



**IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWN**

**Case No: 12589/2024**

In the matter between:

**KOREVEST LEISURE GROUP B.V.**

Appellant

and

**THE TRUSTEES FOR THE TIME BEING OF THE  
SCHLIEMANN FAMILY TRUST**

First Respondent

**FINSERF FOUNDATION**

Second Respondent

**KOREVEST INVESTMENTS GROUP (PTY) LTD**

Third Respondent

**JAN EBERHARD SCHLIEMANN**

Fourth Respondent

**GUSTAV SCHAEFER**

Fifth Respondent

**COBOW (PTY) LTD**

Sixth Respondent

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## JUDGMENT

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### JANISCH AJ:

#### Introduction

1. The Applicant seeks an order interdicting the holding of a shareholders' meeting of the Third Respondent at which a resolution will be proposed for the "*approval and acceptance*" of the annual financial statements of the Third Respondent for the financial years 2016 to 2023.
2. The application is based on the provisions of section 65(4) of the Companies Act 71 of 2008 ("*the Act*").
3. In essence, the Applicant contends that the proposed resolution does not comply with the requirements of section 65(4)(b) of the Act, which is to the effect that such a resolution "*must be accompanied by sufficient information or explanatory material to enable a shareholder who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution*".
4. On that basis, the Applicant also seeks an order interdicting the Third Respondent from calling a similar meeting to put such a resolution to the vote until there has been compliance with section 65(4).
5. The Applicant has also more recently added a further prayer for an order directing the First to Sixth Respondents to make available to it an extensive list of financial, accounting, administrative and other documents pertaining to both the Third and Sixth Respondents.

6. The application is opposed.

## **The Facts**

7. The present application is the latest in a plethora of legal proceedings involving the Applicant (or its sole shareholder and director, Mr Korver) and the Respondents which began after Mr Korver's resignation as a director of the Third Respondent in 2016.
8. Given the approach which I adopt in this matter, most of the factual background is irrelevant. However, I understand the context to be as follows.
9. The Applicant (a Netherlands incorporated entity) is one of three shareholders in the Third Respondent. It holds 47% of the shares. The other shareholders are the First Respondent (holding 28%) and the Second Respondent (holding 25%).
10. The Third Respondent owns all the shares in the Sixth Respondent, which holds immovable property and operates a guest house business.
11. The Fourth and Fifth Respondents are the directors of both the Third and Sixth Respondents.
12. The underlying disputes between the parties include allegations of financial irregularities and misappropriation of funds from the Third and/or Sixth Respondent by Mr Korver, which led to criminal proceedings that he is defending. Mr Korver, in turn, has unsuccessfully attempted (through other entities under his control) to liquidate the Third and Sixth Respondents. The Applicant has also launched an application against the First and Second Respondents in terms of section 163 of the Act (i.e. "*relief from oppressive or prejudicial conduct*") in which it seeks to compel the said Respondents to buy out the Applicant's shares

in the Third Respondent. In relation to that application, the Applicant obtained interlocutory orders for the delivery of the financial statements of the Third Respondent.

13. Following the delivery of the approved and independently reviewed financial statements in October 2023, the Applicant (through Mr Korver) commenced attempts to obtain from the Third Respondent what is described as “*the source documents or the accounting records (as that term is defined in the Act) from which the [Third Respondent’s] financial statements were prepared.*” Mr Korver says he sought this information to enable him to “*verify and/or interrogate*” certain alleged “*material accounting irregularities*” in the financial statements.
14. The Applicant ostensibly based its claim for these documents on section 26 of the Act.
15. The Respondents initially did not resist this request, but indicated that it may take time to provide the documents.
16. In response, on 10 November 2023 the Applicant’s attorneys sent an email to the Fourth and Fifth Respondents. Apart from addressing the documentary request, the Applicant demanded that within five business days, “*the Entities* [this appears to mean the Third Respondent] *call a meeting in terms of s 30(3)(d) of the Act*”.
17. Section 30(3) of the Act provides, to the extent relevant, as follows:

*“The annual financial statements of a company must –*

...

