

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

**“The Tribunal”**

**Case Number: CT00341ADJ2020**

**In the matter between:**

**Value Logistics Limited**

**Applicant**

**AND**

**Value Trans Truck Hire (PTY) LTD**

**First Respondent**

(Registration Number: 2017/275839/07)

**THE COMMISSIONER OF COMPANIES**

**Second Respondent**

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**DECISION**

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**INTRODUCTION:**

**[1]** The Applicant is Value Logistics Limited, a public company registered in accordance with the company laws of the Republic of South Africa, with registration number 1920/000560/06, and having its principal place of business at 49 Brewery Road, Isando, Gauteng.

- [2]** The First Respondent is Valued Trans Truck Hire (Pty) Ltd, a private company registered in terms of the company laws of the Republic of South Africa, with registration number 2017/275839/07, having its registered address at Stand No B941, Block C Mananga Road, Komatipoort, Mpumalanga<sup>1</sup>.
- [3]** The Second Respondent is the Commissioner of the Companies and Intellectual Property Commission (CIPC), appointed in terms of Section 189 of the Companies Act ("the Act"), cited in his capacity as the person responsible for the function of the CIPC, established in terms of Section 185 of the Act. The Applicant has advised that the Second Respondent is joined for purposes of notice and no relief will be sought against it, should it not oppose the relief the Applicant seeks herein.
- [4]** This is an application in terms of which the Applicant opposes the registration of the name 'Value Trans Truck Hire', in terms of sections 11 and 160, read with Regulation 142(a) and (b) of the Act. The Applicant seeks a determination by the Tribunal in respect of the registration of the name 'Value Trans Truck Hire' (Pty) Ltd, and that an order in terms of section 160(3) of the Act be made, directing that the First Respondent chooses a new name within a stipulated period, which is not the same as or confusingly similar to that of the Applicant and its registered trade marks.

## **Submissions by Applicant**

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<sup>1</sup> Annexure VL2-CIPC Search Works company search

**[5]** The Applicant, represented herein by its Chief Executive Officer, Steven David Gottschalk, duly authorised<sup>2</sup>, deposed to a founding affidavit in the Application for Relief, as required by Regulation 142<sup>3</sup>. The applicant submitted that it conducts business in South Africa as 'VALUE', both as a name and under the trading styles 'VALUE LOGISTICS', 'VALUE' and 'V'. Its primary business activity is the supply of transport, logistics and vehicle rental services with a strategic range of merchandise transport, warehousing, distribution and logistics solutions. The Applicant is the proprietor of various 'VALUE' trade mark registrations in South Africa, including amongst others, "VALUE TRUCK RENTAL", and "VALUE LOGISTICS"<sup>4</sup>. The Applicant was founded in 1981 although already incorporated on 01 July 1920 under the laws of South Africa, and has been operating in the transport and logistics industry since its establishment. Over the past 39 years, the Applicant has developed into one of South Africa's foremost supply chain providers, providing a diverse range of services which include distribution, transport, clearing and forwarding, warehousing, container and fleet management, forklift and commercial vehicle rental and leasing, under the "VALUE' marks. The Applicant has further been making continuous and extensive use of the 'VALUE LOGISTICS' name and 'VALUE' and/or 'VALUE DEVICE' trade marks in South Africa in over

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<sup>2</sup> Annexure VL1

<sup>3</sup> (1) A person may apply to the Tribunal for an order in respect of any matter contemplated by the Act, or these Regulations, by completing and filing with the Tribunal's recording officer-

(a) an application in Form CTR 142; and

(b) a supporting affidavit setting out the facts on which the application is based.

(2) The applicant must serve a copy of the application and affidavit on each respondent named in the application, within 5 business days after filing it.

<sup>4</sup> Annexure VL4

three (3) decades, one year short of four (4) decades, and has since gained a significant reputation in the logistics, truck rental, warehousing and transport industry. The Applicant consequently submits that the trade marks "VALUE LOGISTICS" and/or "VALUE" are well-known in the Republic within the meaning of section 34(1)(c) of the Trade Marks Act 194 of 1993.

- [6]** The Applicant submits that it has successfully applied for name objections with the Companies Tribunal in the applications against Osetsekae Value Logistics (Pty) Ltd and Value-Ad Logistics (Pty) Ltd under case numbers CT009Jul2018 and CT010Jul2018 respectively. In both cases, the decisions were that the respondents change their names to those which do not consist of, or incorporate the words 'VALUE LOGISTICS'. The Applicant submits that on becoming aware of the existence of the First Respondent, it sent a letter of demand on 29 March 2019<sup>5</sup> by registered mail to the First Respondent, which letter was returned as unclaimed. The Applicant's attorneys attempts to further obtain contact details of the Respondent proved futile as the only details they have are those obtained from Search Works from the CIPC registration system. The Applicant further conducted investigations to determine the extent, if any, of the use made by the First Respondent of the 'VALUED TRANS TRUCK HIRE' mark and company name. Such investigations failed to reveal any reference to the First Respondent or its company name. The Applicant submits that it has deduced that the First Respondent is either not carrying on business (or is dormant), and/or that the

