



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT003Mar2017

In the matter between:

Christos Zotos

Stand 950 Fairland (Pty)Ltd

FIRST APPLICANT

SECOND APPLICANT

vs

Companies and Intellectual Property Commission

Salim Ahmed Patel

FIRST RESPONDENT

SECOND RESPONDENT

Presiding Member of the Tribunal : Prof PA Delport

Date of Decision : 15 August 2017

DECISION (Reasons and Order)

1. INTRODUCTION

1.1 The first and second applicant ("applicants") lodged an application with the Companies Tribunal ("Tribunal") on 7 March 2017.

1.2 In terms of the founding affidavit lodged with CTR 142, the applicants apply for the following:

“1.1 Finding that the First Respondent in processing the CoR 39 Form, dated 28 September 2016, submitted to it in respect of the Second Applicant failed to fulfil its duties prescribed by Companies Regulation 168(4) and irregularly and erroneously amended its records pertaining to the Second Applicant.

1.2 Reviewing and setting aside the Commission’s decision to record the resignation of the First Applicant on or about 28 August 2016 as a director of the Second Applicant.

1.3 Reviewing and setting aside the Commission’s decision to record the appointment of the Second Respondent on or about 28 September 2016 as a director of the Second Applicant.

1.4 Finding that the aforementioned alleged resignation and appointment of directors of the Second Applicant during August and September 2016 is fraudulent and unlawful.

2. The First Respondent is ordered to expunge and remove from its records any reference to the resignation by the First Applicant referred to in 1.2 above, and any reference to the appointment of the Second Respondent, referred to in 1.3 above, to ensure that the First Applicant is recorded as the sole director of the Second Applicant from incorporation to date.

3. In terms of Section 169 of the Companies Act 71 of 2008 (“the Act”), the First Respondent is to launch an investigation and probe into the actions of the Second Respondent in his attempts to fraudulently and unlawfully appoint himself as a director of the Second Applicant and to take applicable steps contemplated by Section 170(1)(b) and Section 170(1)(f) of the Act.”

2. BACKGROUND

2.1 The application is based, as the relief that is sought indicates, on the apparently illegal and unauthorised removal by the second respondent of the first applicant’s name as director of the second applicant from the records of the first respondent.

2.2 The applicants ask for certain orders, also in terms of s 169 of the Companies Act 71 of 2008 (“Companies Act”).

3. ISSUES

3.1 The issues here are apparently a practice known as “hi-jacking” of a company by the unauthorised alteration of the records of the company as held by the Companies and Intellectual Property Commission (“CIPC”) in terms of s 187(4) of the Companies Act.

3.2 The practice referred to was extensively discussed in *Entrepreneurial Business School (Pty) Ltd and Others v Africa Creek Investment (Pty) Ltd and Others* (3232/2016) [2016] ZAWCHC 53 (12 May 2016).

4. APPLICABLE LAW

4.1 The applicants ask for certain orders to amend or rectify the records of the CIPC and for an order in terms of s 169 to compel the CIPC to launch an investigation in respect of the acts of the second respondent.

4.2 An investigation in terms of s 169 can, as far as it is relevant here, be launched by any person, or by the CIPC on its own initiative or at the request of another regulatory authority, or as directed by the Minister (s 168 of the Companies Act).

4.3 Section 168 makes it clear that the Tribunal does not have the power or authority to initiate such a complaint or to order an investigation.

4.4 The Tribunal is a statutory body and its powers are stated in s 195(1) of the Companies Act that provides as follows:

“(1) The Companies Tribunal, or a member of the Tribunal acting alone in accordance with this Act, may—

- (a) adjudicate in relation to any application that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application;
- (b) assist in the resolution of disputes as contemplated in Part C of Chapter 7; and
- (c) perform any other function assigned to it by or in terms of this Act, or any law mentioned in Schedule 4.”

4.5 The Tribunal can only adjudicate matters that “may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application.”

4.6 The Tribunal is created by s 193 of the Companies Act to perform the functions as in s 195 and does not have inherent powers: *See Senwes Ltd v Competition Commission of South Africa* (118/2010) [2011] ZASCA 99 (1 June 2011) and the decision/ruling of this Tribunal in *Duduzile Cynthia Myeni vs CIPC* CT006Mar2017 (29 Jun 2017) paras 9-11.

5. EVALUATION

The Companies Act does not expressly give the power to the Tribunal to order the CIPC to act in the manner that is requested, neither in respect of the rectification of records, nor in respect of the institution of an investigation.

6. FINDING and ORDER

The application of the applicants is refused.

SIGNATURE

PA Delport

COMPANIES TRIBUNAL: MEMBER

DATE: 15 August 2017