

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG.**

Case Number: 2025-023556

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO

11 April 2025

DATE

SIGNATURE

In the matter between:

LLOYD PRIESTMAN

Applicant

And

FIBONACCI ASSET MANAGEMENT (PTY) LTD

First Respondent

TYRONE LANCASTER HODGSON N.O.

Second Respondent

CANDICE SAMANTHA GILES N.O.

Third Respondent

MICHAEL FRANKS N.O.

Fourth Respondent

CAPITAL LEGACY FIDUCIARY SERVICES (PTY) LTD

Fifth Respondent

TYRON LANCASTER GILES

Sixth Respondent

CANDICE SAMANTHA

Seventh Respondent

JUDGMENT

Noko J*Introduction.*

[1] The applicant instituted an urgent application on 20 March 2025 against the respondents for an order declaring shareholder's resolution adopted at the shareholders' meeting on 3 February 2025 unlawful and be set aside. The application was set down for 11 March 2025. The respondent then served a notice for another shareholders' meeting scheduled to take place on 12 March 2025 which is intended to, *inter alia*, set aside the impugned resolution adopted on 3 February 2025 and also to adopt a new resolution in terms of which the applicant is removed as a director.

[2] The applicant sought to amend his notice of motion and served a supplementary affidavit challenging the lawfulness of the second notice for failure to comply with the Companies Act.¹ The respondents are opposing the application.

The parties.

[3] The parties are:

3.1 The applicant is Lloyd Priestman an adult male resident at 1[...] D[...] C[...], P[...], Western Cape.

¹ Companies Act 71 of 2008.

3.2 The first respondent is Fibonacci Assets Management (Pty) Ltd, (“Company”) a private company duly incorporated in terms of the company laws of the Republic of South Africa and having its registered address at Blueberry Office Park, Block [...] Unit 1 [...], A[...] street, R[...] P[...] R[...], Gauteng.

3.3 The second respondent is Tyrone Lancaster Hodgson N.O. (“Hodgson”), an adult male residing A[...] T[...] C[...] E[...] K[...] G[...] E[...], H[...], cited in his capacity as a Trustee of the Sydney Engineering Family Trust (“Sydney Trust”).

3.4 The third respondent is Candies Samantha Giles N.O., (“Giles”) an adult female resident at 5[...] B[...] Rd, E[...] C[...] G[...] E[...], H[...], cited in her capacity as a trustee of the Sydney Trust.

3.5 The fourth respondent is Michael Franks N.O., an adult male resident at 2[...] M[...] C[...] D[...], C[...] G[...] E[...] , C[...], cited in his capacity as a trustee of the Sydney Trust.

3.6 The fifth respondent is Capital Legacy Fiduciary Services (Pty) Ltd, a company with its registered address at 5[...] S[...] S[...], R[...] G[...], first floor, the C[...] B[...], S[...], cited in its capacity as a trustee of Sydney Trust and represented by Kenrick Edward Newport an adult male residing at [...] T[...] Avenue, M[...], Johannesburg.

3.7 The sixth respondent is Tyrone Lancaster Hodgson, an adult male residing A[...] T[...] C[...] E[...] K[...] G[...] E[...], H[...], cited in his capacity as a director of the first respondent.²

² The Applicant’s Founding Affidavit states that the fifth and sixth respondents are cited in their personal capacities as directors of the first respondents and it is apparent from the context that in fact it is meant to be capacities as directors and not personal capacities.

3.8 The seventh respondent is Candies Samantha Giles an adult female resident at 5[...] B[...] Rd, E[...] C[...] G[...] E[...], H[...], cited in her capacity as a director of the first respondent.

Background

[4] The applicant and Hodgson established the first respondent an asset management company. They both agreed that the applicant would hold 35% shareholding and the remaining 65% will be held by the Sydney Trust which is represented by Hodgson as a Trustee. The board of directors was constituted by three directors, namely, the applicant, Hodgson and Giles.

[5] The applicant was registered as a Key Individual of the company in terms of the Financial Advisory and Intermediary Services Act³ (“FAIS”) and was also responsible for management of the business of the company.

