

SOUTH AFRICA / JUDGMENT

Graham N.O and Others v Sailing Puppy (Pty) Ltd and Another (037099/2024)

[2025] ZAGPPHC 558 (20 May 2025)

[2025] ZAGPPHC 558

COURT

North Gauteng High Court, Pretoria

BEFORE

Nyathi

CASE / FILE NUMBER

037099/2024

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FLYNOTES:

COMPANY

– Shareholders meeting – Compelling to convene – Removal of director – Alleged misconduct and breaches of fiduciary duty – Unjustified obstruction of meeting by falsely claiming sole ownership of company's shares – Trust confirmed sole shareholder status through documentary evidence – Exhausted alternative remedies – Director's conduct was prejudicial to company – Special circumstances warranted judicial intervention – Demand for meeting was bona fide – Companies Act 71 of 2008, ss 61(3) and (12).

IN

THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

CASE NO: 037099/2024

(1)

REPORTABLE: NO

(2)
OF INTEREST TO OTHER JUDGES: NO
(3)
REVISED: NO
(4)
Date: 20 May 2025

Signature:

In

the matter between:

WILLIAM
OLIVER GRAHAM N.O.
First Applicant
ANNAMEY
GRAHAM
N.O.
Second Applicant
HERMANUS
ALBERTUS DU TOIT N.O.
Third Applicant
And
SAILING
PUPPY (PTY) LTD
First Respondent
JACOBUS
CORNELIUS REYNEKE
Second Respondent

JUDGMENT

NYATHI J

A.

INTRODUCTION

[1] This is an application in which the applicants seek an order of this Court to convene a shareholders' meeting under the provisions of Section 61(12) of the Companies Act 71 of 2008 ("the Companies Act").

[2] The application is made pursuant to a written demand by the Trust for the holding of a shareholders' meeting made under Section 61(3) of the Companies Act on 12 March 2024. This demand has been frustrated by the first respondent.

B.

BACKGROUND

[3] The first, second and third applicants are the trustees of a Namibian registered Trust, namely the Rodzina Carbonile Trust ("the Trust")

- [4] The Applicant Trust has since 15 October 2019 held the entire issued share capital in the first respondent, Sailing Puppy (Pty) Ltd ("Sailing Puppy"), a South African registered Company. The Trust enjoyed beneficial and undisturbed ownership of its shareholding in Sailing Puppy.
- [5] Sailing Puppy has two directors, namely, Mr Jacobus Cornelius Reyneke who is cited as the second respondent ("Mr Reyneke") and Mrs Maria Elizabeth van Straaten ("Mrs van Straaten").
- [6] On 12 March 2024, the Trust, as sole shareholder of Sailing Puppy, made demand on Sailing Puppy under the provisions of section 61(3) of the Companies Act, to convene a shareholders' meeting to transact business under section 71(1) of the Companies Act for purposes of debating, and if deemed appropriate, resolving and passing a resolution to remove Mr Reyneke as a co-director of Sailing Puppy.
- [7] Following upon the section 61(3) demand being sent, Mrs van Straaten set about attempting to convene the shareholders' meeting so demanded by the Trust. To that end, Mrs van Straaten, on 12 March 2024 and at 22h28 addressed an email to Mr Reyneke:
1.
informing him of the section 61(3) demand and the request by the Trust that the board of Sailing Puppy convene the shareholders' meeting;
 2.
requesting his co-operation to agree to a date, time and venue for the holding of the shareholders meeting and to that end proposing a directors' meeting over MS Teams on 14 March 2024 at 11h00 to attend to these matters;
 3.
Mrs van Straaten also requested Mr Reyneke to give consideration at the proposed board meeting on 14 March 2024, to the appointment of an independent Chairperson to chair the shareholders meeting to be held.
- [8] No response was forthcoming from Mr Reyneke in respect of the issues raised by Mrs van Straaten in her email. Mr Reyneke's refusal to co-operate with his co-director Mrs van Straaten to convene the requested meeting is rooted in a claim by Mr Reyneke, which surfaced just after the Trust made demand for the meeting. He alleged that he, and not the Trust, is the sole shareholder of Sailing Puppy.
- [9] Instead, and on 13 March 2024, Taljaard & De Oliveira Attorneys ("Taljaard"), addressed a letter to Mrs van Straaten, informing her that their firm had been instructed by Mr Reyneke to respond to the section 61(3) demand and that they would do so in due course.