(c) *be approved by the board and signed by an authorised director;*  
*and*

(d) *be presented to the first shareholders meeting after the statements have been approved by the board.”*

18. Mr Korver in his founding affidavit states that the Applicant demanded the shareholders meeting “so that [the Applicant] could vote against the approval of the financial statements and seek to obtain the documents listed in the Demand”.
19. In other words, it seems that Mr Korver saw a section 30(3)(d) meeting as a different way of forcing the disclosure of the source documents by the Third Respondent.
20. In response to this demand, the attorneys for the Third Respondent on 6 December 2023 furnished a notice of a shareholders’ meeting to be held on 27 December 2023. The purpose of the meeting was stated as follows:

*“The purpose of the meeting will be to present and approve the financial statements of Korevest Investment Group (Pty) Ltd. Copies of the independently reviewed financial statements have already been provided to your client, however, for ease of reference, copies are attached hereto. A copy of the draft resolution to be taken is also attached hereto for your kind attention.”*

21. The terms of the proposed resolution were as follows:

*“RESOLVED THAT:*

1. *The shareholders of Korevest Investment Group (Pty) Ltd ... hereby vote in respect of the approval and acceptance of the financial statements of the company for the financial years 2016 to 2023 ...”*

22. The Applicant's attorneys sought the postponement of the meeting. They stated that the demand for the meeting was based on the assumption that the Third Respondent would respond fully to the prior demand (based, as I have stated, on section 26 of the Act) for the delivery of the source documents. It was averred that the failure to provide those documents contravened section 26.
23. The meeting was postponed, but on 15 February 2024 a fresh notice for the meeting, with the same resolution, was issued.
24. In response to this, the Applicant withdrew its demand for the shareholders' meeting. On the assumption that the meeting would nonetheless proceed, the Applicant alleged for the first time that insufficient information had been furnished as part of the resolution to meet the requirements of section 65(4). A postponement was sought to enable the launch of proceedings envisaged in section 65(5). That section allows a shareholder or director who believes that the form of a resolution does not satisfy the requirements of section 65(4) to apply to Court for an order restraining the company from putting the proposed resolution to a vote until the requirements of subsection (4) are satisfied, and requiring the company to take steps alter the resolution so that it satisfies subsection (4).
25. The meeting was then postponed owing to insufficient notice having been given. A third notice was then issued for the meeting to be held on 11 March 2024. This despite the fact that the Applicant's demand for the meeting had been withdrawn.
26. In response, the Applicant reiterated its section 26 demand for information and stated that only once those documents had been delivered could it be determined whether section 65(4) was complied with. He threatened to interdict the meeting.

27. Following this there were a number of engagements between the parties about the information demands, and various source documents were provided to the Applicant. The meeting scheduled for 11 March 2024 did not proceed.
28. On 9 May 2024, the Third Respondent issued a further notice of a shareholders' meeting to be held on 10 June 2024. The proposed resolution was the same.
29. Once again, the Applicant objected on the basis of alleged non-compliance with section 65(4), i.e. that the resolution was not accompanied by sufficient information or explanatory material to enable it to determine whether to participate in the meeting and seek to influence the outcome of the vote. It demanded "*the missing accounting records*". These were particularized under 19 categories covering a wide range of items.
30. In support of this demand, the Applicant provided reports from an accountant which suggest potential difficulties and/or inaccuracies in the annual financial statements. It is contended that the information is required to enable these aspects to be further interrogated.
31. Mr Korver in the founding affidavit states in this regard:

*"All I am requesting is to be given access to the same documents that the Respondents had access to when preparing the financial statements and to which I am entitled to (sic) in terms of sections 24 to 26 of the Act."*
32. The Respondents did not provide any further information and also did not withdraw the notice of the meeting. This led to the launching of the present application on 28 May 2024.

## **The application**

33. The primary relief sought in the application was to interdict the Third Respondent from proceeding with the shareholders' meeting on 10 June 2024, "*given that the resolution annexed to the notice dated 9 May 2024 ... does not contain sufficient information or explanatory material as contemplated in section 65(4) of the Companies Act ...*", and to prohibit any such meeting being called until section 65(4) had been complied with.
34. Once the application became opposed, the parties agreed that the meeting would not proceed pending the final determination of the present application.
35. Before answering papers were filed, the Applicant applied to amend its notice of motion to claim, under a new paragraph 2A, the delivery of a specified list of documents of the Third and Sixth Respondents in 23 different categories. I understand that it is the Applicant's case that the provision of these documents would amount to compliance with section 65(4) in the context of the resolution. The Respondents did not object to the amendment and at the hearing I therefore granted leave to amend accordingly.
36. The Respondents filed detailed answering affidavits. The Applicant filed a reply.
37. Shortly before the hearing, the Applicant also brought an application to strike out certain material in the answering affidavit on the basis that it constitutes irrelevant and/or vexatious and/or scandalous material that is prejudicial to the Applicant.