[6] During May or June 2024, Hodgson conveyed to the applicant that the relationship between them is no longer conducive for proper operation of the company and that the applicant should consider exiting the company. The respondents raised the following complaints regarding the applicant, namely, that the applicant is conducting himself in competition with the company; he fails to uphold his fiduciary duties; he is accused of dereliction of his duties; he is illtreating, rude, disrespectful and abrasive to the employees of the company; and that he refused to report to the other directors. Subsequently an offer was presented to the applicant by Sydney Trust for the purchase of the applicant’s shares for the sum of R1,6 million. The offer was rejected by the applicant as he believed that the offer was below the market value.

[7] Further exchanges between the parties regarding the sale of shares did not bear positive any outcome. Having regard to the above alleged complaints

³ Financial Advisory and Intermediary Services Act 37 of 2002.

against the applicant the majority shareholder (Sydney Trust) took a decision that the applicant must be removed as a director.

[8] The respondent delivered a notice of meeting of shareholders (first notice) and on agenda was the consideration and the adoption of the resolution for the removal of the applicant as a director of the company. The date set for the meeting was 3 February 2025. The meeting continued on 3 February 2025 and in attendance was the second and third respondents on the one hand and the applicant was represented by his attorney, Ms Gottschalk. The meeting was chaired by Justin Course of Nourse Inc attorneys who informed the attendees that voting would be by show of hands. The second and third respondents cast their vote in favour of the removal and the applicant's proxy voted against the removal of the applicant as a director.

[9] The applicant sought to assail the proceedings of the meeting and contends that several sections of the Companies Act were not complied with. The relevant sections are, first, section 65(7) which provides that for an ordinary resolution to be carried it must be supported by more than 50% of the voting rights exercised on the resolution and this was not complied with. Secondly, the director who is sought to be removed should be given an opportunity to make representation in terms of section 71(2)(b) and same was not complied with. Thirdly, the section 63 of the Act requires that a director in this instance should be given a 10 days' notice and the applicant was given 9 days' notice. The applicant states further that if the removal is preceded misconduct on his part as alleged, then sections 71(3) and (4) of the Companies Act are implicated and have not been complied with.

[10] The applicant then launched the urgent proceedings to set aside the resolution and in retort the respondent served opposing papers and another notice of meeting where shareholders (second notice) would "...address the deadlocks in voting at the general meeting of shareholders held on 3 February 2025. On agenda will be the setting aside of the resolution adopted on 3 February 2025 and the removal of the applicant as a director of the company. In

reply thereto the attorney for the applicant stated that it is noted from the respondents' letter enclosing the notice that the intended removal is predicated on the reasons which were previously conveyed to the applicant. The applicant sought to amend and delivered his amended papers to challenge the second notice as it also contravened certain sections of the Companies Act.

Urgency

[11] I had regard to the submissions by both parties and was persuaded that the matter deserves of the attention of the urgent court. The urgency includes the urgency as prayed for in the amended notice of motion which was predicated by the respondent committing to set vary the resolution of 3 February 2025 and substituting same with another resolution to remove the applicant. The respondent filed opposing papers in the amended notice of motion. I concluded that the applicant would not obtain redress in due course and no evidence was also presented to suggest that the urgency was self-created.

Supplementary Affidavit and amendment.

[12] In view of the assertion in the new notice of the shareholders' meeting set down for 12 March 2025 and the persistent infractions of the Companies Act the applicant sought to file a supplementary affidavit now to specifically deal with the averments in the second notice of the shareholders' meeting. The applicant seeks that the court should interdict the applicant from holding the meeting of 12 March 2025 to remove the applicant as a director pending delivery of the papers for an order directing the respondent to acquire his shares. The respondent in turn filed an answer and offer to not to proceed with the meeting and suggested that the focus between the parties should be towards the resolution of the main issue between the parties, which is the agreement about the sale of shares.

[13] In view of the order made below there is no need for the amendments or admission of further affidavit to detain this court.

Parties' Submissions

[14] The applicant contended that the respondent has failed to engage with the issues raised which relates to the infractions or non-compliance with the provisions of the Companies Act, specifically sections 71(1), 71(3), 71(4) and 62(1)(a) read with (b). The applicant should also be dealt with like any other shareholder and compliance with the provisions of section 65(4) is imperative. In addition, the attempt to withdraw the resolution of 3 February 2025 remained incomplete as the respondent wanted only to consider the voting process from by show of hands as compared to voting on a poll. This stance did not have regard to the requirement for representation and the reduced period of the notice is required in terms of section 62 of the Companies Act. To this end the applicant submitted that a case has been made out for the relief of interdict to set aside the resolution of 3 February 2025.

