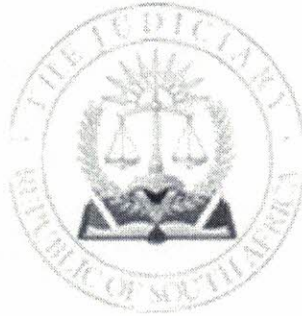


✓✓ 17/11/17.

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



CASE NO.: 66223/2015

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

17/11/2017

In the matter between:

LEVINAUX MURANDT BOTHA

APPLICANT

and

JAMANZI ELECTRICAL CC^R
JULY PHILLEMONT MKHOZA
MONA HEYNS
ADRIES STOCKENSTROOM HEYNS
JAMANZI LIVE LINE (PTY) LTD
STANDARD BANK OF SOUTH AFRICA
FIRSTSTRAND BANK LIMITED

FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT
SEVENTH RESPONDENT

JUDGMENT

VAN DER WESTHUIZEN, A J

- [1] The applicant applies for an order for contempt and relief in terms of the provisions of the Close Corporation Act, 69 of 1984. The contempt order flows from an order granted by agreement in September 2015 following on an urgent application launched by the second respondent during September 2015. That application has not come to fruition. The second respondent has not filed a replying affidavit and has to date not prosecuted that application.
- [2] In the present application, the applicant avers that the first to fifth respondents have acted in breach of the order granted by agreement on 9 September 2015. The alleged breach relates to the payment of monies without the applicant's prior written consent.
- [3] The applicant holds 49% membership in the first respondent and the second respondent the balance. The applicant is thus a minority member in the first respondent. The applicant feels aggrieved by the conduct in particular that of the second respondent in allowing the third and fourth respondents to participate or to interfere, to the exclusion of the applicant, in the management of the first respondent.
- [4] It is to be noted that the parties to the aforementioned order of 9 September 2015, were the applicant, the first respondent and the second respondent.
- [5] In terms of the said order, the applicant and the second respondent were specifically interdicted from making payment of amounts out of the first respondent's stipulated bank accounts without the other's prior written consent. Further in terms of that order, the applicant and the second respondent were directed to work together to resolve their disputes. Naught has come thereof. The applicant and the second respondent are effectively at a deadlock.
- [6] In the present application, the applicant alleges that the third and fourth respondents manage the first respondent as their *alter ego's*. They

have effectively taken over the first respondent and as such utilise the funds of the first respondent to their own advantage in that the funds are utilised for payments of other expenses not that of the first respondent. In so doing, it is alleged that the third and fourth respondents are in breach of the order of 9 September 2015 and hence in contempt of court.

- [7] There is no merit in that contention. Neither the third, nor the fourth respondents were a party to the order of 9 September 2015. Whatever contrary actions are undertaken by either the third or fourth respondent can in those circumstances be in contempt of that order.
- [8] The applicant has not shown that the second respondent has acted in breach of the order of 9 September 2015. In fact, the applicant states that the second respondent has distanced himself from the first respondent.
- [9] In my view, it follows that the applicant is not entitled to an order for contempt and committal of the second, third or fourth respondents.
- [10] The second part of the relief that the applicant seeks, relates to relief under the Close Corporation Act, 69 of 1984 pending the finalization of the urgent application referred to earlier. In that regard the applicant alleges that the third and fourth respondents interfere with the management of the first respondent and act in a manner to the detriment of the first respondent and thereby affecting the applicant's rights in the first respondent.
- [11] The interference on the part of the third and fourth respondents in the management of the first respondent complained of, relates *inter alia* to:
 - (a) The closing of bank accounts of the first respondent with the seventh respondent;

- (b) The transfer of monies from the first respondent's bank accounts, for example the amount of R 1 908 830.00 (One Million Nine Hundred and Eight Thousand and Eight Hundred and Thirty Rand);
- (c) Payments of monies out of the first respondent's bank accounts to parties not entitled thereto and not constituting lawful creditors of the first respondent.

All the aforementioned actions were undertaken without the applicant's prior written consent.