## **Discussion**

38. The requirement for a company to prepare annual financial statements is set out in section 30 of the Act.
39. Section 30(2) requires the financial statements of a company either to be audited or independently reviewed, depending on the nature of the company.



40. I have already quoted the relevant parts of section 30(3), which requires the annual financial statements to be (i) approved by the board and signed by an authorized director, and (ii) presented to the first shareholders' meeting after the statements have been approved by the board.
41. It is common cause that the Third Respondent's financial statements for 2016 to 2023 have been approved by the board of the Third Respondent, having been subject to independent review as envisaged in section 30(2)(b)(ii)(bb) of the Act. They have however not as yet been presented to a shareholders' meeting.
42. The Act contains no requirement that financial statements be approved by the shareholders of a company. Nor does it require that the shareholders, after having the approved financial statements presented to them at a shareholders' meeting, can or must do anything other than note them.
43. There was also no suggestion that the memorandum of incorporation of the Third Respondent requires the shareholders to approve the financial statements which have already been approved by the directors.
44. In the light of that statutory and contractual framework, I asked counsel for the parties what legal purpose the proposed shareholders' resolution would or could serve. Neither had a concrete answer. They could not say that the approval of the financial statements would give those statements any greater legal status or authority than they already have arising from their approval by the directors. Indeed, counsel for the Applicant accepted that, even if notionally the shareholders were to vote not to approve the statements, that would have no impact, as this is not a function attributable to the shareholders under the Act or the company statutes. The Applicant also put up no case for why it, *qua* shareholder, would be affected in any manner, negatively or positively, by a shareholders' resolution approving the financial statements.

45. The Respondents, for their part, could also supply no reason why they regarded it as necessary to persist with the resolution, given the Applicant's withdrawal of its demand in this regard. The only suggestion was that withdrawing the resolution at this stage could have costs implications for the present litigation.
46. It also seems to me that the resolution arose from a misunderstanding on the part of the Respondents in interpreting the initial demand by the Applicant. As stated above, the Applicant demanded a meeting in terms of section 30(3)(d) of the Act. That section merely envisages approved financial statements being presented to the shareholders. No provision is made for any decision to be taken in regard to them. The Respondents however seem to have interpreted this as a request for a resolution that the financial statements be approved by the shareholders. They formulated the notice of the meeting and the draft resolution on that basis, and this has not been revisited.
47. The Applicant recognises that there is no basis to insist on a resolution being put to shareholders to vote on the financial statements. Its argument is however that this does not matter. The fact is that a resolution has been proposed, and all resolutions must comply with section 65(4). In the context, so the argument goes, to be placed in a position to participate in the meeting and vote on the resolution, the shareholders must have access to all the information to which the directors had access in approving the annual financial statements. It contends that its list in paragraph 2A of the amended notice of motion particularizes that information.
48. The question as to whether sufficient information is provided together with a resolution to meet the requirements of section 65(4) is self-evidently one to be decided on the facts of each case.
49. The purpose behind section 65(4) is to ensure that shareholders, when requested to vote on a matter that is important enough to put it to the general

meeting, should have sufficient information before them to enable them to act appropriately in exercising their voting rights – precisely because of the significant consequences which could flow for them *qua* shareholder from such a decision.