[15] The applicant further submitted that by virtue of his position as a director he is entitled to be dealt with in accordance with the Companies Act and the court is enjoined to ensure that there is proper compliance therewith. There is also reasonable apprehension of harm emanating from the conduct of the other directors carrying out the business of the company to his exclusion. There is no alternative suitable remedy that may assuage the negative impact unleashed at his good name and reputation in the business space of the company and for the devaluation of his shareholding.

[16] The respondent on the other hand submitted that the application launched by the applicant was premature as the CIPC records clearly showed that the applicant was not removed as a director of the first respondent. In addition, Sydney Trust as the majority shareholder is entitled to remove the applicant without furnishing any reason to the applicant and as such the provisions of section 71(3) are not implicated. In addition, the applicant was being malicious and indecisive as he wanted to remain the director of the company but at the same time having issued a notice in terms of section 345 of the Companies Act with a threat to liquidate the company.

[17] The respondent further disputes that the requirements for an interdict have not been complied with and importantly contends that the applicant is aware that there are alternative remedies including civil suit for damages in the event his shares are being devaluated.

[18] In retort the applicant contends that he has been *de facto* removed as a co-director of the company. To factors which fortifies his stance, he argued, is that the other directors have taken decisions without including him e.g. he was removed as an asset consultant, he was removed as a Key Individual registered with FAIS on behalf of the first respondent. Furthermore, a decision was taken to engage with Alexander Forbes in his absence regarding the request for a loan to acquire his shares. The access to the company's resources including emails was terminated. The activities by other directors without him contravenes the provisions of section 66(1) of the Companies Act which requires that the business of the company should be carried out by the directors.

Legal principles and analysis

[19] The requirements for final interdict are settled in our jurisprudence and were clearly set out more than a century ago in *Setlogelo*⁴. The applicant has to present evidence of *prima facie* right even if it may be open to some doubt; that there is imminent and irreparable harm and that there is no alternative remedy.

[20] The application is for a final interdict and such an order can only be granted in motion proceedings if the facts stated by the respondent together with the admitted facts in the applicant's affidavits justify the order, and this applies irrespective of where the onus lie.

⁴ *Setlogelo v Setlogelo* 1914 AD 221.

[21] Removal by shareholder is correctly in terms of section 71(1) and though the shareholders need not have reasons it was held in *Pretorious*⁵ that the reasons must be presented which will enable the director to be able to make representation prior the voting process takes place. In contrast it was held in *Miller*⁶ that the removal by the directors by shareholders need be preceded by reasons.⁷ The removal by the directors has to follow section 71(3) of the Companies Act where the director is to be removed on the basis of, *inter alia*, negligence or dereliction of duties.

[22] The continued conduct of the respondent remains unlawful for failure to comply with the provisions of the Companies Act which prescribes how the directors should be dealt with. To this end the applicant is entitled to be dealt with on accordance with what the companies act has prescribed, including having to discharge his duties and making decisions at board level. The persistent conduct threatens his entitlement and obligations imposed by the Companies Act and requires to be arrested through an interdict. The claim for damages may be available but the question is whether same would be suitable. The inability to quantify such quantum for damages weigh in favour of the applicant and would include indeterminable damages due to decisions which may have been taken in his absence as a director who has duties to act be discharged as contemplated in the Companies Act.

[23] The respondent's focus was more regarding the fact that the parties are in agreement that the applicant should exit the company and the major shareholder should then acquire his shares. To this end there is no need to have to fight over the applicant remaining a director in the company as such there was no aggressive or requisite engagement of the legal issues raised by the applicant in relation to the respondents' conduct.

⁵ *Pretorious and Another v PB Meat (Pty) Ltd and Others* (15479/14)[2015] ZAWCHC 21(2 June 2015).

⁶ *Miller v Natmed Defence (Pty) Ltd* 2022 (2) SA (GJ). The disharmony in these judgments do not impact on the applicant's case as there are other infractions identified by the applicant.

