

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CTR002/05/2012

In the matter between:

Thales South Africa (Pty) Ltd
(1996/006180/07)

and

Alain Jean Jacques Villemard



Applicant

Respondent

Coram: Delpont P.A.

Decision handed down on 5 December 2012

DECISION

INTRODUCTION

- [1] An order is sought for the Applicant to be exempted from the requirement to attach a certified copy of the passport of the Respondent, Alain Jean Jacques Villemard of 24 Rue A Auger, Montrouge, France, 92120, who resigned as director, to Form CoR 39 in terms of the Companies Act 71 of 2008 (the "Act" or "Companies Act").

BACKGROUND

- [2] The facts and the relief sought are singularly confusing in the documents attached to the CTR 142 and in the supporting affidavit.
- [3] The Respondent was a director of the Applicant and apparently resigned with effect from 30 March 2011.

- [4] Various new directors were also appointed to the Applicant. It is not of direct relevance, but it should be noted that few, if any, of the statutory time frames were complied with.
- [5] The Applicant submitted Form CoR 39 to the Companies and Intellectual Property Commission (“CIPC”) on 11 May 2012 to reflect the resignation/s and appointments.
- [6] The CIPC apparently, according to the supporting affidavit of Patrick Alain Oszczeda of 9 May 2012, requires that a certified copy of the passport of the Respondent, Alain Jean Jacques Villemard, who resigned, must be attached to Form CoR 39.

ISSUES

- [7] The Respondent apparently failed to provide said certified copy of the passport and the Applicant applies that it be exempted from having to provide the certified copy.

APPLICABLE LAW

- [8] The regulations in terms of the Companies Act (GNR 351 of 265 April 2011) (“Regulations”) provide, as far as it is relevant for the present finding, as follows:

“142. Applications to the Tribunal in respect of matters other than complaints.—(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.

(3) An application in terms of this regulation must—

- (a) indicate the basis of the application, stating the section of the Act or these regulations in terms of which the Application is made; and
- (b) depending on the context—
 - (i) set out the Commission's decision that is being appealed or reviewed;
 - (ii) set out the decision of the Tribunal that the applicant seeks to have varied or rescinded;
 - (iii) set out the regulation in respect of which the applicant seeks condonation; or
- (c) indicate the order sought; and
- (d) state the name and address of each person in respect of whom an order is sought.

EVALUATION

- [9] There are various substantive law issues, but in light of the reasoning in the matter the Tribunal does not have to address these.
- [10] The application is defective on various substantive grounds. Some of the more critical of these are:
 - 10.1 In terms of regulation 142 (3) (a) the application must indicate the basis of the application, stating the section of the Act or the regulations in terms of which the application is made. There is no such indication in the application.
 - 10.2 Regulation 142 (2) requires that 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. There is no indication that the indicated Respondent was served with the documents required.
 - 10.3 It is accepted for purposes of this ruling that the requirement to submit a certified copy of the ID or passport of a resigning director as required by the CIPC is a valid and legal requirement. The relief sought is to be

exempted from this CIPC requirement (para 6 of the supporting affidavit of Patrick Alain Oszczeda of 9 May 2012). As such the relief sought is against the CIPC as Respondent and not against the Respondent as indicated.

10.4 The CIPC should also have been named as a Respondent and therefore also served with the documents as required by regulation 142.

FINDING

[11] The application is defective in various formal respects as outlined above and these deficiencies are material and cannot be condoned.

AND ORDER

[12] The application is refused.



MEMBER OF THE COMPANIES TRIBUNAL