- [10] Later, on 13 March 2024, Mr Reyneke (acting personally) addressed an email to Mrs van Straaten in which he recorded that the directors' meeting that Mrs van Straaten had proposed (and scheduled for 11h00 on 14 March 2024), was "premature", as he would be consulting with his attorneys and would revert to Mrs van Straaten after he had done so.
- [11] On 18 March 2024, Taljaard addressed a letter to Mrs van Straaten in which it was amongst others recorded that "Both you and all the trustees of the Trust who signed the aforesaid demand are acutely aware that the Trust is not a shareholder of Sailing Puppy (Pty) Ltd ("Sailing Puppy ") and that "Our client has always been the sole shareholder of Sailing Puppy".
- [12] The Trust upon coming to learn of this letter on the same day, addressed correspondence to Taljaard disputing the allegations contained in the letter from Taljaard, it having become clear to the Trust that Mr Reyneke was unlawfully contending that he, as opposed to the Trust, was the sole shareholder of Sailing Puppy.

C. THE SHAREHOLDING IN CONTEXT

- [13] The context of the shareholding is best illustrated in a broad summary of the events that constituted the status quo before the Trust made the Section 61 (3) demand:

1.

Sailing Puppy was incorporated on 20 August 2019;

2.

WPR Financial Services CC ("WPR") incorporated Sailing Puppy;

3.

Mr Reyneke was from the date of incorporation, recorded as the sole director of Sailing Puppy;

4.

On 30 January 2020, WPR's Mr Basch addressed an email to Mr Reyneke indicating that:

- (i) Sailing Puppy was ready for use; and
- (ii) Mr Reyneke was the only director; and
- (iii) that the first issue of 100 shares could be

"...done to whoever you wish."

5.

On 4 February 2020, WPR's Mr Basch addressed an email to Mr Reyneke to which he attached the "...first share certificate (issued in your name at incorporation date) and blank CM42 (share transfer form) for signing."

6.

On 6 February 2020, Mr Reyneke addressed an email to Mr Basch asking "Can Pippa please amend the docs to transfer the shares to the attached Namibian Trust. The date of transfer should be 15 October 2019." It is common cause that reference "Namibian Trust" is a reference to the Trust;

7.

On 10 February 2020, Mr Basch responded to the earlier email of Mr Reyneke of 6 February 2020 and stated as follows:

"Hi Jacques,

Attached the draft docs as follows:

1. Share Certificate # 1 issued in your name as the incorporator of the company
2. CM42 date 15 October 2019 where you transfer the 100 shares to the Rodzina Carbonile Trust (PS you must sign just above the date)
3. Share Certificate # 2 issued to the Trust date 15 October 2019 Note that we need the address of the Trust in order to complete the CM42 and Share Certificate properly, but that can also be written in by hand.

Also don't worry about the two lines for director and the one for secretary in the share certificates. You are the only director and there is not an official company secretary registered with CIPC.

Let me know If you have any questions?

Let the puppy sail."

8.

On the same day, 10 February 2020, and within 14 minutes of receiving the information to in the preceding subparagraph, Mr Reyneke wrote to the second applicant's husband and Mr. Senekal and recorded that the shares were not issued at incorporation but would first vest in him and then only 15 October will they vest onwards to (Rodzina) the Trust. He then advises them to send him the address of the Trust to enable him to complete the CM42 and the share certificate.

9.

Following the address of the trust being provided, Mr. Reyneke on 3 March 2020 addressed an email to Mr Senekal (and copied Mr. Graham), in which he recorded that:

"Hi Johan, Hier is Sailing Puppy se aandelesertifikate. Die oorspronklike (sic) sertifikate is by die ouditeure in PTA."

