



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT003Dec2018

In the matter between:

ACROW LIMITED

APPLICANT

And

ACROW TOWING AND LOGISTIX (PTY) LTD

RESPONDENT

Presiding Member of the Tribunal: Kasturi Moodaliyar

Date of Decision: 28 March 2019

DECISION (Reasons and Order)

INTRODUCTION

[1] This is an Application in terms of section 160 of the Companies Act 71 of 2008 (the Act). The basis of this Application is that the Respondent's name, ACROW TOWING AND LOGISTIXS (PTY) LTD offends against the provisions of sections 11(2)(b) and (c) of the Act by incorporating a name that is confusingly similar to the Applicant's registered ACROW trademarks.

[2] The Applicant is Acrow Limited, a company duly incorporated in terms of the laws of the Republic of South Africa, with registration number

1946/024069/06. The registered address of the Applicant was not provided.

[3] The Respondent is Acrow Towing and Services and Logistix (Pty) Ltd, a company incorporated in terms of the company laws of South Africa, registration number 2017/537351/07, with registered address at 2639 Dr Alfred Xama Street, Diepsloot Ext 4, Gauteng.

ISSUES

[4] An affidavit by Sandra Moya, the director of Acrow Limited, states that they also own another company by the name “Acrow Scaffolding Form Work (Pty) Ltd, with registration number 2008/001814/07.

[5] Ms Moya also informed the Tribunal that the Applicant registered a trademark under the ACROW name, trademark no: 47/00109/1-5.

[6] No further information is provided as to why the Respondent’s name offends the Applicant, save to say that it has the same “ACROW” which forms part of the company name.

THE FORM AND SUBSTANCE OF THE APPLICATION FOR DEFAULT ORDER

[7] The Tribunal notes that there is no evidence submitted by the Applicant that the Board of Directors of the Applicant passed a Resolution giving authorization to Ms Moya to depose of an affidavit on its behalf. This Resolution should have been provided in order for the Tribunal to adequately take note of the contents of Ms Moya’s affidavit.

[8] The Applicant filed this Application CTR 142 with the Tribunal on the 22 February 2019. On 11 December 2018 the served a copy of the

application on the Respondent via Registered Post. No response to the application was received to date. The Applicant also made further inquiries via email to the address stated on the CIPC being Kabelo.briz@gmail.com, and no response was received

[9] Once an Application for Default Order is filed with the Companies Tribunal, it is therefore enjoined to consider such an application in terms of sections 11(2) and 160 of the Act read with the provisions of regulation 153(1) and (2) of the Regulations. It is therefore important that I should make reference to the provisions of regulation 153(1) and (2) of the Regulations which read as follows:

“(1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal.

*(2) **On an application in terms of sub-regulation (1), the Tribunal may make an appropriate order–***

(a) after it has heard any required evidence concerning the motion; and

*(b) **if it is satisfied that the notice or application was adequately served.** [Own emphasis added.]*

[10] In order for me to consider the current Application for Default Order and to make an appropriate order in relation thereto, I must be satisfied that the Application for Relief was adequately served on the Respondent in accordance with Regulation 142(2).

[11] I am not satisfied that proper service has been effected. There is no evidence to show whether the registered letter was received or not. It is my view that the Respondent did not receive a copy of the Application for Relief in this matter.

[12] The Applicant is to serve the application via the Sheriff at the registered address of the Respondent.

[13] The Applicant did not attach a copy of the Certificate of Registration of the Respondent Company to show that it was the Respondent was incorporated under the name ACROW TOWING AND LOGISTIX (PTY) LTD. Thus there is no evidence, beside Ms Moya's affidavit to show that that the information provided to the Tribunal is true and correct.

[14] This application is thus defective in nature. Should the Applicant adequately address these defects, it is welcome to re-file the application.

ORDER

[15] I proceed to make the following order:

[15.1] The Application for Default Order in terms of regulation 153 of the Regulations is hereby refused.

[15.2] There is no order as to costs.

KASTURI MOODALIYAR
COMPANIES TRIBUNAL: MEMBER