



**IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA**

Case no.: **CT02318ADJ2025**

In the matter between:

**Alexis Fotiadis**

**Applicant**

and

**Glow Hire (Pty) Ltd**

**First Respondent**

**Glow Studios (Pty) Ltd**

**Second Respondent**

**PKMB INVESTMENTS (Pty) Ltd**

**Third Respondent**

**Andreas Demetriou Elia**

**Fourth Respondent**

**Andreas Demetriou Elia N.O**

**Fifth Respondent**

**Roberto Jorge Medonca Velosa N.O.**

In his capacity as representative of

**Best Trust Company (JHB) (Pty) Ltd**

**Sixth Respondent**

**Fezispot (Pty) Ltd**

**Seventh Respondent**

Presiding member: Nomagcisa Cawe

Date of hearing: 25 November 2025, 17 February 2026 and 2 March 2026

Date of decision: 22 May 2026

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### **DECISION** (Reasons and Order)

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1. The matter served before the Companies Tribunal “the Tribunal”) on the 25 November 2025, 17 February 2026 and 2 March 2026. The Applicant was represented by Mr. Steven Sachs, an advocate, and the fourth respondent was represented by Ms. Ann Milovanovic-Bitter, also an advocate. Both counsel had filed Heads of Argument. As no relief was sought against the other respondents by the applicant, I will refer to the fourth respondent simply as “the respondent/Mr. Elia”).
2. The application is brought before the Companies Tribunal in terms of section 71(8) of the Companies Act 71 of 2008 (“**the Act**”) The applicant, Mr. Alexis Fotiadis (Mr. Fotiadis), seeks the removal of Mr. Andreas Demetriou Elia (Mr.Elia) as a director of Glow Hire (Pty) Ltd (“Glow Hire”)
3. The application is centered around allegations of misconduct and dereliction of fiduciary duty by Mr. Elia. It is brought in terms of section 71(8)(b) read with section 71(3) of the Act, which provide for the removal of a director where there are less than three directors on the board of a company. In such circumstances, an application to the Tribunal is necessitated by the fact that a majority vote would typically be impossible, unless the director whose removal is sought essentially resigns voluntarily. Mr. Elia opposes the application. He contends,

through his representative, that the dispute is a shareholders dispute, as opposed to a directors dispute.

4. The applicant alleges that Mr. Elia has committed a series of breaches of his directorial fiduciary duty, and the application is supported by a substantial body of documentation. These include email correspondence, financial records and correspondence exploring the possibility of resolving the matter between the parties through Alternative Dispute Resolution. The representatives deliberated elaborately on the days the matters was heard.

## **BACKGROUND**

5. At the core of the dispute lies an alleged dereliction of fiduciary duty by Mr. Elia in as far as it relates to the finances of Glow Hire. Glow Hire carries out the business of hiring out photographic equipment, studio equipment and studios. Both Mr. Fotiadis and Mr. Elia are fifty percent directors of the company each. The two parties formed the partnership in 2014.
6. Giving a background to the relationship of the other six respondents, Mr. Sachs states that the first respondent, Glow Hire has a shareholder, the light Saver Trust ("the Trust"), and the applicant. Mr. Elia is not a shareholder in Glow Hire at all, nor is he a shareholder in Glow Studios or PKNB Investments. The shareholder in PKNB Investments is the seventh respondent, which is in turn owned by Light Saber Trust. Mr. Sachs, for the applicant, explained that the issue before the Tribunal relates to the conduct of Mr. Elia, who has been appointed by the Trust's respective shareholder in each of the first three respondents to act as a director of the companies on behalf of the relevant shareholders and the Trust.

7. For years responsibilities of the company's affairs have been split between Mr. Fotiadis and Mr. Elia, with Mr. Elia, as a director, running the financial control and booking of the company. On the other hand Mr. Fotiadis has taken charge of the operational side of the business.
8. Mr. Elia has fronted all negotiations with the banks. The last signed set of financial statements of the company, in 2019, were signed off by the accounting company, NWRK, Mr. Mike Reynolds as well as Mr. Elia.
9. Upon coming together in 2014, Mr. Fotiadis and Mr. Elia formed a Joint Venture, called Penanimix (Pty) Ltd. The name was subsequently changed to Glow Hire (Pty) Ltd. In the shareholder agreement both Mr. Fotiadis and Light Saver Trust had fifty percent shares each. Mr. Mike Reynolds from MWK Accountants and Auditors was appointed company accountant and auditor by Mr. Elia.
10. In making out a case for the removal of Mr. Elia, Mr. Sachs refers to page 10 of Applicant's Heads of Argument where it was shown that although Mr. Fotiadis had a "read only" access to the company's books and records, he uncovered a number of irregularities in the entries made by Mr. Elia. According to Mr. Sachs Mr. Elia put through a number of personal expenses without the prior knowledge or authorization of his co-director. This is the nub of the applicant's request to the Tribunal for Mr. Elia's removal as a director. It is argued on behalf of the applicant that Mr. Elia is one of only two directors and, therefore, could not make a decision on his own about the company's funds. Worse still, Mr. Elia mis-recorded the entries in the books as shareholders loan accounts.
11. At some stage Mr. Elia paid his Diners Club card with company funds, stating that it was a reimbursement for expenses he had incurred on behalf of the company personally. Mr. Elia, it should be noted, has not provided any proof of

