



COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT00920/ADJ/2022

In the matter between:

Frederick Jacobus van Zyl

Applicant

and

Sarel Phillip Van Zyl

Respondent

DECISION

Date of Decision: 5th March 2022

Member of the Tribunal: Dr. Alli Chicktay _____

INTRODUCTION

- [1] This is an application in terms of sections 71(8)(b) of the Companies Act No. 71 of 2008 (“the Act”) for an Administrative Order determining the removal of the Respondent as a director of Van Zyl Farms (Pty) Ltd), a private company with registration number 2019/19308/07 .

PARTIES

- [2] The Applicant is Frederick Jacobus van Zyl , an adult male and
- [3] The Respondent is Sarel Phillip Van Zyl an adult male.
- [4] The Applicant and Respondent are both resident within South Africa.

APPLICATION

- [5] The Applicant seeks the following relief:

“Removal of a director”

ARGUMENTS

- [8] The Applicant argued that:

8.1 That he and the Respondents are sole directors and shareholder of the company

8.2 That the Respondent did not give permission for UIF payments to be made in 2019.

- 8.3 The Respondent failed to provide signatory powers to the Applicant to the detriment of the company
- 8.4 In February 2020 the Respondent prevented payments to be made into the Applicants account to the detriment of the Company.
- 8.5 The Respondent refused to provide the Applicant with bank statements.

APPLICABLE LAW

[10] Section 71 (removal of directors) is the applicable section of the Act.

[11] Section 71 of the Act provides as follows:

Removal of directors

- 1) Despite anything to the contrary in a company's Memorandum of Incorporation or rules, or any agreement between a company and a director, or between any shareholders and a director, a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director, subject to subsection (2).
- 2) Before the shareholders of a company may consider a resolution contemplated in subsection (1)
 - a) the director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether or not the director is a shareholder of the company; and

- b) the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.
- 3) If a company has more than two directors, and a shareholder or director has alleged that a director of the company
- a) has become
 - i) ineligible or disqualified in terms of section 69, other than on the grounds contemplated in section 69(8)(a); or
 - ii) incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or
 - b) has neglected, or been derelict in the performance of, the functions of director, the board, other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.
- 4) Before the board of a company may consider a resolution contemplated in subsection (3), the director concerned must be given
- a) notice of the meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and present a response; and

- b) a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.
- 5) If, in terms of subsection (3), the board of a company has determined that a director is ineligible or disqualified, incapacitated, or has been negligent or derelict, as the case may be, the director concerned, or a person who appointed that director as contemplated in section 66(4)(a)(i), if applicable, may apply within 20 business days to a court to review the determination of the board.
- 6) If, in terms of subsection (3), the board of a company has determined that a director is not ineligible or disqualified, incapacitated, or has not been negligent or derelict, as the case may be
- a) any director who voted otherwise on the resolution, or any holder of voting rights entitled to be exercised in the election of that director, may apply to a court to review the determination of the board; and
 - b) the court, on application in terms of paragraph (a), may
 - i) confirm the determination of the board; or
 - ii) remove the director from office, if the court is satisfied that the director is ineligible or disqualified, incapacitated, or has been negligent or derelict.
- 7) An applicant in terms of subsection (6) must compensate the company, and any other party, for costs incurred in relation to the application, unless the court reverses the decision of the board.

- 8) If a company has fewer than three directors
- a) subsection (3) does not apply to the company;
 - b) in any circumstances contemplated in subsection (3), any director or shareholder of the company may apply to the Companies Tribunal, to make a determination contemplated in that subsection;
and
 - c) subsections (4), (5) and (6), each read with the changes required by the context, apply to the determination of the matter by the Companies Tribunal.
- 9) Nothing in this section deprives a person removed from office as a director in terms of this section of any right that person may have at common law or otherwise to apply to a court for damages or other compensation for
- a) loss of office as a director; or
 - b) loss of any other office as a consequence of being removed as a director.
- 10) This section is in addition to the right of a person, in terms of section 162, to apply to a court for an order declaring a director delinquent, or placing a director on probation.

EVALUATION

- [11] The main issue is whether the Respondent has neglected or been derelict in the performance of his functions as a director.

[12] Having considered the provision of sections 71 of the Act I am of the considered view that the Respondent has neglected his functions as a director of the Company. The Respondent neglected to ensure that UIF payments were made, which could have serious consequences for the company. The respondent denied the Applicant signatory rights to the bank account, which were necessary for the Applicant to perform functions on behalf of the company. The Respondent also prevented funds from going into the Applicants account for the Applicant to perform functions on behalf of the company

[13] The Tribunal finds that the Respondent has failed to exercise her duties as director in good faith and in the best interest of the company.

ORDER:

[14] In the result the following order is made:

- a) The relief sought by the Applicant is granted.
- b) The Respondent is removed as a director of Van Zyl Farms (Pty) Ltd, (registration number 2019/19308/07) in terms of Section 71(8) of the Act.
- c) The Companies and Intellectual Property Commission is hereby ordered to deregister Sarel Phillip Van Zyl (ID NUMBER 9509055154083) (the Respondent), as director of Van Zyl Farms (Pty) Ltd, (registration number 2019/19308/07) within a period of 10 (ten) days from date of receipt of this order.
- d) The Registrar of the Tribunal is hereby directed to deliver a copy of this order to the Commissioner of Companies and Intellectual Property Commission within 5 (five) days from date of handing down of this order.

Dr. MOHAMED ALLI CHICKTAY
MEMBER OF COMPANIES TRIBUNAL OF
SOUTH AFRICA
