C) and *Boerboonfontein BK v La Grange NO* 2011 (1) [Page 254] SA 58 (WCC) and numerous other cases; and *cf Pretoria City Council v Meerlust Investments (Pty) Ltd* 1962 (1) SA 321 (AD) at 325; but *cf Eskom v Soweto City Council*

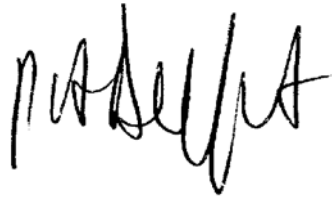
1992 (2) SA 703 (W) at 705.” *Henochsberg on the Companies Act 71 of 2008* at 253.

EVALUATION

- [19] A certain Tyrone Evan Walker of Moore Attorneys deposed of the affidavit and signed the CTR 142 “...as per the General Power of Attorney marked hereto as “Annexure UPS1”. (para 2 of the founding affidavit).
- [20] The general power of attorney referred to was given by a certain Liesel Viljoen, who is indicated as the General Manager: Brands of the applicant.
- [21] It may be that the said Liesel Viljoen has the power to delegate her authority to the said Tyrone Evan Walker, but there is no evidence that the authority that she received was from the board of the applicant. See *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* 1957 (2) SA 347 (C) at 351–352; *Yiba and Others v African Gospel Church* 1999 (2) SA 949 (C) and *Boerboonfontein BK v La Grange NO* 2011 (1) [Page 254] SA 58 (WCC).
- [22] A general manager of a company may have tacit authority in respect of acts for and on behalf of the company (*Randcoal Services Ltd v Randgold and Exploration Co Ltd* 1998 (4) SA 825 (SCA) at 841; *NBS Bank Ltd v Cape Produce Co (Pty) Ltd* 2002 (1) SA 396 (SCA) at 411; *Glofinco* case *supra* at 482, and the minority judgment at 492; *Northern Metropolitan Local Council* case *supra* at 507; *One Stop Financial Services (Pty) Ltd v Neffensaan Ontwikkelings (Pty) Ltd and Another* 2015 (4) SA 623 (WCC)) but litigation is not included in tacit authority, and even if it were, there is no evidence to that effect before the Tribunal.
- [23] It should be stated that even if proper authority was proved, there are many formal and substantive deficiencies in the application that may be fatal to the application.

ORDER

[24] The application is refused.

A handwritten signature in black ink, appearing to be 'M. A. B. J. A.', written in a cursive style.

MEMBER OF THE COMPANIES TRIBUNAL