

COMPANIES TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case: CT020Jun2015

In the matter between;

GROWTHPOINT PROPERTIES LIMITED

Applicant

(Registration number 1987/004988/06)

and

GROWTH POINT MINING PTY (LTD)

Respondent

(Registration 2014/190003/07)

Presiding Member of the Tribunal: Lucia Glass

DECISION (Reasons and Order)

1. This is an application in terms of Section 11 and 160 of the Companies Act 71 of 2008 (the Act) read together with Regulation 13 of the Act.

2. The Deponent to the Applicant's founding affidavit is Roland Krabbenhoft, who states that he is authorised to depose to the Applicant's founding affidavit, on behalf of the Applicant and does so in his capacity as the Applicant's Secretary.

3. It is averred by the Applicant's attorney, that on the 22 June 2015 a copy of this Application was sent to the sheriff for service (within five business days, after the date on which the Application was filed with the Tribunal). A non service was reported by the Sheriff on the Respondent's registered address at 110 Mala Mala Crescent, Meadon Heights Timbavati street.

4. A copy of the Sheriff's return of service marked Annexure 'D' is attached to the affidavit.

FACTS

5. After scrutinising annexure "D", the Sheriff's Return of Service, it is evident that the Sheriff Mr JHD Du Bruyn Sheriff, of Sheriff Sandton South office delivered a **Non-Service of this** Application for Relief. The Sheriff's Service, is headed: "NON-SERVICE application for Relief" and further states: "On the 22 June 2015, at 8H24 at 101 Woodburn Manore, French Lane Morningside, the application for relief could **not be served as the given address was found vacant and locked.**" (emphasis added)

6. It appears to me that the Application before me, was not properly served on the Respondent's registered address by the Sheriff of the High Court, and it gives me reason to first contemplate the Sheriff's service before the merits can be considered. Thus it is my view that I can only consider this Application, once I have established that this Application was properly served on the Respondent and that the lack of participation by the Respondent in

these proceedings is not due to a lack of knowledge and of service on it by the Applicant. Thus I am compelled to establish, in law, whether or not a proper service was effected.

7. Rule 4(1) (v) of the Uniform Rules of Court provides that a Sheriff's service on a company should take place by delivering a copy of the Application to a responsible employee at the registered office or principal place of business of the company, or if there **be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or any manner provided by law"**. (emphasis added)

8. The Courts have been vigilant in observing whether proper service has been effected before embarking on the merits of a case, and have emphasized the importance of proper service of court processes.

9. In the Case of Fishing Touch 163 versus BHP Billiton Energy Coal SA Ltd 2013 (2) SA 204 (SCA) it was stated that giving the respondent notice was an essential first step in an application for relief, and that the application could not be considered to have been made if it had merely been issued but not served.

10. In the case of Ritchie versus Andres 1882(2) EDC25C, it was held that judgement will only be given against those served. If the Court finds that service does not comply with the requirements, the Court should not grant any relief prayed for in default, before a proper return has been obtained.

11. Regulation 142 (2) of the Act provides that the applicant must serve a copy of the application and supporting affidavit on each respondent named in the application within 5 business days after filling it with the Tribunal. Any other application which may have been served after the 5 working days would be out of time and the applicant would have to apply for condonation of time. There is no application for condonation of time for any service that may have been effected after 5 business days after filling the Application with the Tribunal.

EVALUATION

12. The Sheriff's non return of service states that the defendant is unknown at the given address. The Sheriff does not attempt to serve the Application by affixing it to the main door or any other means of service. He merely finds that the defendant is unknown at the given address goes away with the Application in hand, and that is the end of attempting to serve the Application. It is thus evident from the Sheriff's Non return of service, (Annexure "D") that service had not been effected at all or in any way.

FINDINGS

13. I am convinced that the respondent did not receive the application and that service was not properly effected. I am consequently not satisfied that the respondent's lack of participation in these proceedings is due its own choice not to defend the proceedings but rather its lack of knowledge of these proceedings as the application was not properly served on it.

ORDER

I proceed to make an order in the following terms;

The application for relief is refused.

LUCIA GLASS

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Dated this 30th September 2015