

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO.: 30443/2022

(1) **REPORTABLE:** Y/N

(2) OF INTEREST TO OTHER JUDGES: [Y/N]

(3) REVISED: [Y/N]

(4) Signature:

Date: 22/12/2023

In the matter between:

ACQUI 38 (PTY) LTD

Applicant

(Reg. no.: 2001/023820/07)

and

BLUE RISK MANAGEMENT (PTY) LTD

Respondent

(Reg no.: 2012/040081/07)

JUDGMENT

KHWINANA AJ

INTRODUCTION:

[1] This is an unopposed interlocutory application, wherein the applicant seeks to compel the respondent to file heads of argument and to participate in a pre-hearing conference.

[2] The applicant seeks an order to compel with costs. The respondent's attorney withdrew and the applicant has served the notice to compel via email.

[3] I am ceased to consider if the notice of withdrawal is in terms of Rule 16 and the service on the respondent.in terms of Rule 4 of the Uniform Rules of Court.

[4] I have requested Counsel to prepare heads of argument to address the above. I am grateful that counsel has obliged despite the short notice and the festive season.

BACKGROUND

[3] The counsel representing the applicant has presented their case, indicating that this matter concerns an opposed liquidation application. Within this context, the necessary affidavits have been duly exchanged between the involved parties. The applicant asserts that they have completed and filed several critical documents to support their position. These documents include the heads of argument, a practice note, a comprehensive list of authorities, which references relevant legal precedents and statutes; and a chronology table, systematically documenting the sequence of events pertinent to this case.

[4] The applicant has expressed their intention to schedule the liquidation application for a hearing on the opposed motion roll. They have conveyed that, based on guidance from the Registrar, they must first proceed with this current application to secure a hearing date. Additionally, it's noteworthy that on the 9th of December 2022, the attorneys representing the respondent officially withdrew their services, citing a lack of instructions and outstanding invoices as their reasons for withdrawal.

[5] On April 20, 2023, a representative of the respondent, Mr. Davies, received the applicant's replying affidavit by hand. This document was delivered directly to him at the respondent's official registered address, which is located at 6[...] K[...] Close, Silver Stream Estate, Silver Lake Road, Silver Lakes, in Pretoria.

[6] On the same day, the applicant's replying affidavit was also electronically served to both Mr. Davies, representing the respondent, and the respondent's

former attorneys. In the email dated April 20, 2023, the applicant's attorneys noted, *inter alia*, that Mr. Davies of the respondent had indicated that the respondent was still officially represented by their former attorneys. However, he was amenable to accepting the service of documents at the respondent's registered address.

- [7] On April 21, 2023, the former attorneys of the respondent sent an email to the attorneys of the applicant, with a copy to Mr. Davies of the respondent. In this communication, they reiterated their position that they had withdrawn from representing the respondent.

- [8] On June 16, 2023, the attorneys for the applicant electronically delivered the applicant's practice note and heads of argument to Mr. Davies of the respondent. The email containing these documents was opened and read by Mr. Davies on the same day, at precisely 3:50 PM.

- [9] On June 19, 2023, the former attorneys of the respondent sent an email to Mr. Davies of the respondent, with a copy to the attorneys of the applicant. The email, marked with a read receipt, stated: "Dear Mr. Davies, We wish to reiterate our previous communication confirming our withdrawal as your attorneys of record. This decision is due to non-payment of our fees and a lack of instructions from your side. For your convenience, we have again attached the Notice of Withdrawal as Attorneys, which was originally served on December 9, 2022."

- [10] On June 21, 2023, the attorneys for the applicant electronically sent the applicant's list of authorities and chronology table to Mr. Davies, representing the respondent. In this email, Mr. Davies was also asked to clarify whether the respondent's former attorneys were continuing to represent the respondent.

- [11] On July 31, 2023, noting that the respondent's heads of argument had not yet been submitted, the attorneys for the applicant sent a further email to Mr. Davies of the respondent. In this email, they extended an additional five-day period for the respondent to submit their heads of argument. They also stated

that should the respondent fail to comply within this timeframe, the applicant would proceed to apply to compel submission and would additionally seek to recover costs from the respondent.

THE LAW

[12] In terms of Rule 16 (4)(a) of the Uniform Rules of Court,

“Where an attorney acting in any proceedings for a party ceases so to act, such attorney shall forthwith deliver notice thereof to such party, the registrar, and all other parties: Provided that notice to the party for whom such attorney acted may be given by facsimile or electronic mail following the provisions of rule 4A.

(b) The party formerly represented must within 10 days after the notice of withdrawal notify the registrar and all other parties of a new address for service as contemplated in sub-rule (2) whereafter all subsequent documents in the proceedings for service on such party shall be served on such party following the rules relating to service: Provided that the party whose attorney has withdrawn and who has failed to provide an address within the said period of 10 days shall be liable for the payment of the costs occasioned by subsequent service on such party in terms of the rules relating to service unless the court orders otherwise.