the expenses he incurred personally for the company. He showed extra expenses in the company as those of the company whereas they were his. The Applicant cites this as another reason for the submission that Mr. Elia did not act in the best interest of the company as claimed. I must mention that the allegations made by the applicant herein are accompanied by the relevant annexures.

12. Glow Hire went through a difficult period and the two directors of Glow Hire entered into a side business called Cutting Room. The venture failed. When this happened Mr. Elia organized for book entries to go into the books of Glow Hire and the charges to be debited to the applicant's loan account. Applicant feels that this was vengeful of Mr. Elia.

13. In conclusion the applicant stresses that his version shows that the present dispute is about Mr. Elia's misdemeanors as a director and not a shareholder, as claimed by the respondent's representative.

14. Responding to applicant's submissions Ms. Milovanovic-Bitter sought to prove that the version of the Applicant is incorrect. Her starting point was the fact that the application should not be before the Companies Tribunal as it was a shareholders dispute as opposed to a directors dispute. It is her version that there is a binding Shareholders Agreement in place and it prescribes how the shareholders relate to one another and also what is to happen insofar as there are any disputes amongst the shareholders in respect of the accounts of the company.

15. Ms. Milovanovic-Bitter submits that Mr. Fotiadis has made the present application from a point of vengefulness towards the fourth respondent, Mr. Elia. Her version is that Mr. Fotiadis wants the company for himself. Moreover, Mr.

Fotiadis lodged the present dispute after receiving a lawyer's letter informing him of a pending removal application for his own misdemeanors in the company.

16. As far as Mr. Elia's representative is concerned, each and every complaint raised by the applicant before the Tribunal is in fact a shareholders dispute relating to book and journal entries in respect of shareholder loan accounts. The disputes have nothing to do with the directorship appointments made by shareholders and is inept and inappropriate. In view of this, the respondent will ask for punitive costs against the applicant.

17. According to Ms. Milovanovic-Bitter even if the director is removed, the Trust would simply appoint another one in his stead, as it is permitted by the shareholders Agreement. At this juncture I wish to point out that Ms. Milovanovic-Bitter seems to be tacitly admitting that her client is in fact a director as opposed to a shareholder.

18. The respondent believes that the applicant's objective of seeking relief from the Tribunal is to achieve some sort of audit in order to ensure that the books of account are properly presented. The respondent's representative submits that the removal of a director does not need an audit of the company's books. In any case all Mr. Fotiadis' complaints are historical and should not be considered. Mr. Fotiadis has never requested an audit. Had he requested it there are provisions in the Shareholders Agreement which would have been his remedy.

19. After the parties had completed their arguments on 2 March the respondent's representative requested to be allowed to submit further papers, as she felt that the applicant's representative had given evidence "from the bar". I duly indulged her.

20. Another submission tendered in the papers of 6 March was that the majority of the disputes which the applicant has referred to the Tribunal have already been dealt with and settled in the Equalization/Settlement Agreement the very purpose of which was to deal with and finalize the shareholders disputes then existing. I wish to point out that no proof of such Settlement was tendered by the representative, either in the Heads of Argument, during the three hearings or with the papers submitted on 6 March.

21. Ms. Milovanovic-Bitter, in the further papers, set out that the applicant's representative raised issues that concerned the debiting and crediting of the shareholders loan account and were, therefore, shareholders disputes which ought to be determined through the dispute resolution mechanism contained in the Shareholders Agreement. She goes further to state that if the dispute were to be taken to arbitration the applicant faced the possibility of being met with a prescription plea or that the matter had been settled. Respondent's representative concludes by stating that the true motivation is not the resolution of the dispute and/or the protection of any rights, but an attempt by the applicant to harm Mr. Elia as much as possible. I note that had prescription taken place it could have been raised at the Tribunal as prescription rules are not reserved solely for Alternative Dispute Resolution, as Ms. Milovanovic-Bitter seems to suggest.

