



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

SIGNATURE

DATE: 25 October 2024

Case No. 2024-121455

In the matter between:

FIRE AND ICE FITNESS (PTY) LTD

First Applicant

ESTATE OF THE LATE DENZEL DAVIS

Second Applicant

ESTATE OF THE LATE RICHARD SHAM

Third Applicant

and

DANSABE TRADING 17 (PTY) LTD

First Respondent

CITY OF JOHANNESBURG

Second Respondent

JUDGMENT

WILSON J:

- 1 The applicant, Fire & Ice, is a company that operated a gym out of premises in Linksfield. It has, by all accounts, been finally deregistered under sections 82 (3) (a) (i) and (ii) of the Companies Act 71 of 2008. Those provisions allow

the Companies and Intellectual Property Commission (CIPC) to deregister a company that has not filed an annual return for two years, and has not explained its failure to do so or shown satisfactory cause to remain registered.

- 2 Fire & Ice had two directors and shareholders, both of whom are now deceased. Their estates are joined as the second and third applicants. The deponent to the founding affidavit, Dr. Bosch, is the executor of the third applicant, the estate of Richard Sham. She is also Mr. Sham's surviving spouse. The prospective executor of the Estate of Denzel Davis, Ms. Davis, also signed a confirmatory affidavit in support of the application. She is Mr. Davis' surviving spouse.
- 3 Fire & Ice's final deregistration and the death of its directors and shareholders notwithstanding, the gym it operated at the Linksfield property carried on as a going concern until two days ago, Wednesday 23 October 2024. On that day, the gym's patrons and staff arrived at the property to find that it had been locked by the first respondent, Dansabe. Dansabe leased the property from the second respondent, the City, and in turn sublet it to Fire & Ice.
- 4 Dansabe's action to seal the property off came at the end of a series of steps Dansabe had taken to collect the arrear rentals Fire & Ice owed it, and to eject Fire & Ice from the property. On Friday 13 September 2024, the day after Mr. Davis died, Dansabe's attorney assured the executors' attorneys that those proceedings would not continue until new directors of Fire & Ice had been appointed, which in turn would require the appointment of executors of the deceased directors' estates. That led Dr. Bosch and Ms. Davis to believe, clearly *bona fide*, that no further steps would be taken to exclude the gym's

patrons or employees from the property until new directors and executors had been appointed. Given that Ms. Davis has not yet been able to get herself formally appointed as the executor of Mr. Davis' estate, it seems clear to me that Dansabe acted precipitously at best, and in bad faith at worst.

5 Dr. Bosch and Ms. Davis were obviously taken by surprise when Dansabe sealed the property off and caused the gym's operations to cease. They, together with Fire & Ice, apply urgently to me for an interim interdict directing Dansabe to allow the gym's patrons and employees to continue to access and use the property, at least until the pending legal proceedings against Fire & Ice are finalised.

6 Mr. Cassim, who appeared together with Mr. Moodley for the applicants, argued the case as if it were a spoliation application. But that is not how it is pleaded. The founding papers in fact seek an interim interdict restraining Dansabe from interfering with Fire & Ice's right to operate a gym at the Linksfield property.

7 Still, on the facts before me, that relief would almost certainly have to follow, were I able to find that that any of the applicants had the standing to seek it.

8 However, none of the applicants has such standing. Fire & Ice has been finally deregistered. The effect of deregistration is unambiguous: it is that the Fire & Ice no longer exists, and is, as a result, unable to authorise anyone to act on its behalf (see *Silver Sands Transport (Pty) Ltd v SA Linde (Pty) Ltd* 1973 (3) SA 548 (W)). Because deregistration "puts an end to the existence of the company" (*Miller v NAFCOC Investment Holding* 2010 (6) SA 390 (SCA),

paragraph 11), Fire & Ice technically has no rights to protect, and no standing before me.

- 9 Accordingly, to the extent that an interdict is sought to protect Fire & Ice's rights, the application cannot succeed. Nor do I think that Dr. Bosch or Ms. Davis can claim any relief in their capacities as executors of Fire & Ice's directors' and shareholders' estates. Any attempt to do so would come up against the insurmountable problem that Fire & Ice presently has no directors or shareholders, because it does not exist. This position does not change merely because the liability of a director, member or officer of a company survives a company's deregistration (section 83 (2) of the Companies Act).
- 10 The executors may have had a cognisable legal interest in the continuation of the gym as a going concern in their capacities as the former directors' surviving spouses. However, neither executor was herself cited as a party to this application, and no interest of that nature was alleged.
- 11 It follows from all of this that no-one with the standing necessary to claim an order restraining Dansabe from interfering with the gym's operations is before me. The proper order is accordingly one striking the application from the roll (see *Silver Sands Transport (Pty) Ltd v SA Linde (Pty) Ltd* 1973 (3) SA 548 (W) at 549E-H). Anything else (a dismissal or a postponement for example) would entail the recognition of an entity which the Companies Act tells me does not exist.
- 12 This may seem harsh. I have no doubt that Dansabe has taken advantage of Fire & Ice's deregistration to effect an act of self-help, to the prejudice of Ms. Davis, Dr. Bosch and the gym's patrons and employees. This was done having

assured Ms. Davis and Dr. Bosch that proceedings against the Fire & Ice were being held in abeyance. That conduct was unfortunate, and it is not excused by the fact that Dansabe may very well have been worried that Fire & Ice's deregistration left it, for the time being at least, without a legal persona against which it could press its claims for arrear rental and eviction. By assuring Dr. Bosch and Ms. Davis that it would suspend its action to press those claims, Dansabe, perhaps deliberately, created the misleading impression that it intended to give the executors a reasonable opportunity to get Fire & Ice's affairs in order.

13 Nonetheless, the Companies Act does provide the applicants with other remedies. An application to the CIPC to reinstate Fire & Ice's registration could have been made (section 82 (4) of the Companies Act). I could also have been approached for an order declaring Fire & Ice's dissolution void, and for "any other order that is just and equitable in the circumstances" (section 83 (4) (a) of the Companies Act).

14 It seems to me that section 83 (4) is broad enough to accommodate an application for relief shielding Fire & Ice from the ordinary consequences of deregistration, and permitting the gym to continue to operate until new directors are appointed and those directors are given a reasonable opportunity get Fire & Ice back on an even keel. Had that relief been applied for, I would have been hard-pressed, on the facts presently before me, to refuse it, provided that the state, in which the assets of a deregistered company are automatically vested, was joined as a party (see *Rainbow Diamonds (Edms) Bpk v Suid-Afrikaanse Nasionale Lewensassuransiematskappy* 1984 (3) SA

1 (A)). It also seems to me that such an application may still be brought, urgently if need be.

15 However, I must decide the application that was presented to me rather than the application I would prefer to have heard. For the reasons I have given, the application actually before me is stillborn, and must be struck from the roll. Given Dansabe's conduct, I am not inclined to award costs in its favour.

16 The application is struck from the roll, with each party paying their own costs.



S D J WILSON
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 25 October 2024.

HEARD ON: 24 October 2024

DECIDED ON: 25 October 2024

For the Applicants: N Cassim SC
A Moodley
Instructed by L Mafetsa Attorneys

For the First Respondent: HP Van Nieuwenhuizen
H Le Roux
Instructed by Barry Aaron and Associates