

**COMPANIES TRIBUNAL**  
  
**of**  
  
**THE REPUBLIC OF SOUTH AFRICA**

**Case Number CT014MAR2016**

In the Ex Parte Application of

**JT ROSS PROPERTIES (PTY) LTD**

**Applicant**

(Registration number 2000/005526/07)

in respect of

**AN APPLICATION FOR AN EXEMPTION FROM THE REQUIREMENT TO APPOINT A  
SOCIAL AND ETHICS COMMITTEE**

**Presiding Member of the Tribunal; Lucia Glass**

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**DECISION (Reasons and Order)**

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**INTRODUCTION**

1. The Applicant applies for an exemption, from the requirement to appoint a Social and Ethics Committee, as imposed by Section 72 of the Companies Act 71 of 2008 (further herein referred to as 'the Act').

2. This application is made, on the basis that it is not reasonably necessary in the public interest to require the Applicant to appoint a Social and Ethics Committee having regard to the nature and extent of the activities of the Applicant. Alternatively that there are formal

structures in place that substantially perform the functions that would otherwise be performed by the Social and Ethics Committee.

## **PRELIMINARY ISSUES AND FACTS**

3. The Deponent to the Applicant's founding affidavit is Melanie Ann Gillespie, who alleges that she is a Director of the applicant and is authorised to depose to the founding affidavit.

4. It is averred that in respect of the Applicant's public interest score, it has scored above 500 points.

5. It is further averred that the Applicant is a property owning entity with a property portfolio of a number of commercial and industrial buildings. The management Company collects rental from tenants on behalf of the Applicant and administers the building on behalf of the Applicant.

6. It is submitted that the Applicant does not have any employees. And because the Applicant does not have employees, it is averred that it is not necessary to appoint a social and ethics committee, having regard to the nature and extent of the activities of the Applicant.

7. It is argued that in the alternative, if it is found that it is reasonably necessary in the public interest to require the Applicant to have a Social and Ethics Committee, then the Applicant avers that that it is unnecessary for the Applicant to form a Social and Ethics Committee as all the functions required by regulation 43(5) of the Act to be exercised by a Social and Ethics Committee, are performed by committees already in existence and or the Director of the Applicant.

## **THE APPLICABLE LAW**

8. The applicable Sections of the Act, and the applicable Regulations are as follows;

Section 72 (5) reads as follows:

a) "the company is required in terms of other legislation to have and does have, some form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by the social and ethics committee, in terms of this section and the regulations or

b) it is not reasonably necessary for the public interest to require the company to have a social and ethics committee having regard to the nature and extent of the activities of the company."

Regulation 43 (2) reads as follows:

"A company to which this regulation applies must appoint a social and ethics committee unless

a) It is a subsidiary of another company that has a social and ethics committee, and the social and ethics committee of that other company will perform the functions required by this regulation on behalf of that subsidiary company; or

b) It has been exempted by the Tribunal in accordance with Section 72 (5) and (6)."

## **APPLICATION OF THE LAW TO THE FACTS**

9. The Tribunal is to decide, whether in terms Section 72 (5), (a) the Applicant is required in terms of other legislation to have and does have, some form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by the social and ethics committee. The Applicant does not provide any evidence to the effect that it is required by **other legislation** to have and does have mechanisms in place, and thus the Tribunal can not make a decision on this score. (highlights added)

10. In terms of Section 72 (5), (b) it is not reasonably necessary for the public interest to require the company to have a social and ethics committee having regard to the nature and extent of the activities of the company. The applicant has not provided sufficient information regarding its nature and extent except that it does not have employees. This is the only evidence provided in respect of the nature and extent of the Applicant, which in my view is not enough for the Tribunal to weigh up whether or not it can exempt the applicant in terms of, Section 75(2)(b) of the Act.

## **FINDINGS**

11. After considering all the facts, in relation to the Act and Regulations, I conclude that the Applicant can not be exempted from having a Social and Ethics Committee.

## 12. **Order**

I accordingly make the following order;

The Applicant is not granted exemption from appointing a Social and Ethics Committee.

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LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 9.4.16