50. In **Trinity Asset Management (Pty) Limited v Investec Bank Limited** 2009 (4) SA 89 (SCA), a case predating the Act, it was held (in paragraphs [22] and [37]) that where a resolution to ratify a particular loan agreement was to be put to shareholders to vote on, shareholders needed to have sufficient information to be able to come to an intelligent conclusion on the matter on which they were being asked to vote. The SCA held (in paragraph [38]) that information as to the invalidity of the loan agreement which the shareholders were being requested to approve or ratify was precisely the sort of information which they needed to have before voting.
51. The degree of information which should be furnished to the shareholders is in my view dependent on the nature of the resolution.
52. On the present facts, as stated above, both parties accepted that the proposed resolution, whether it were to be approved or not, serves no particular legal purpose in the light of the financial statements having been approved by the directors in terms of the Act. What the Applicant had originally demanded was only that the statements should be presented to the shareholders as required by the Act. It did not demand a vote of any kind. The Respondents had apparently misinterpreted this in drawing the resolution as they did. But in any event, since neither party can point to any substantive consequence for shareholders or the Third Respondent arising out of the resolution, it seems to me that the resolution would have no greater effect in law than the shareholders noting the existence of the already approved and reviewed financial statements.

53. For purposes of considering that limited issue, I see no reason why the shareholders should require access to any information over and above the existence of the financial statements, the approval thereof by the directors and the fact that they have been independently reviewed. It is common cause that that information was provided with the resolution.
54. It follows that on these limited facts, the Applicant is not entitled to receive any further information pursuant to section 65(4).

### **The striking out application**

55. The Applicant seeks orders striking out various paragraphs in the answering affidavit. In broad overview, these constitute averments relating to the underlying disputes between the parties, including the averments of financial impropriety on the part of Mr Korver which started the wide-ranging litigation to which I have already referred.
56. The Applicant contends that the impugned material is irrelevant to the application under section 65(4), and furthermore that it contains matter that is scandalous and vexatious. No founding affidavit was however filed in support of the application to make out a case for specific prejudice.
57. The impugned averments were included primarily in support of a defence that the Applicant's application should be dismissed because it was "*abusive*." Given the approach I have adopted to the application, it has been unnecessary for me to decide that issue. Moreover, to the extent that the material deals with the pre-history to the dispute and the related litigation (including criminal proceedings), it must be noted that Mr Korver himself traverses some of the historical background and attaches a letter from the Applicant's attorneys that itself refers to the criminal proceedings.

58. Given the complex and often intertwined nature of the various disputes, and the complicated history between the parties, I cannot find that it was necessarily irrelevant, vexatious or scandalous for the Respondents to address this material in their answering papers. I also note that the Applicant has not identified any particular prejudice that it or Mr Korver has suffered as a result of this material being included.
59. Ultimately, nothing has turned on the impugned material for purposes of my judgment, and the retention of the material is therefore also not prejudicial in that sense.
60. I therefore do not uphold the striking-out application.

### **Costs**

61. The Applicants have been unsuccessful in their application. Ordinarily, costs would follow the result. However, this is not a straightforward case for the application of that principle.
62. Even though I have held that the Applicant does not need more information to vote on a resolution that both parties accept will have no legal significance above the formal noting of the financial statements, and could not justify its application on any grounds other than that the resolution existed, the question also arises as to why the Respondents persisted with the resolution in the first place. This is so particularly given that the resolution was no longer demanded by the Applicant, and the Respondents themselves saw no reason for it, one way or the other.
63. The simple withdrawal of the resolution would, in the circumstances, have obviated the need for the application to be brought.

64. In my view, the parties must therefore share the blame for what has turned out to be time-consuming but unnecessary litigation about a resolution the outcome of which neither party saw as impacting their rights as shareholder, one way or the other.
65. Even though the application fails, I accordingly do not think that either party is deserving of a costs order in its favour.
66. The striking-out application did not add materially to the manner in which the dispute was dealt with, and it is unnecessary to make an independent costs order in that regard.

## **ORDER**

67. In the premises, I make the following order:

- “1. *The Applicant’s application in the main proceedings is dismissed.*
2. *The Applicant’s application to strike out is dismissed.*
3. *There is no order as to costs.”*

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**M W JANISCH**  
**Acting Judge of the High Court**  
**Western Cape Division**

## **APPEARANCES:**

For the Applicants:

A Smalberger SC

Instructed by:

Andrew Bagg & Associates

For the Respondents:

M Ipser

A J van Aswegen

Instructed by:

Gillan & Veldhuizen Inc

Date of hearing:

30 October 2024

Date of judgment:

4 November 2024 (electronically)