[13] In terms, Rule 4 of the Uniform Rules of Court, which deals with service, provides that: “(1)(a) Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (A) any document initiating application proceedings shall be effected by the sheriff in one or other of the following manners: ... (v) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court’s jurisdiction, or if there be no such employee willing to accept service, by affixing a copy to the main door of such office or place of business, or in any manner provided by law;”

COUNSEL SUBMISSIONS

[14] Counsel submits that:

14.1 The notice of withdrawal by the respondent's erstwhile attorneys does comply with the provisions of Uniform Rule 16;

14.2 Appearing on CaseLine is proof that the notice of withdrawal was electronically transmitted by the respondent's erstwhile attorneys to the respondent, which constitutes proper notification in terms of Uniform Rule 16(4)(a);

14.3 In the notice of withdrawal, the respondent was notified that it had to appoint a new service address within 10 (ten) days, which it failed to do;

14.4 In terms of Uniform Rule 16(4)(b), the onus was on the respondent to appoint a new service address, which it failed to do;

14.5 In terms of Uniform Rule 16(4)(b), service of further legal documents in these proceedings may be effected in terms of the rules relating to service in general, as governed by Uniform Rule 4;

14.6 Service of legal documents at the registered address of a company, such as the respondent, constitutes proper service in terms of Uniform Rule 4(1)(a)(v);

14.7 Service of legal documents at the registered address of the respondent by affixing constitutes proper service in terms of Uniform Rule 4(1)(a)(v);

14.8 Appearing on CaseLines is proof that the address at which the application was served, 6[...] K[...] Close, Silver Stream Estate, Silver Lake Road, Silver Lakes, Pretoria, is the registered address of the respondent;

14.9 The said address is also the place at which the applicant's attorneys served the applicant's replying affidavit on 20 April 2023 and where it was accepted by the respondent's Mr. Davies;

14.10 The applicant's attorneys have again conducted a WinDeed search on the respondent, a copy of which is attached hereto, which confirms that the respondent's registered address has not changed and remains situated at 6[...] K[...] Close, Silver Stream Estate, Silver Lake Road, Silver Lakes, Pretoria.

- [15] Counsel submits that the applicant is entitled to the relief set out in the proposed draft order.

APPLICATION OF THE LAW TO THE FACTS

- [16] The withdrawal of the respondent's attorneys was executed in strict adherence to Uniform Rule 16. The electronic transmission of the notice of withdrawal to the respondent satisfies the procedural requirements under Uniform Rule 16(4)(a), ensuring that the respondent was adequately informed of the withdrawal.
- [17] Following the withdrawal of its legal representation, the respondent, identified by its registered address at 6[...] K[...] Close, Silver Stream Estate, Silver Lake Road, Silver Lakes, Pretoria, was obligated under Uniform Rule 16(4)(b) to appoint a new service address within ten days. This vital procedural step was communicated to the respondent but was regrettably not actioned.
- [18] The applicant's attorneys, in response to the respondent's inaction, rightfully directed the sheriff to serve the legal documents at the respondent's registered address, in compliance with Uniform Rule 4(1)(a)(v).¹ This rule authorizes service at a company's registered office, and the sheriff's action of affixing the documents there aligns with the stipulated procedures.
- [19] The sheriff's return of service and the data on CaseLines serve as robust evidence that the service was appropriately executed. Furthermore, the prior acceptance of documents at this address by a representative of the

¹ K.D.N v G.M.N (41019/2020) [2023] ZAGPJHC 220 (13 March 2023)

respondent, Mr. Davies, reaffirms its validity as the respondent's operational address. Makume J held "The Notice of Set-down was correctly served on the Applicant in accordance with the provisions of Rule 4a (1) (C) which reads as follows:

"Service of all subsequent documents and notices not falling under Rule 4(1)(a) in any proceedings on any other party to the litigation may be effected by one or more of the following manners to the address provided by that party under Rules 6(5) (b); 6(5) (d)(i) 17(3) 19(3) or 34(8) by (c) facsimile or electronic mail c) facsimile or electronic mail to the respective address provided."²

[20] The findings of the WinDeed search, conducted by the applicant's attorneys, which confirm the unchanged status of the respondent's registered address, lend additional weight to the propriety of the service process. Taking into account the respondent's non-compliance with the requirement to update its service address and the appropriate measures taken by the applicant to serve legal documents, it is evident that the applicant has complied with the necessary legal protocols. This, in turn, justifies the entitlement to the relief sought in the proposed draft order.

[21] In conclusion, the respondent's failure to update its service address post-withdrawal of its attorneys, coupled with the proper and verified service of legal documents by the applicant, solidifies the position that the applicant has acted within the bounds of legal requirements. The applicant went above and beyond to inform the respondent of this application. The applicant made extensive and diligent efforts to ensure that the respondent was thoroughly informed about this application. In the result, I have come to the conclusion that this application should not be granted.

[22] I have considered the draft order filed by counsel and I am satisfied that it is in order. I mark it X and make an order of this court.

² Ibid

KHWINANA ENB
ACTING JUDGE OF GAUTENG HIGH COURT

COUNSEL FOR THE APPLICANT: ADV E WARD
INSTRUCTED BY: PAYNE ATTORNEYS INC.

NO APPEARANCE FOR RESPONDENT

DATE OF HEARING: 19/12/2023

DATE OF JUDGMENT: 22/12/2023