REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: **2020/7700**

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

20 February 2025 [redacted]
DATE SIGNATURE

In the matter between:

ANGELIQUE MEISEL	First Applicant
TATUM YAMMIN	Second Applicant
and	
SWEET SUE INVESTMENTS CC	First Respondent
LYNETTER ELSTON (Previously Bonheim)	Second Respondent

JUDGMENT

Raubenheimer, AJ

Order

(a) In this matter I make the following order:

1. The first respondent be and is hereby placed under final winding up in the hands of the Master of the High Court;
2. The second respondent shall bear the costs of the application

The reasons for the order follow below

Introduction

[1] The first respondent was incorporated as a Close Corporation (CC) in 1990 as an investment vehicle for an immovable property on the banks of the Vaal River. The property served as a recreational facility to the members of the first respondent.

[2] Each of the three incorporating members held a third interest in the first respondent.

[3] The membership of the first respondent changed over the years due to the passing of some of the incorporating members and some of the incorporating members selling their interest.

[4] One of the members, Colin, sold his interest to the other two, Harry and Leo who then held equal membership interests in the CC.

[5] As at the time of the application, the first and second applicants are the holders of 50% membership interest and the second respondent a 50% membership interest.

[6] The second respondent obtained her membership share in 1990 on transferral from her husband (Leo Bonheim) and with the consent of the other member (Harry Meisel). Leo passed away in 1991.

[7] The applicants are sisters who inherited their membership from their father on his passing in 2013, each holding a 25% member interest.

[8] The relationship between the members is governed by an Association Agreement, entered into between the incorporating members in 1990.

[9] The applicants brought an application for the liquidation of the first respondent in terms of section 81(1)(d) of the Companies Act, Act 71 of 2008 due to the existence of a deadlock between the members of the CC.

[10] The application, brought in March 2020, was met with opposition which raised a number of points in limine namely, that the applicant does not have standing to bring the liquidation application, non-compliance with section 326(4A)(a)(iv), 346(4A)(b), 346(3) and 346(4)(e) of the Companies Act of 1973 and the existence of disputes of fact.

[11] These points were dealt with in a judgment dated 22 April 2021, delivered by my sister, Killops AJ in which she dismissed the locus standi and dispute of fact points but upheld the section 346(4A)(b) point. The non-compliance with this provision was ruled to be fatal to the application and it was consequently struck from the roll.

[12] The matter was enrolled on the opposed roll ostensibly after the shortcomings were cured by the applicants.

Submissions by the applicants

[13] The applicants, desiring to exit the CC, made an offer to the second respondent in terms of the provisions of the Association Agreement. The time period for the acceptance of the offer has now expired which triggered the application for liquidation as foreshadowed in the Association Agreement.

[14] The non-response of the second respondent to the offer created a deadlock as prescribed in section 81 of the Companies Act, in respect of the winding up of a solvent CC.

[15] The applicants rely on the "just and equitable" criteria for the winding up of the CC as contained in section 81(1)(d)(iii) of the Companies Act.

[16] The fact that both parties hold equal membership interests defeats the possibility of managing the CC through a majority vote in accordance with the essential principles as contained in the Association Agreement.

Submissions by the second respondent

[17] The second respondent opposes the application by persisting with the remainder of the points *in limine* not dealt with in the Killips judgment, namely:

a. Non-compliance with section 346(A)(a)(i)-(v) and 346(A)(b) of the 1973 Companies Act;

b. Non-compliance with section 346(3) of the 1973 Companies Act;

c. Non-compliance with section 346(4)(a) of the 1973 Companies Act;

[18] The further opposition is founded in the "just and equitable" requirement which according to the second respondent has not been met.

Discussion

[19] Section 326(A)(a)(i)-(iv) deals with service of the application on a registered trade union, the employees themselves; SARS and the CC itself.

[20] The employees of the first respondent do not belong to a trade union and consequently subsection (i) does not find application.

[21] The application was served on the employee at the premises where the employee was rendering services to the CC on 30 June 2022.

[22] Service was effected on SARS as required by subsection (iii) on 17 March 2020 and again on 8 June 2021.

[23] Whether there has been compliance with subsection (iv) service on the company raised the main dispute in respect of this point *in limine*.