10. The certificate referred to in the email was accompanied by a Securities Transfer Form signed by Mr Reyneke on 15 October 2019 in terms of which he transferred the 100 ordinary par value shares which had been registered in his name under share certificate No. 1, to the Trust.
11. A copy of Share Certificate No. 2 which Mr Reyneke signed on 15 October 2019 in his capacity as director of Sailing Puppy, also accompanied Mr Graham's email, which reflects the Trust as the "Registered Proprietor of 100 Ordinary Par Value Fully Paid Shares ..."
12. Copies of the Securities Transfer Form (Form CM42) signed by Mr Reyneke on 15 October 2019 as well as Share Certificate No. 2 issued to the Trust and bearing the date of 15 October 2019 also confirm the status of the Trust as sole shareholder of Sailing Puppy. [emphasis added].
- [14] It is first applicant (Mr. Graham's) contention that since then, the Trust has been and remains the sole shareholder of Sailing Puppy.
- [15] Matters came to a head when Mr Reyneke in his efforts to thwart Mrs. Van Straaten and Mr Graham's efforts on behalf of the Trust to have a shareholders' meeting called, that Mr. Reyneke started raising objections and making allegations that he has always been and remains the sole shareholder of Sailing Puppy. This much he contends in his answering affidavit filed in opposition to this application.
- [16] Mr. Reyneke contends that the No. 2 share certificate was issued as part of a pledge, without providing any coherent supporting evidence thereto.
- [17] The Trust submits that Mr Reyneke's version of that he is the sole shareholder in Sailing Puppy is contradicted by the clear facts and circumstances which establish that the Trust has, since 15 October 2020 been the sole shareholder of Sailing Puppy. Such facts (which are borne out by the documents which Mr Reyneke admits) are destructive of the version of Mr Reyneke which is, on paper, demonstrated to be palpably untrue meriting its rejection in motion proceedings.
- [18] There are allegations made by the first applicant in his founding affidavit that Mr. Reyneke has in his capacity as a director of Sailing Puppy, abused his powers and authority, and acted so as to prejudice Sailing Puppy and the Trust's interests.[1]
- [19] This type of conduct and breach of fiduciary duties on the part of Mr. Reyneke is the main reason which necessitates the bringing of this application on an urgent basis.[2]
- [20] In the circumstances, no directors' meeting was held, and no shareholders' meeting was convened under the section 61(3) demand made by the Trust, Mr Reyneke for his part, refusing to attend a directors' meeting.

[21] The Trust approached Mr Basch's office in an attempt to secure further corroborative evidence in support of its shareholder status. Mr Basch confirmed the following in a letter dated 27 March 2024 sent to the directors of Sailing Puppy:

1. that his offices had been instructed to register Sailing Puppy by Mr Reyneke in August 2019 and that Sailing Puppy was incorporated on 20 August 2019;
2. that Mr Reyneke was at the date of incorporation the sole initial director and holder of 100% of the issued share capital of Sailing Puppy;
3. that Mr Basch's office had been instructed by Mr Reyneke to prepare a securities transfer form (CM42) as well as share certificate number 2 of Sailing Puppy for the transfer of 100% of the issued share capital to the Trust recording further that he was in possession of the signed electronic copies of the CM42 and the share certificate in the name of the Trust;
4. that his offices had also been appointed to appoint Mrs van Straaten as a director of Sailing Puppy with effect from 1 April 2022; and
5. that Sailing Puppy did not have an appointed company secretary on record and that he had never maintained a share register of Sailing Puppy nor a minute book nor did he have any minutes of any corporate actions on the part of the company.

[22] In light of the above, the Trust resolved that it had exhausted all possible alternative avenues to secure any additional corroborative evidence of the factual position that it is the sole shareholder of Sailing Puppy. The Trust then approached the court on an urgent basis seeking an order to convene a shareholders' meeting under section 61(12) of the Act.

