



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT00736/ADJ/2021

In the matter between:

BRIDGESTONE CORPORATION

Applicant

and

BRIDGESTONE PROJECT MANAGERS (PTY) LTD

First Respondent

Registration Number: 2015/165912/07

COMMISSIONER OF THE COMPANIES AND

INTELLECTUAL PROPERTY COMMISSION

Second Respondent

Presiding Member:

Lindelani Daniel Sikhitha

Date of handing down of decision:

17 November 2021

Summary: An application objecting against the registration and continued use of the company name Bridgestone Project Managers (Pty) Limited in terms of sections 11(2)(b) and 11(2)(c) read with section 160 of the Companies Act, 2008 (Act No. 71 of 2008) – application for a default order in terms of regulation 153 of the Companies Regulation 2011 – default order can only be granted if the Companies Tribunal is satisfied that the application was adequately served on the respondent – sheriff issued a return of non-service – applicant should apply for substituted service either to the Companies Tribunal

or to the High Court – held: application for default order is dismissed due to inadequate service on the respondents.

DECISION (Reasons and Order)

Per: Lindelani Daniel Sikhitha

INTRODUCTION

- [1] The Applicant in this matter is Bridgestone Corporation which is a private company duly registered and incorporated under the company laws of Japan and having its address of registered office at 1-1, Kyobashi 3-Chome, Chuo-ku, Tokyo, Japan.
- [2] The First Respondent is Bridgestone Project Managers (Pty) Limited, which is a company duly registered and incorporated in terms of the Companies Act, 2008 (Act No 71 of 2008) (“the Act”), with registration number 2015 / 165912 / 07 and having its address of registered office at 163 Malcolm Road, Ext 3, Poortview Gauteng, 1733. In terms of the Certificate issued by the Second Respondent on Wednesday, 12 June 2019 at 16:10, the First Respondent was registered by the Second Respondent on the 22nd day of May 2015.
- [3] The Second Respondent is the Commissioner of the Companies and Intellectual Property Commission, appointed in terms of section 189 of the Act. The Second Respondent is cited in these proceedings in an official capacity as the person responsible for the function of the Commission of Companies and Intellectual Property Commission (“the CIPC”) in terms of the Act.

- [4] This is a company name objection application in terms of which the Applicant is objecting to the registration and use of the company name of the First Respondent, being Bridgestone Project Managers (Pty) Limited. The objection is made in terms of sections 11(2)(b), 11(2)(c) and 160(2)(b) of Act read together with regulations 13 and 142 of the Companies Regulations, 2011 ("the Regulations"). In short, the Applicant contends that the First Respondent's name is contrary to the provisions of sections 11(2)(b) and 11(2)(c) of the Act.
- [5] According to the documents filed with the Companies Tribunal, the Applicant, through its attorneys, Moore Attorneys Incorporated, filed its application on the 28th day of June 2021. There was an attempt to have the application served on the First Respondent by the Deputy Sheriff: Roodepoort on the 02nd day of July 2021. The Deputy Sheriff issued a Return of Non-Service and recorded the following to be the reason for non-services:

"IT IS HEREBY CERTIFIED:

That on the 02 July 2021 at 09:00 THE APPLICATION FOR RELIEF, FOUNDING AFFIDAVIT AND ANNEXURES could not be served as number 163 could not be found in MALCOM ROAD.
No board indicating. [Own emphasis added.]

- [6] I did peruse the papers filed with the Companies Tribunal by the applicant and I could not find any proof of service of the application for relief, founding affidavit and annexures thereof on the Second Respondent. I will therefore proceed with

this matter under the assumption that there was no service of the application papers in this matter on the Second Respondent.

FORM AND SUBSTANCE OF THE APPLICATION FOR RELIEF IN TERMS OF THE REGULATIONS

- [7] This is an application in terms of which the Applicant is objecting to the registration and continued use of the company name of the First Respondent in terms of sections 11(2)(b), 11(2)(c) and 160 of the Act read with applicable Regulations. Before dealing with the merits of the application, it is important that I should first deal with some preliminary issues which relates to the form and substance that applications of this nature should comply with in terms of the applicable regulations.
- [8] I should begin such an exercise by first having a look at the provisions of regulation 13(a) which deals with the form of applications that are similar to the current application. I should do so in order to determine if this application is indeed in compliance with such provisions. The relevant parts of regulation 13(a) of the Regulations read as follows:

“(a) A person may apply in Form CTR 142 to the Tribunal in terms of section 160 if the person has received... a Notice of a Potentially Contested Name, in Form CoR 9.6 or a Notice of a Potentially Offensive Name, in Form CoR 9.7, or has an interest in the name of a company as contemplated in section 160(1)....” [Own emphasis added.]

- [9] The current application is contained in Form CTR 142 (Application for Relief) in line with the Regulations. Since it appears that there is confusingly similarity between the names of the Applicant and the First Respondent, the Applicant does indeed have an interest in the name of the First Respondent. I am therefore satisfied that the current application does comply with regulation 13(a) of the Regulations as outlined above.
- [10] In terms of regulation 142(1) of the Regulations, a person may apply to the Companies Tribunal for an order in respect of any matter contemplated in the Act or the Regulations by completing and filing with the Companies Tribunal's recording officer:
- 10.1 an Application in Form CTR 142; and
 - 10.2 a supporting affidavit setting out the facts on which the application is based.
- [11] The current application is made in Form CTR 142 and it is supported by an affidavit ("Founding Affidavit") deposed to by Tyrone Evan Walker ("the deponent") who, as it appears from the papers placed before me, is a partner at Moore Attorneys Incorporated (Applicant's attorneys). The deponent is indeed duly authorised to launch the current application and to depose to the Founding Affidavit on behalf of the Applicant. His authority to do so is in terms of a Letter of Authorisation / Mandate signed by Akane Mori dated 25 February 2021. Akane Mori's is employed as Manager of Mark Administration Section by the Applicant.
- [12] In terms of regulation 142(2) of the Regulations, the Applicant is required to serve a copy of the application together with the Founding Affidavit and any attachment

thereto on each respondent cited in the application, within five (5) business days, calculated from the date of filing of the application with the Companies Tribunal.