[24] The second respondent contends that service was effected at an address which is not the registered address of the CC. The basis for this contention is that where a CC has more than one place of business, service must be effected at the "principal place of business" being the place where the central administration is conducted. As the general administration of the CC is occurring at the address of the second respondent and not at the registered address, service should have been effected at her address.

[25] The applicants explained in their founding affidavit that the Companies and Intellectual Property Commission (CIPC) records of the CC erroneously indicate the registered address as 6 Paris Avenue, Thorn Village Estate, Greenstone Hill instead of 8 Paris Avenue, Thorn Hill Estate, Greenstone Hill. After becoming members of the CC, the applicants submitted a change of address to the CIPC indicating the address to be 8 Paris Avenue. The changes effected by the CIPC was for 6 and not 8.

[26] The application was served by the applicants on both no 6 and 8 Paris Avenue.

[27] The service on the CC was confirmed by means of an affidavit as requires in terms of section 326(4A)(b) of the 1973 Companies Act.

[28] The issue for determination is thus whether service of the application on the registered address constitutes compliance with subsection (iv).

[29] Section 25 of the Close Corporations Act, 69 of 1984 provides:

"(1) Every corporation shall have in the Republic, a postal address and an office to which, subject to subsection (2), all communications and notices to the corporation may be addressed. (2) Any –

(a) Notice, order, communication or other document which is in terms of this Act required or permitted to be served upon any consideration or member thereof, shall be deemed to have been served if it has been delivered at the registered office, or has been sent by registered post to the registered office or postal address, of the corporation; and

(b) process which is required to be served upon any corporation or member thereof shall, subject to applicable provisions in respect of such service in any law, be served by so delivering or sending it."

[30] The Companies Act of 2008 retained the institution of the registered office. Such office serves as the address at which third parties can effectively transact with

the CC.[1] Service on the registered address is consequently deemed to be sufficient.[2]

[31] There is no obligation on the applicant to serve the application at the registered address and principal place of business.[3]

[32] The manner of service of court process is regulated by rule 4 of the Uniform Rules of Court. In respect of a CC court process may be served at its registered office or its principal place of business. The mentioned places of service present alternative locations for service to the effect that court process must always be served on the registered address and may be served on the principal place of business unless it is served at the registered place of business.[4]

[33] There was consequently compliance with the provisions of subsection (iv) in respect of service on the CC.

[34] The second respondent further avers that subsection (iv) requires service on creditors. The subsection contains no such requirement and merely confers a discretion on the court to dispense with the requirement of service on the CC if satisfied that it would be in the interests of either the CC or its creditors to dispense with such service. The particular requirement has been complied with and there is consequently no need for the court to exercise its discretion.

[35] The second respondent contends that there was no compliance with section 346(3) in that the security lodged with the Master was not lodged within ten days before the date of the application.

[36] The application was served on the Master on 4 March 2020 and bears a stamp of the Master to that effect, evidencing the service on the Master. Attached to the application was the Security Bond dated 3 March 2020. The security Bond was consequently lodged in compliance with sect 346(3).The section does not require that the certificate be dated before the date of the application or even that it exists

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[1] Sibakhulu Construction v Wedgewood Village Golf Country Estate 2013(1) SA 191

[2] Cooper NO and Others v Market Fisheries (Oudtshoorn) CC (13845/2022) [2023] ZAWCHC 56; 2023 (5) SA 212 (WCC) (9 March 2023)

[3] Van der Merwe v Daraline (Pty) Ltd (7344/2013) [2013] ZAWCHC 213 (23 August 2013)

[4] Federated Insurance Co Ltd v Malwana 1986 (1) SA 751 (A) 759D; Chris Mulder Genote Ing v Louis Meintjies Konstruksie (Edms) Bpk 1988 (2) SA 433 (T)

at such date.[5]. The only requirement is that the certificate evidencing that security has been provided is before the court on the day of the hearing.[6]

[37] The second respondent argues that the matter should have been referred to mediation in terms of Rule 41(A) to resolve the dispute between the parties. The second respondent is referring to the alleged managerial deadlock between the parties that should have been referred to mediation.

[38] The Rule does not preclude a respondent from issuing a notice in terms of the rule. If the respondent was of the opinion that the matter is ripe for mediation she could have issued such a notice.

[39] The issue pertaining to mediation was not in the opposing papers of the second respondent, neither was it contained in the primary Heads of Argument. It was raised only in the supplementary Heads of Argument.