⁷ On whether sufficient information has been made available see *Trinity Asset Management (Pty) Ltd v Investec Bank Ltd* 2009 (4) Sa 89 SCA

[24] Though it does appear that the parties are in agreement that the shares should be acquired, this should not justify the directors of the first respondent carrying on with the business of the first respondent with the applicant's exclusion unless his exclusion/ removal is predicated on the provisions of the Companies Act. It is clear that the resolution of 3 February 2025 was not in compliance therewith and this is also fortified by the respondent conveying its plans to set aside the said resolution. As at the time of the hearing of the application the said resolution was still extant. There were no hurdles which would have made it insurmountable for the respondent to withdraw the said resolution even prior serving the opposing affidavit or even before the hearing of the application. To this end the respondent persisted that despite the assurance of what would take place on 12 March 2025 the proceedings set down for 11 March 2025 should continue.

[25] As said out above, the claim to withdraw the resolution was a still borne as the respondent became aware that even the notice for the meeting of 12 March 2025 has shortcomings as a result of the failure to comply with the requirements of the Companies Act. In the premises it follows that the resolution of 3 March 2025 that the applicant is removed remain intact and should therefore be set aside by the court is so warranted.

[26] The respondent has repeated that the facts as stated by Edwards together with the statements from first respondent's business associates clearly found the basis for the removal of the applicant as a director. If the respondent persist that the removal would be justified by the alleged misdemeanour (that the applicant has, *inter alia*, failed in his fiduciary duties and dereliction of duties) on the part of the applicant then section 71(3) and (4) of the Companies are implicated and failure to comply would apply a fatal blow to the respondent's case. The acknowledgement that the said resolution should be set aside is sufficient indication that it cannot be left intact.

Conclusion.

[27] There is non-compliance with the provisions of the Act which is fatal to the first resolution taken and also interdicting⁸ the second meeting unless complied with section 65(4) of the Companies Act. The respondents have already conceded that the meeting which led to taking of the resolution was not properly taken and could have been withdrawn had the meeting of the 12th March 2025 not been adjourned and being compliant. To this end the said resolution of 3 February 2025 should be declared unlawful and set aside.

[28] The applicant was aggrieved by the suggested second notice of the shareholders' meeting hence he amended his notice of motion and had a specific relief for that meeting to be interdicted. The respondent has made a without prejudice offer that the meeting will not proceed which offer was not accepted by the applicant and it was not withdrawn as at the hearing. It can safely be assumed that the respondent would make sure that there is compliance with the provisions of the Companies Act and attend to the infractions as identified by the applicant.

Costs

[29] The general principle is that the costs should follow the costs. The applicant has been litigating from own pockets and was compelled to approach the court by the respondents whose legal costs are settled by the company. It would be unfair that the applicant be left out of pocket from the persisting conduct of the respondent who could have just readily withdrawn the resolution without

⁸ Section 65(5) of the Companies Act provides that:

At any time before the start of the meeting at which a resolution would be considered, a shareholder or

director who believes that the form of the resolution does not satisfy the requirements of subsection (4) may seek leave to court for an order (a) Instructing the company from putting the proposed resolution to a vote until the requirements of subsection (4) are satisfied; and requiring the company, or the shareholders who proposed the resolution, as the case may be, to: (i) Take appropriate steps to alter the resolution so that it satisfies the requirements of subsection 4 and (ii) Compensate the applicant for cost of the proceedings, if successful.

even calling for a meeting for that purposes. To this end the contention that the costs should be reserved is unsustainable.

[30] The applicant sought costs for two counsels and without persuasive arguments advanced to justify two counsels costs of one counsel will be allowed.

[31] *Order*

1. The rules relating to forms, service, notice and time periods are dispensed with and this application is heard as an urgent application as provided for in Rule 6(12) of the Uniform Rules of Court.

2. The shareholder resolution purportedly adopted by the shareholders of the first respondent on 3 February 2025 removing the applicant as a director of the first respondent is set aside.

3. It is recorded that the parties agreed that the meeting of the shareholders of the first respondent convened for 12 March 2025 for the purpose of removing the applicant as a director of the first respondent shall not proceed.

4. The second to fifth respondents, in their capacities as trustees of the Sydney Engineering Family Trust, are jointly and severally liable for the costs of this application on scale C, including costs of one counsel.

M V NOKO

Judge of the High Court,
Gauteng Division, Johannesburg.

Dates:

Hearing: 12 March 2025

Judgment: 11 April 2025.

Appearances:

For the Applicant:

C Bester and N Nchabeleng.

Instructed by Caitlin Gottachalk Inc

For the Defendant:

M Muchenje.

Instructed by Office of the State Attorney,
Johannesburg.