

COMPANIES TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case: CT018Jun2015

In the matter between;

GROWTHPOINT PROPERTIES LIMITED

Applicant

(Registration number 1987/004988/06)

and

GROWTHPOINT ENERGY INVESTMENT CO-OPERATIVE LTD

Respondent

(Registration C2912/003002/24 date 01/02/2012)

Presiding Member of the Tribunal: Lucia Glass

DECISION (Reasons and Order)

1. This is an application in terms of Section 11 and 160 of the Companies Act 71 of 2008 (the Act) read together with Regulation 13 of the Act.

2. The Companies Tribunal can only entertain the merits of this application in terms of section 160 of the Act, once it is satisfied that it has the necessary jurisdiction to do so.

3. The Applicant is a **company registered in terms of the Act** (emphasis added) and Respondent is a **Co-operative which is NOT registered in terms of the Act** (emphasis added) and is governed and registered in term of the Co-operative Act, 2005 (Act No 14 of 2005).

THE LAW

4. **In terms of Section 11(2) (a) of the Act**, names of companies, must not be the same as the name of another company, domesticated company, registered external company, close corporation or **co- operative** (emphasis added).

5. In terms of Section 160 of the Act,

(1) A person to whom a notice is delivered in terms of section 12(3) or section 14(3) or any other person with an interest in the **name of a company, may apply to the Companies Tribunal in the prescribed manner** (emphasis added) and form for a determination whether the name satisfies the requirements of section 11.

(3) After considering an application made in terms of subsection (1), and any submissions by the applicant and any other person with an interest in the name or proposed name that is the subject of the application, **the Companies Tribunal—**

(a) must make a determination whether that name satisfies the requirements of section 11; and (emphasis added)

(b) may make an administrative order directing

(i) the Commission to

(aa) reserve a contested name for the applicant in terms of section 12;

(bb) register the contested name, or

amended name as the name of a company; or

(cc) cancel a reservation granted in terms of section 12, if the reserved name has not been used by the person entitled to it; or

(ii) a company to choose a new name.

INTERPRETATION OF THE LAW

6. It is my interpretation of Section 11(2)(a) that names of companies, must not be the same as the name of another company, domesticated company, registered external company, close corporation or **Co-operative** (emphasis added). Thus a Co-operative which finds that its name is the same as a company name in terms of the Act, may apply to the Companies Tribunal for an order in terms of Section 160 (2) of the Act that the Company change its name or any other relief in terms of Section 160 (3).

7. It is my view that in terms of Section 11(2)(a) the opposite does not apply, thus in the case before me, the applicant, **a Company** who finds that its name is being **used by a Co-operative**, (emphasis added) may not apply to the Companies Tribunal for an order that the Co-operative change its name, or any other relief in terms of Section 160 (3).

8. It is my understanding that there is no provision in the Act that empowers a Company (registered in terms of the Act) to apply to the Companies Tribunal for an order that a Co-operative, (registered in terms of the Co-operative Act 2005), to change its name.

FINDING

9. Consequently it is my view that the merits of this application cannot be contemplated by the Companies tribunal in terms of Section 11 and 160 of the Act, as the Companies Tribunal does not have jurisdiction over the matter.

ORDER

The case is dismissed.

LUCIA GLASS

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Dated this 27th September 2015