



COMPANIES TRIBUNAL OF SOUTH AFRICA

Case/File Number: CT010NOV2018

In the matter between:

SOUTHERN SUN HOTEL INTERESTS (PTY) LTD

APPLICANT

and

BEVERLY HILLS REST (PTY) LTD

FIRST RESPONDENT

(Registration Number: 2016/413151/07)

COMMISSIONER OF COMPANIES

SECOND RESPONDENT

in respect of objection to company name

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

Date of Decision : 28 February 2019

DECISION (Order and Reasons)

Khashane La M. Manamela

[1] Southern Sun Hotel Interests Proprietary Limited, the applicant herein, objects to the first respondent's name. The objection is based on the ground that the first respondent's name BEVERLY HILLS or part of the first respondent's name does not satisfy the requirements of sections 11(2)(a)(iii) and 11(2)(b)(i) of the Companies Act 71 2008 (the Companies Act) in respect of its registered trade mark "BEVERLY HILLS". The applicant further operates a hotel business bearing that name.

[2] Both the first and second respondents are not taking part in these proceedings. The proceedings are, therefore, before me by way of an application for a default order. The applicant submits that the first respondent could not be served, despite diligent attempts including by the sheriff. There are, apparently, problems with the registered office address of the first respondent as recorded by the second respondent. The first respondent's address appears to be non-existent. However, there was service by way of affixing to the principal door at an address of a person appearing to be associated with the first respondent. But there does not appear to have any attempt, at all, to serve the second respondent.

[3] The applicant also filed an application for default order in terms of regulation 153 of the Companies Regulations, 2011¹ due to the respondents or first respondent defaulting in filing an answer within the period prescribed by regulation 143.²

¹ Regulation 153 reads in the material part: "(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) ...; and (b) if it is satisfied that the notice or application was adequately served. (3) Upon an order being made in terms of sub-regulation (2), the recording officer must serve the order on the person described in subsection (1) and on every other party."

[4] In my view, the form of service effected on the first respondent does not constitute proper and effective service. It is not recognised as one of the methods of delivery of documents prescribed for companies by Table CR3 of Annexure 3, which is in terms of regulation 7³ of the Companies Regulations, 2011.

[5] Should it be the applicant's case that it is impossible to serve or give notice to the first respondent using the prescribed methods, the applicant must formally apply for substituted service. Once substituted service has been authorised and complied with, an application objecting against the use of the first respondent's name may be launched.

[6] Actually, the applicant appears to have been aware of the approach suggested above and tentatively somewhere in the middle of its founding affidavit hinted to a request for substituted service. But such an approach does not suffice for an order for

² Regulation 143 reads in the material part: "(1) Within 20 business days after being served with ... an application, that has been filed with the Tribunal, a respondent who wishes to oppose the ... application must – (a) serve a copy of an Answer on the initiating party; and (b) file the Answer with proof of service."

³ Regulation 7 of the Companies Regulations reads: "(1) A notice or document to be delivered for any purpose contemplated in the Act or these regulations may be delivered in any manner— (a) contemplated in section 6 (10) or (11); or (b) set out in Table CR 3. (2) A document delivered by a method listed in the second column of Table CR 3 must be regarded as having been delivered to the intended recipient— a) on the date and at the time shown opposite that method, in the third column of that table; or (b) if the date and time for the delivery of a document referred to in Table CR 3 to a regulatory agency is outside of the office hours of that regulatory agency, as set out in regulation 165 (2), that document will be deemed to have been delivered on the next business day, subject to regulation 165 (3). (3) If, in a particular matter, it proves impossible to deliver a document in any manner provided for in the Act or these regulations— (a) if any person other than the Tribunal is required to deliver the document, the person may apply to either the Tribunal or the High Court for an order of substituted service; or (b) if the Tribunal is required to deliver the document, the recording officer of the Tribunal concerned may apply to the High Court for an order of substituted service. (4) A document that is delivered by fax must include a cover page, and a document that is transmitted by electronic mail must be accompanied by a cover message, in either case setting out— (a) the name, address, and telephone number of the sender; (b) either— (i) the name of the person to whom it is addressed, and the name of that person's attorney, if applicable; or, (ii) the name or description of the class of intended recipients, if the document is being delivered generally to all the members of a particular class of persons; (c) the date of the transmission; and (d) in the case of a fax transmission— (i) the total number of pages sent, including the cover page; and (ii) the name and telephone number of the person to contact if the transmission is incomplete or otherwise unsuccessful."

substituted service. A formal application, in terms of the provisions of the Companies Act and/or the Companies Regulations, supported by an affidavit with the necessary averments made, and all other necessary documents attached, is necessary.

[7] For the above-mentioned reasons, this application would fail. But the failure would not constitute a dismissal of the application of the merits. The application, once the service or notice requirements have been met, may be re-launched, if the applicant is still so minded or advised.

Order

[8] Therefore, the following order is made:

- a) the application is refused for reasons mentioned above.

Khashane La M. Manamela
Member, Companies Tribunal
28 February 2019