



COMPANIES TRIBUNAL OF SOUTH AFRICA

Case/File Number: CT011SEP2017

In the matter between:

ROBERTO FRANCESCO CINTI

Applicant

and

**COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION**

First Respondent

ALLEGIANCE PROPERTIES CC
(Reg NO.: 1996/026744/23)

Second Respondent

Presiding Member : Khashane La M. Manamela (Mr.)

Date of Decision : 31 October 2017

DECISION (Order and Reasons)

Khashane La M. Manamela

Introduction

[1] The applicant is Roberto Francesco Cinti (Cinti). From the papers, it appears that Cinti is bringing the application in some representative capacity on behalf of an entity called Allegiance JHB South Proprietary Limited (registration number 2014/210099/07). However, Cinti does not include any proof that the application is authorised by the aforementioned entity. Therefore, as cited above, Cinti will be considered the applicant herein, for current purposes.

[2] The first respondent is the Companies and Intellectual Property Commission (the CIPC). The CIPC is not taking an active part in these proceedings and was also not specifically cited as a respondent. However, from a reading of the papers, it is clear that the relief sought in the application is directed towards the CIPC. Be that as it may, there is proof that the papers were served on the CIPC by delivery through electronic mail on 02 October 2017 to a certain Mr Emanuel Manyelo of the CIPC.

[3] The second respondent is Allegiance Properties CC of Glenvista Johannesburg (Allegiance). There is no proof that Allegiance was served with the application, despite its clear interest in the outcome of this application. Allegiance, unlike the CIPC, was specifically cited as a respondent in the application. The absence of service on Allegiance will, obviously, have a bearing on the outcome of this application.

[4] Through this application, Cinti requests that the name *Allegiance Properties* belonging to Allegiance “be released”. It is submitted, in this regard, that the name

Allegiance Properties has been deregistered and that Cinti or his company or both would like to continue trading under the impugned name and have also registered a trademark similar to the name. I am not certain that I fully comprehend the aforementioned submissions, but I will revert to this later, below.

[5] As already indicated above, the application is riddled with defects, both of procedural and substantive nature. I will only mention some of these defects to refuse the application.

Absence of authority to bring the application

[6] Cinti, as stated above brought this application, ostensibly on behalf of an entity called Allegiance JHB South Proprietary Limited. This was in his capacity as the COO or Chief Operations Officer of the aforementioned entity. However, there is no proof of authority, like in the form of a resolution passed by the board of the entity, authorising the proceedings to be initiated.

[7] In terms of the decision of *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk*¹ “where a company commences proceedings by way of petition, it must appear that the person who makes the petition on behalf of the company is duly authorised by the company to do so. This seems to me to be a salutary rule and one which should apply also to notice of motion proceedings where the applicant is an artificial person. In such cases, some evidence should be placed before the Court to show that the applicant has resolved to institute the proceedings and that the proceedings are instituted at its

¹ 1957 (2) SA (C).

instance.”² Therefore, the absence of proof of authority to bring the application is a defect which renders the application stillborn. I will nevertheless proceed to deal with other defects in the application, for completeness.

Citation of the respondents and service of the application

[8] As I have already indicated above, the CIPC is not cited as a party to these proceedings, although it was served with the papers. The CIPC was added by myself, albeit nominally so, to the proceedings due to the nature of the relief sought and service of the papers on the CIPC by Cinti. Both respondents ought to have been cited.

[9] On the other hand, Allegiance is cited as a party or respondent in the application. However, the application was not served on Allegiance, even though the applicant or Cinti had the relevant contact details of Allegiance, including as appearing on a certificate issued by the CIPC on 20 June 2017, which forms part of the papers. The aforementioned certificate, among others, reflects postal and registered office addresses of Allegiance, as well as, details of its director and his residential address. These could clearly have been used to effect transfer on Allegiance, but was not.

[10] Therefore, the application was not served on Allegiance as contemplated by regulation 142(2) of the Companies Regulations, 2011. This is fatal to the application.

² See *Mall (Cape) (Pty) Ltd v Merino Ko-operasie Bpk* at 351H.

Nature of relief and grounds for relief

[11] Further, it is submitted that the relief sought herein is that the name *Allegiance Properties* “be released”, as Cinti or his company has registered a trademark bearing the aforementioned name and is also trading under the same.

[12] Documents, appearing to be application for registration of a trademark, filed on 14 October 2016, are included as part of the papers. However, in terms of these documents, the applicant for the trade mark is one Kenneth Noel Smith. There is no indication of any link between Smith, on the one hand, and Cinti or his company, on the other. Therefore, without evidence suggesting that the trade mark applied for belongs to Cinti or his company, reliance on section 11(2) of the Companies Act 71 of 2008 is impossible. One cannot rely on a trade mark whose proprietorship belongs to someone else, unless there is some form of authority or association in this regard.

Conclusion

[13] For the abovementioned reasons, this application will be refused. But, Cinti or whomsoever so entitled or authorised may initiate the application *de novo* after having regard to what is stated as defects above. However, my views expressed herein, will not be binding on my fellow Tribunal members, who may be seized with any new proceedings to be initiated.

Order

[14] Therefore, I make an order in the following terms:

a) the application is refused;

Khashane La M. Manamela
Member, Companies Tribunal
31 October 2017