

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case number: 14056/2019

Heard on: 10 June 2019

Date of judgment: 19 June 2019

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	YES
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	YES
(3) REVISED	
19/6/19	
DATE	SIGNATURE

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LTD

Applicant

and

COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION

1st Respondent

THE SOUTH AFRICAN REVENUE SERVICE

2nd Respondent

THE REGISTRAR OF DEEDS

3rd Respondent

JUDGMENT

SWANEPOEL AJ:

[1] This is an application in terms of section 83 (4) (a) of the Companies Act, Act 71 of 2008 ("the Act"), for an order in the following terms:

- 1.1 Declaring the deregistration process of Smartline Properties CC void in terms of section 83 (4) (a) of the Companies Act, 71 of 2008 with retrospective effect;
- 1.2 Ordering the respondent (sic) to restore the status of the entity known as Smartline Properties to "in business" on the register of companies;
- 1.3 That the liabilities of Smartline Properties continue to be enforceable against it with retrospective effect;
- 1.4 That all actions taken by applicant to enforce its rights as creditor of Smartline Properties during the period of dissolution be validated;
- 1.5 Declaring that any proceedings may be taken against Smartline Properties as might have been taken if Smartline Properties had not been dissolved;

- 1.6 Directing that the 1st Respondent shall not alter the registration status of Smarline Properties on its records to reflect "deregistration process" or "deregistered" or finally registered until such time that another court directs otherwise.

[2] The background to the matter is, briefly, that Smartline is one of two trustees of the Valeo Investment Trust ("the trust"). It has failed to submit regular annual returns to 1st Respondent, as a result of which 1st Respondent has commenced the process of deregistering the corporation. The process has not yet been finalised, and the corporation is not yet deregistered. Applicant has also applied to 1st Respondent for the reinstatement of the corporation in terms of the provisions of section 82 (4) of the Act.

[3] Applicant is a creditor of the trust, and seeks to issue summons against the trust in order to recover the debt. In order to sue the trust, applicant has to cite its trustees. Should Smartline Properties be dissolved, it could not be cited in the action.

[4] Section 83 (4) reads as follows:

"(4) At any time after a company has been dissolved-

(a) The liquidator of the company, or other person with an interest in the company, may apply to a court for an order declaring the dissolution to have been void, or any other order that is just and equitable in the circumstances; and

(b) If the court declares the dissolution to have been void, any proceedings may be taken against the company as might have been taken if the company had not been dissolved."

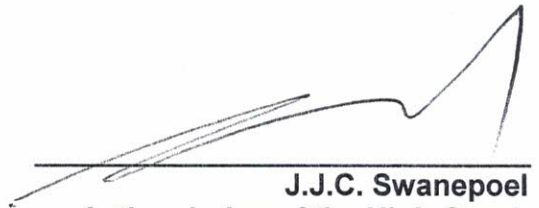
[5] The matter came before me on an unopposed basis. I have had the advantage of reading applicant's heads of argument (for which I wish to thank counsel) and the applicable authorities, and although it seems that a Court has extensive discretion to grant whatever order is just in the circumstances, in each of the reported cases the company that was sought to be reinstated had already been deregistered. (See: ***ABSA Bank Ltd v Companies and Intellectual Property Commission of SA and others* [2013] 3 ALL SA (WCC); *Morgenrood v Companies and Intellectual Property Commission and others* [2015] ZAGPPHC 294 (12 March 2015); *Nulandis v Minister of Finance* 2013 (5) SA 294 (KZP); *Missouri Trading CC and another v ABSA Bank Ltd and others*)**

[6] The provisions of section 83 (4) (a) are clear, that the application for reinstatement of the company may only be brought after dissolution has occurred. Therefore it follows that I cannot grant an order reinstating Smartline Properties because on applicant's own papers it has not yet been dissolved. Applicant says that what it seeks is to have the deregistration process and Smartline's eventual dissolution declared void. That is not what is provided for in section 83 (4) (a).

[7] What applicant actually seeks, in my view, is an interdict preventing Smartline's deregistration, and preventing the 1st Respondent indefinitely from

changing Smartline Properties' status. The Act does not make provision for such an order, nor do applicant's papers make out a case for what would amount to an anticipatory interdict. In the premises I make the following order:

7.1 The application is dismissed.



J.J.C. Swanepoel
Acting Judge of the High Court,
Gauteng Division, Pretoria