22. A further submission was that counsel for applicant maintained that the Equalization/Settlement Agreement does not constitute an agreement as the word "settlement" does not appear on the document. Respondent denies that this is the case.

23. In support of the submission in paragraph 21 above, respondent refers to the approach adopted by the court in *Natal Joint Municipal Pension Fund v*

*Endumeni Municipality [2012] 2 SA 262 (SCA)* where it was stated that the document has to be interpreted having regard not only to the words on the page, but also having regard to the context and purpose of the document. According to respondent's representative the Equalization/Settlement Agreement indicates that issues between the parties were resolved by Mr. Elia making payments into the company and the applicant's accounts. I have observed that no proof of the alleged repayments was tendered by the representative.

24. The applicant's representative had brought up the issue of whether Mr. Reynolds, the accountant appointed by Mr. Elia was qualified to handle the company's books. Dealing with the issue of Mr. Reynolds qualifications, as brought up by the applicant, Ms. Milovanovic-Bitter maintained that only an expert can give evidence on qualifications. I agree with this sentiment as assumptions of qualifications are hardly proof that one is qualified or not and would need to be authenticated by an expert in the same field. However, the qualifications or lack thereof do not take away anything from the evidence produced by applicant's representative as annexures.

25. I have considered all the submissions made by respondent's representative, from the Heads of Argument to the submissions of 6 March and will deal with my findings thereof. From the outset the respondent's representative has vehemently stated that the present matter is a shareholders, as opposed to a directors, dispute. No explanation is given as to the exact duties of "a shareholder". The representative repeats that such disputes are regulated by the Shareholders Agreement without saying why the activities of the respondent are not those of a director, especially considering that applicant's representative stated that Mr. Elia was not a shareholder in Glow Hire. This ground, therefore, fails.

26. Respondent has raised the point that the application before the Tribunal is jurisdictionally defective as the dispute is that of shareholders as opposed to directors. This is a bare statement which is not substantiated by any evidence other than reference to the Shareholders Agreement. The Agreement does not stipulate that Section 71 of the Act is irrelevant to disputes arising between the two parties, who are both directors. This ground also fails as I have not found any jurisdictional defects in the matter being before the Tribunal as a directors dispute.

## **LEGAL FRAMEWORK**

27. Section 71(3) of the Act permits the removal of a director by the board or by shareholders if that director either:

- a. has become ineligible or disqualified in terms of section 69, other than on the grounds contemplated in section 69 (8) (a);
- b. has become incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or
- c. has neglected, or been derelict in the performance of, the functions of a director (this being the relevant ground for the applicant to establish in the present case).

28. Where, as here, the company has only two directors, section 71(8) permits application to the Tribunal for relief. The Tribunal must be satisfied that the evidence establishes conduct falling within section 71(3), warranting removal.

29. It is required – in terms of section 71(8)(b) read with 71(4)(b) – that the director facing removal be given a reasonable opportunity to make a presentation before the decision is made, and this has been done at the hearing of the matter, and further opportunity to produce evidence was given thereafter.

## **DISCUSSION / ANALYSIS**

### **Evidence before the Tribunal**

30. Before turning to the merits of each allegation, it is necessary to mention the evidentiary standard applicable to the present proceedings. The applicant bears the onus of establishing his case on a balance of probabilities, as confirmed in *Novukuza v Thusi (CT00999/ADJ/2022 COMTRI 33 (27 July 2022))*, which means that he must satisfy the Tribunal that it is more likely than not that the grounds for removal under section 71 of the Act are met, and that Mr. Elia's conduct justifies his removal as director of the company, considering the number of transgressions that have been tabled and proven by applicant's representative.

31. It must now be determined whether there is evidence to support the applicant's case for the fourth respondent's removal. This requires a consideration of each allegation levelled against the fourth respondent, and in each case, a determination as to whether the conduct as pleaded occurred and, if so, whether it amounted to a breach of duty on the evidence presented.

### **Allegation of misappropriation of company funds**

32. The first complaint levelled against the Mr. Elia serves as the central thread running through the remainder of the allegations. The complaint is that he has, on

several occasions, made unauthorized expenditure of company funds for his and his family's benefit.

33. I have found that the Mr. Elia was not authorized or entitled to withdraw monies from the company's bank accounts. He also did not have authority to make purchases for himself and his family with company funds. This was a breach of the standards of directors under section 76 of the Companies Act. Whether there was repayment or not by Mr. Elia, as submitted by his representative, the mere fact that illicit transactions were made against the company is enough evidence of the respondent not acting in the best interests of the company. This is made worse by the fact that no proof of such repayment was produced by the respondent's representative.