- [13] It is evident from the papers placed before me that the current application was sent to the Sheriff: Roodepoort for service on the First Respondent. However, the Deputy Sheriff: Roodepoort issued a Return of Non-Service of Application for Relief, Founding Affidavit and Annexures on 02nd day of July 2021. The relevant parts of the Return of Non-Service read as follows:

"IT IS HEREBY CERTIFIED:

That on the 02 July 2021 at 09:00 THE APPLICATION FOR
RELIEF, FOUNDING AFFIDAVIT AND ANNEXURES could not be
served as number 163 could not be found in MALCOM ROAD.
No board indicating. [Own emphasis added.]

I could not find any proof of service of the application for relief, the founding affidavit and annexures on the Second Respondent.

- [14] It is therefore clear that there was no proper service of the current application on the respondents. In terms of regulation 142(2) of the Regulations, the current application should have been served on the respondents within a period of five (5) business days calculated from the date of filing of the application with the Companies Tribunal.
- [15] In terms of regulation 143(1) of the Regulations, any respondent who wishes to oppose the application is required to serve a copy of its answer on the initiating party and file the answer with proof of service thereof with the Companies Tribunal within twenty (20) business days after being served with an application

that has been filed with the Companies Tribunal.¹ It follows therefore that none of the respondents received the current application because it was never served on them.

THE FORM AND SUBSTANCE OF THE APPLICATION FOR DEFAULT ORDER

- [16] Despite the fact that there was no proper service of the current application on the respondents, the Applicant proceeded to file the application for default order with the Companies Tribunal in terms of regulation 153(1) of the Regulations. The application for default order was filed with the Companies Tribunal on the 10th day of September 2021. It is clear that the application for default order was filed after the expiry of twenty (20) business days that the respondents are afforded to file their respective answers in terms of the Regulation 143(1) of the Regulations.
- [17] Once an application for default order is filed, the Companies Tribunal is enjoined to consider such an application in line with the applicable provisions of the Act and Regulations. The Companies Tribunal is therefore enjoined to consider the current application in terms of sections 11(2) and 160 of the Act read with the provisions of regulation 153(1) and (2) of the Regulations. It is important that I should refer to the provisions of regulation 153(1) and (2) of the Regulations which read as follows:

¹ Regulation 143(1) of the Regulations reads as follows:

"Within 20 business days after being served with a Complaint Referral, or an application, that has been filed with the Tribunal, a respondent who wishes to oppose the complaint or application must—

*(a) serve a copy of an Answer on the initiating party; and
(b) file the Answer with proof of service."*

- "(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) after it has heard any required evidence concerning the motion; and
- (b) if it is satisfied that the notice or application was adequately served." [Own emphasis added.]

- [18] In terms of regulation 153(2)(b) of the Regulations, I can only consider the current application for default order and to make an appropriate order in relation thereto, if I am satisfied that the application was adequately served on all the respondents who are cited therein. In this matter, the Deputy Sheriff: Roodepoort issued a Return of Non-Service for reasons fully outlined therein in relation to the attempted service of the application and supporting documents on the First Respondent. In addition, I was not able to find any proof of service of the application and supporting papers on the Second Respondent. It follows therefore that there was no proper service of the current application on the First Respondent.
- [19] Upon receipt of the Return of Non-Service and in terms of regulation 7(3)(a) of the Regulations, the Applicant should have brought an application for an order of substituted service of the current application to either the Companies Tribunal or the High Court. The relevant provisions of regulation 7(3)(a) of the Regulations read as follows:

"(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. . . ."

[Own emphasis added.]

- [20] Considering the contents of the Return of Non-Service and failure by the Applicant to utilize the procedure provided for in terms of regulation 7(3)(a) of the Regulations, I am not satisfied that there was adequate service of the current application on the First Respondent. It follows therefore that the application was not adequately served on the First Respondent and that the application for default order should be refused on that basis.
- [21] I was not able to find any document which proves that there was service of the application on the Second Respondent or the CIPC. The Applicant is, in terms of regulation 142(2) of the Regulations, required to serve a copy of the application and supporting documents on each respondent who is named on the application within five (5) business days after filing with the Companies Tribunal. It follows therefore that the application was not adequately served on the Second Respondent and that the application for default order should be refused on that basis.
- [22] Should the Applicant wish to pursue this matter, it should bring an appropriate application to either the Companies Tribunal or the High Court applying for an

order of substituted service in line with the provisions of regulation 7(3)(1) of the Regulations.

THE ORDER

[23] Based on what I have outlined above, I therefore make the following order:

23.1 The application for default Order in terms of regulation 153 of the Regulations is hereby refused on the ground that there was no adequate service of the application for relief on the respondent.

23.2 There is no order as to costs.

LINDELANI DANIEL SIKHITHA
Member of the Companies Tribunal
17 November 2021