



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT00328ADJ2020

In the matter between:

DJ INVESTEC PTY. LTD Applicant

INVESTEC BANK (PTY) LTD Respondent

Date of Decision: 28th April 2021

DECISION

INTRODUCTION

1. The Applicant is D J Investec Pty. Ltd/. It is a duly incorporated South African company, registered under number 2018/599962/09. It has its principal place of business at Rendall Road Wadeville Germiston, Johannesburg, Gauteng, 2000.

2. The respondent is Investec Ltd. It is a duly incorporated South African company. It has its principal place of business at 100 Grayson Drive Sandown Sandton, Johannesburg, Gauteng.

3. The Applicant applies to the Companies Tribunal in terms of Section 11(2) of the Companies Act 71 of 2008 (“the Companies Act”), a name of a company must not be the same as the name of another company, domesticated company, registered external company, close corporation or co-operative and must not be confusingly similar.

APPLICANT’S SUBMISSIONS

4. On 12th December 2020 the applicant filed its application with the Companies Tribunal.

5. The Applicant submits that the Respondent had sent them a letter from the law firm Edward Nathan and Sonnenbergs indicating that the Applicants name is confusingly similar to that of the Respondent and that the Respondent had threatened to take legal action against them for this. As a result the Applicant chose to make an application to the Companies Tribunal to confirm that the Applicants name is not confusingly similar to that of the Respondent.

6. Mr. Dingli Yang (ID number 5502165235068) director of the applicant and who is authorized to make such an application argued that the Applicants name was not confusingly similar to that of the Respondent as it was not in the banking sector. The Applicant had registered the name with CIPC. It’s registered with SARs and has a bank account in that name. It made a loan in that name and also made an offer to purchase in that name.

7. The Applicant argues that it should be allowed to continue to use its name

EVALUATION AND FINDINGS

8. To determine the first issue I am compelled at the outset to deal with the fact that Respondent has not participated in these proceedings, and appears to not even be aware thereof.

9. There is an email sent from the Applicant to the Respondents alleged email address. There is no proof that the Respondent had received this email.

10. There is also no proof that there was correspondence on this application being made with Gaelyn Scott from law firm the Edward Nathan Sonnenbergs, who had sent the Applicant a letter on behalf of the Respondent on 19th December 2020 calling on the Applicant to change its name.

11. There is no other proof that the Respondent did indeed receive notice of the application. Such proof could be in the form of:

- a "read" receipt via email to Respondent;
- proof of Respondent's attorneys of record along with an acknowledgment of receipt from them;
- a tracking report from the post office; or
- a sheriff's return of service (ideal).

12. Regulation 142 of Companies Regulation 2011 GN R351¹ provides for Applications to the Tribunal in respect of matters other than complaints

¹ in GG 34239 of 26 April 2011

13. 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.

14. Companies Regulation 153 (2) provides for default orders:

15. 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.

16. The merit of Applicant's initial application for relief is over-shadowed by the fact that Respondent is apparently unaware of these proceedings. Therefore I focus this decision on the importance of service.

17. In the case of *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC) at para 18, Ngcobo J stated:

"The procedural aspect of the rule of law is generally expressed in the maxim *audi altaram partem* principle ('the audi principle'). This maxim provides that no one should be condemned unheard. It reflects a fundamental principle of fairness that underlies or ought to underlie any just and credible legal order. The maxim expresses a principle of natural justice. What underlies the maxim is the duty on the part of the decision-maker to act fairly. It provides an insurance against arbitrariness...this principle is triggered whenever a statute empowers a public official to make a decision which prejudicially affects the property, liberty or existing right of an individual."

18. The Tribunal has been seized with the issue of proper service. In the case of *Growthpoint Properties Ltd v Growth Point Mining (Pty) Ltd*², it was decided that a matter could not be considered until it has been

² Case no: CT020JUN2015 at 6

established that proper service was effected. It was also noted as important that Respondent's non- participation in the proceedings should not be ascribed to ignorance thereof, due to non-service on it by the Applicant.

19. In the case of *Skybridge cc and Another v Skybridge Investments (Pty) Ltd and Another*³ it was emphasised that service of notice is crucial to the rules of natural justice. Both these applications were not successful as the Tribunal found that there had not been proper service of the notice on the Respondent.

FINDINGS

20. In light of the fact that it is not clear on Applicant's papers whether or not the Respondent is aware of this application, the Tribunal is not satisfied that Applicant has exhausted all avenues to notify the Respondent

6. ORDER

The application is refused.

MOHAMED ALLI CHICKTAY
MEMBER OF THE COMPANIES TRIBUNAL

³ Case no: CT004DEC2016 at 7