[40] I do not regard it necessary to deal with this aspect for the reasons provided above.

[41] The last aspect to be considered is whether it would be just and equitable to liquidate the first respondent.

[42] The basis for the contention that liquidating the first respondent would be in the interests of justice is that there exists a deadlock between the members of the CC.

[43] The deadlock has to be of a certain quality namely deadlock in management and deadlock in voting power.

[44] Deadlock in management requires an inability to break the deadlock as well as two further requirements namely the deadlock must or may result in irreparable harm to the CC if not resolved or the business of the CC can, due to the deadlock, not be conducted to the advantage of the members

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[5] De Wet NO v Mandelie(Edms) Bpk 1983 (1) SA 544 (T)
[6] Mafikeng Creamery Bpk v Mamba Boerdery (Edms) Bpk 1980 (2) SA 776 (NC)

[45] A deadlock in voting power must have resulted in a failure to elect successors to members of who their terms have expired. This is clearly not the case as all the members of the CC are still members and there have been no need to elect successors.

[46] The CC may be wound up if it is just and equitable to do so.[7] The court has a wide discretion in deciding to liquidate a CC on this basis.[8]

[47] In exercising its discretion, a court has to have regard to the facts, justice and equity, the interests of good governance and the proper administration of justice.[9] Circumstances akin to the dissolution of a partnership constitutes grounds for the winding up of a CC on this basis.[10]

[48] The relationship between the applicants and the second respondent has deteriorated due to the unwillingness by the second respondent to engage with them in terms of the provisions of the Association Agreement. The second respondent has furthermore moved the general and financial administration to her residence and does not provide the applicants access to the financial records of the First Respondent.

[49] The applicants cannot put any management issue to a vote and the second respondent has excluded the applicants from the running and operations of the CC.

[50] The relationship between the members have irretrievably broken down[11] which is having a detrimental effect on the running of the business and causing irreparable damage to the business of the CC as the municipal services account is not serviced.

[51] Which is administration and financial principle underlying the relationship between members of a CC is based on the principles of a partnership. Members

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[7] Barbaglia NO and Others v Noble Land (Pty) Ltd (A5041/2020) [2021] ZAGPJHC 85 (24 June 2021)
[8] Moosa NO v Mavjee Bhawan (Pty) Ltd 1967 (3) SA 131 (T)
[9] Weare and Another v Ndebele NO and Others 2009 (1) SA 600 (CC)
[10] Rand Air (Pty) ltd v Ray Bester Investments (Pty) Ltd 1985 SA 345 (W)
[11] Apco Africa (Pty) Ltd v Apco Worldwide Inc 2008 (5) SA 615 (SCA), Thunder Cats Investments 92 (Pty) Ltd and Another v Nkonjane Economic Prospecting and Investment (Pty) Ltd and Others 2014 (5) SA 1 (SCA)

meetings renders no resolutions and no proper management information is provided to the applicants.

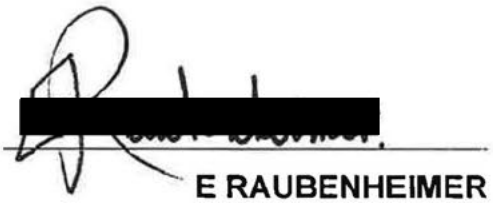
[52] It is undisputed that the relationship between the members have broken down irretrievably and that there is no possibility for it the be salvaged.

Conclusion

[53] I am consequently satisfied that the applicants have shown the relationship to have deteriorated beyond repair, that the members do not trust each other and do not place confidence in each other.

[54] I conclude that the discretion be exercised in favour of granting the relief as prayed for in the Notice of Motion and that it would be just and equitable to grant the winding up order taking into consideration the historical developments of the matter and the deadlocks existing between the members.[12]

[55] For all the reasons as set out above I make the order in paragraph 1.



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ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

[12] Recycling and Economic Development Initiative of South Africa NPC v Minister of Environmental Affairs 2019 (3) SA 251 (SCA)

For the Applicants:	Adv J Bhima instructed by D Kaufmann Incorporated
For the Respondents:	Adv N Smit instructed by JP Van Schalkwyk Attorneys
Date of Hearing:	07 August 2024
Date of Judgment:	20 February 2025