- [12] The applicant alleges that the conduct of the third and fourth respondents in respect of the first respondent impacts negatively on the financial status of the first respondent. The first respondent's dire financial and business status is exacerbated by the fact that the fifth respondent, a limited company, effectively is utilised to conduct the first respondent's business. Neither the applicant nor the second respondent holds any apparent interest in the fifth respondent.
- [13] It is alleged that the third respondent's meddling in the first respondent's business, prevents the applicant from enquiring into the first respondent's affairs. The applicant has been sidelined.
- [14] The response of the second respondent does not take the matter any further, but to confirm that the business of the first respondent seems to be directed to the fifth respondent. The response further confirms that the second respondent has distanced himself from the first respondent. The second respondent does not appear to be concerned with the business of the first respondent and clearly sides with the third, fourth and fifth respondents.
- [15] It is to be gleaned from the answering affidavits filed on the part of the third and fourth respondents that they are of the view that they are

entitled to meddle in the affairs of the first respondent, they being the parties that established the first respondent originally. In my view, such approach is far off the mark. They have no right to meddle in affairs where they do not have the *de iure* authority or legal basis to participate in the business of the first respondent.

[16] It follows that the applicant is entitled to the relief he seeks in terms of the provisions of the Close Corporation Act.

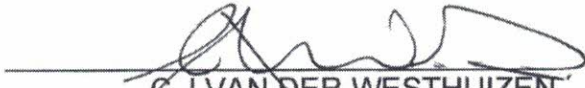
I grant the following order:

- (a) The fifth respondent is directed to pay the first respondent forthwith upon the grant of this order the sum of R 1 908 830.00 (One Million Nine Hundred and Eight Thousand and Eight Hundred and Thirty Rand);
- (b) Pending the final determination of the initial (urgent) application under Case No. 66223/2015, alternatively any further proceedings to be instituted pursuant to such initial (urgent) application or by the applicant against first and/or second and/or third and/or fourth and/or fifth respondents within 120 days of the date of this order:
 - (i) The applicant is hereby declared to be the sole member and/or person entitled to represent and/or transact on behalf of the first respondent;
 - (ii) Second, third and fourth respondents be and are hereby interdicted and restrained from dealing with and/or transacting on behalf of the first respondent and/or from accessing and/or transacting on any Bank Accounts held in the name of the first respondent;
 - (iii) Sixth and seventh respondents are directed to take all such steps as may be necessary to ensure that the:

- (1) Applicant is the sole member and/or person entitled to transact on any Bank Account the first respondent may hold with the sixth or seventh respondent; and
 - (2) Second and/or third and/or fourth respondents are not able to access and/or transact on any Account that the first respondent may hold with the sixth or seventh respondents;
- (iv) Second and/or third and/or fourth respondents be and are hereby directed to:
- (1) Deliver to the applicant, or his duly nominated agent, in writing, any and all documents, of whatsoever nature and in whatsoever format, belonging and/or pertaining to the first respondent and/or its business that may be in their possession, including but not limited to, any and all invoices, receipts and/or receipt books, books of account, financial statements and ledgers, asset registers, income tax and value added tax returns, submissions and proofs of payment(s), tax clearance certificates, motor vehicle logbooks and/or vehicle identification certificates, motor vehicle finance agreements, bank statements, vouchers, employee records and/or employment contracts/files, job cards, time sheets, equipment logs, letters, e-mails, faxes and any written agreements (whatever their designation or nature) and to advise the applicant of the terms and conditions or any oral agreements concluded on behalf of the first respondent, of which they are aware;
 - (2) Deliver to the applicant, or his duly nominated agent, in writing, any and all motor vehicles, motor vehicle keys, key cards, bank access cards, credit and/or current

account cards, tools, equipment, plant or machinery belonging to and/or pertaining to the first respondent and/or its business that may be in their possession;

- (3) Advise the applicant, in writing, of the existence and/or present whereabouts of any of the items mentioned in paragraphs (iv)(1) and (iv)(2) above should they not currently be in the possession of the second and/or third and/or fourth respondents;
 - (4) Provide the applicant with whatever assistance and/or explanations and/or directions as may be reasonably necessary for the applicant to locate and/or obtain possession or control of any of the items mentioned in paragraphs (iv)(1) and (iv)(2) above;
- (c) The second, third, fourth and fifth respondents are directed to pay the costs of this application, jointly and severally the one paying the other to be absolved.


C J VAN DER WESTHUIZEN
ACTING JUDGE OF THE HIGH COURT

On behalf of Applicant: M E Stewart
Instructed by: Hamann Attorneys

On behalf of Respondent: J P Greyling
Instructed by: Odendaal & Kruger Attorneys