#### **Refusal of Access to the financial statements of the company**

34. Another significant complaint raised by the applicant is directed at the respondent's alleged refusal to cooperate in letting the applicant inspect the financial statements of the company.

35. The respondent disputes this and alleges that the applicant never requested to inspect the company's books as the Shareholders Agreement has provision for the inspection of the books for a number of years. I am, however, not convinced that applicant would willingly neglect to properly inspect the company's books. The company had, therefore, as a result of the respondent's actions effectively lost a lot of money and incurred unnecessary debt. Respondent's actions cast doubt on the bona fides of his stated intention to fulfil his responsibilities as the company's financial director.

36. Section 76(3) of the Act prescribes the standards of directors' conduct. A director must exercise powers and perform functions in good faith and for a proper purpose; in the best interests of the company; and with the degree of care, skill and diligence reasonably expected of a person carrying out the same functions and having the director's general knowledge, skill and experience. Conduct contrary to section 76, as displayed by Mr. Elia, can and does constitute the factual basis for allegations of neglect or dereliction under section 71(3) of the Act.
37. Considering the number of instances in which it has been shown that respondent's actions were negative in the carrying out of his duties, there can be little room for doubt that the respondent has in fact neglected and/or been derelict in the performance of the functions of director.
38. The applicant submits that the cumulative effect of the respondent's conduct has irreparably destroyed the trust relationship that must subsist between co-directors. *In Visser Citrus (Pty) Ltd v Goede Hoop Citrus (Pty) Ltd 2014 (5) SA 179 (WCC)* it was held that where mutual trust has broken down beyond repair, continued co-directorship is untenable. *In Pretorius v PB Meat (Pty) Ltd 2013 SA 30 (SCA)* it was stated that neglect, dishonesty and breach of trust justify removal.
39. No proof that Mr. Elia paid back the money to the applicant's loan account or the company's books. The failure to submit proof of payment to the Tribunal is an unexplained omission on a matter within Mr. Elia and his representative's knowledge. This constitutes a gross abuse of directorial position and was condemned in *Grancy Property Ltd v Gihwala (ZAWCHC 2014)* and endorsed in *Grancy Property Ltd 2017 (2) SA 337 (SCA)*.

## **FINDINGS**

40. The grounds advanced by the applicant for the removal of Mr. Elia as director of Glow Hire (Pty) Ltd satisfy the threshold under section 71(3) of the Act. Mr. Elia has neglected and been derelict in the performance of his duties as director of the company in the following respects:

40.1 He unilaterally used the company's funds for his private use without the knowledge of his co-director, the applicant, constituting dereliction within the meaning of section 71(3)(b), being the intentional misappropriation of company funds for his personal benefit and gross abuse of his position as a director; and

40.2 denied the applicant access to the company's financial records.

41. The application for the removal of Mr. Elia succeeds on the basis of the aforementioned grounds.

42. Conversely, none of the grounds advanced by respondent's representative have proven that the instant application is a shareholders dispute and that Mr. Elia was ever a director of Glow Hire. Therefore, respondent's version is dismissed in its entirety.

## **COSTS**

43. Respondent's representative asked for punitive costs against the applicant.

The governing principle is that a successful litigant is ordinarily entitled to a costs award. This principle was stated as follows by Innes CJ in *Texas Co. S.A) Ltd v Cape Town Municipality 1926 AD 467 at 488*: "Now costs are awarded to the successful party in order to indemnify him for the expense to which he has been put through having unjustly having to initiate or defend litigation". This principle applies with equal force before the Tribunal. An

admission that Mr. Elia was never at any stage a shareholder of Glow Hire would have spared the applicant the expense of the present litigation. Respondent is, therefore, directed to pay applicant's costs on the party-and-party costs, including the costs of counsel.

## **ORDER**

44. Accordingly, it is ordered that:

- a) Mr. Andreas Demetriou Elia is removed as a director of Glow Hire (Pty) Ltd with immediate effect.
- b) The respondent is directed to provide Mr. Fotiadis with all the financial records of the company, (including lease and purchase agreements), bank statements, general ledgers, creditor and debtor schedules, payroll records and tax returns.
- c) The respondent is to provide all records of company assets, insurance records and share registers.
- d) The respondent is to procure unfettered access by the applicant to all records of the company that are held by third parties- including accountants, auditors and financial institutions within ten days of receipt of this order.

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**NOMAGCISA CAWE**

Member of the Companies Tribunal