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<sup>5</sup> Annexure VL7

First Respondent intends to use the 'VALUED TRANS TRUCK HIRE' name in relation to services relating to transport and logistics industry. However, the Applicant is concerned that the First Respondent's activities are unrestricted and the words "VALUED TRANS TRUCK HIRE" imply that any transport and logistical services would fall within the First Respondent's business activities and/or that the First Respondent is connected with, or is an extension of, the Applicant's business, or that the First Respondent is a subsidiary of the Applicant's group. The Applicant therefore submits that the First Respondent's company name "VALUED TRANS TRUCK HIRE" is in conflict with the provisions of sections 11(2)(a)(iii) and (b) and 11(2)(c)(i) of the Act. The Applicant prays for an order in terms of CTR142 form:

- i) ordering the First Respondent to change its company name to one which does not incorporate and is not confusingly similar to 'VALUE' trade marks
- ii) ordering the Second Respondent to change the First Respondent's company name to its registration number
- iii) ordering the First Respondent to pay costs of this application; and
- iv) further and /or alternative relief.

**[7]** On the application for a default order in terms of regulation 153, the attorneys representing the Applicant have filed an affidavit in support of the application. I will focus on the issue of service of this

application upon the First Respondent. Chezanne Haig, the attorney representing the Applicant herein, has submitted that the company name objection was lodged with the Tribunal on 10 March 2020, in terms of regulation 142, the Applicant was required to serve a copy of the company name objection application on the First respondent within five (5) business days of lodging the form CTR142 and the affidavit with the Tribunal. The Applicant instructed the Sheriff to serve the form and affidavit on the First Respondent. On 18 March 2019<sup>6</sup>, the Sheriff attempted to duly and formally serve the First Respondent and it was impossible to do so, as the Sheriff was unable to locate the First Respondent's registered address. On 02 April 2020 the Applicant's attorneys sent correspondence to the Sheriff to clarify as to the reason why it was impossible to locate the address of the First Respondent, or alternatively, re-attend to the service of the application in terms of Rule 4(1)(v) of the High Court Rules<sup>7</sup>. On 01 June 2020, 16 July 2020 and 24 July 2020, the attorneys sent follow-up emails requesting clarification in respect of the service on the First Respondent<sup>8</sup>. Despite these attempts, no response was forthcoming from the Sheriff. On 23 September 2021, the Tribunal's recording officer communicated with the Applicant advising that it had not received proof of service and that the twenty (20) business days in terms of regulation 143(1), in which the First Respondent was required to serve and file an answer to the application had lapsed, and they directed the Applicant to

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<sup>6</sup> Annexure CH2- Sheriff return of service

<sup>7</sup> Annexure CH3

<sup>8</sup> Annexure CH4

continue with the application for default order<sup>9</sup>. The Applicant's legal representative submits that it has made all best and reasonable efforts, endeavouring to comply with regulation 142 of the regulations and that the First Respondent's registered address does not exist.

## Evaluation

- [8] This is an application for a default order in terms of regulation 153 of the Act, which provides: " **(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 subregulation (1), the Tribunal may make an appropriate order... (b)if it is satisfied that the notice or application was adequately served**"

The application for relief was filed with the Tribunal on 11 March 2020 (as per stamped CTR Form 142), whereafter, as required by regulation 142, the Applicant's legal representatives instructed the Sheriff to serve the application (Form CTR 142 and founding affidavit) upon the First Respondent. The Sheriff's return stated that on the 18th March 2021 he attempted to accomplish service upon the First Respondent, however it was impossible for him to locate the mentioned address or addressee, and was returning the documents for further instructions. The Applicant's attorneys directed the Sheriff to make a second attempt to serve the application upon the First Respondent, but no response from the Sheriff was

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<sup>9</sup> Annexure CH5- email from the Companies Tribunal administrative officer

forthcoming. Further attempts were made to communicate with the Sheriff but it seems there was no response from the office. The last correspondence with the Sheriff's office was in July 2020. It was only in response to the communication from the Tribunal's administrative officer in September 2021 that the Applicant's attorneys went ahead and filed this application for a default order, despite the fact that the application has not been served upon the First Respondent. The Tribunal's administrative officer made a follow-up, as the application had been filed in 2020 and due to lapse of time, indicated the intention to close the file in the absence of the filing of an application for a default order in terms of regulation 153 of the Act. In light of the fact that the First Respondent has not been served with the application within five (5) days of filing the application with the Tribunal's recording officer, in compliance with regulation 142(2), the application for a default order is not properly before the Tribunal as required by regulation 153.

## **FINDINGS**

- [9]** The application for a default order fails on the basis that the First Respondent has not been served with the application in terms of regulation 142(2), read with regulation 153 of the Act.

**ORDER:**

The application is dismissed.

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B. Zulu

02 November 2021