D. THE PLEDGE

[23] It is common cause that Mrs van Straaten was appointed as a co-director with Mr Reyneke in Sailing Puppy on 1 April 2022[3], and that he consented to the appointment in order to safeguard the interests of the Trust. "...because it held the shares in pledge as security for the repayment of the loans."

[24] This particular aspect of Mr Reyneke's statement is vehemently opposed by the applicants as being fictional and an untruth under oath. They submit that it is contradicted by all admitted documents which make no reference whatsoever to a pledge. They submit that it is contrary to legal provisions because:

1. When shares are pledged they are not transferred by the pledgor to the pledgee. They are retained in the name of the pledgor.
2. A pledge of shares involves the handing over of the share certificate reflecting the name of the pledgor together with a signed CM42 (in the case of certificated shares as these are).
3. It is only if there is a default that the pledgee can, following due process, register the shares into the pledgee's name.

E. LEGAL PROVISIONS PERTAINING TO ORDER SOUGHT

[25] Section 61(3) of the Companies Act reads as follows:

” (3) Subject to subsection (5) and (6), the board of a company, or any other person specified in the company's Memorandum of Incorporation

or rules, must call a shareholders meeting if one or more written and signed demands for such a meeting are delivered to the company, and-

(a) each such demand describes the specific purpose for which the meeting is proposed; ...”

[26] The courts have shown a reluctance to call a meeting in terms of this section or its equivalent in earlier versions of the Companies Act. In *Yende v Orlando Coal Distributors (Pty) Ltd*[4] the Court refused to order the holding of a meeting where despite disputes between the shareholders of the company, there was nothing preventing the calling of a meeting. Dowling J reasoning that: “In general, the policy of the Courts has been not to interfere in the internal domestic affairs of a company, where the company ought to be able to adjust its affairs itself by appropriate resolutions of a majority of the shareholders.”[5]

[27] In *CDH Invest NV v Petrotank South Africa (Pty) Ltd and Another* [6], Van der Linde J held that Court intervention in the form of an order in terms of section 6(12) is not there for the asking, as a Court generally declines to interfere in the management of company affairs. The learned Judge stated that:

“A court would generally, unless special circumstances require otherwise, have to be satisfied that calling a members’ meeting was bona fide intended, with a legitimate purpose, and in the best interests of the company”[7]

F. DISCUSSION

[28] The decisions referred to above display a stark reluctance by the Courts to interfere in the management of company affairs when invited by applicants to do so. The exception that was clearly stated is when special circumstances so require, and when the court is satisfied that the intentions for calling the members’ meeting were bona fide and in the best interests of the company.

[29] Mr Reyneke as can be seen above has not given his cooperation to the Trust’s efforts to hold a shareholders’ meeting in terms of the section 61(3) demand. He provides no tenable reason for his attitude.

[30] This state of affairs establishes without equivocation that as at 12 March 2024 when the Trust made demand upon Sailing Puppy that it convene a shareholders’ meeting, the Trust enjoyed the competence and entitlement to do so as the sole shareholder of Sailing Puppy.

- [31] Being a co-director of Sailing Puppy, Mr Reyneke's conduct thus far, is inimical to the interests of Sailing Puppy. Mr Reyneke has, despite warnings by Mrs van Straaten, caused Sailing Puppy losses in value to the tune of N\$ 460 000.00 through his addendum scheme wherein Sailing Puppy assumed obligations of another company, and in so doing denuded Sailing Puppy by that amount.
- [32] The applicants have demonstrated the special circumstances required in section 61(3). When the court is satisfied that the intentions for calling the members' meeting are bona fide and in the best interests of the company, it will eschew its general reluctance and grant the order sought.

G. THE ORDER

[33] The following order is made:

1. Condonation is granted for the applicants' non-compliance with the Uniform Rules of Court pertaining to forms, time periods and service, as well as the non-observance of Uniform Rule of Court 41A and permitting the matter to be heard as an urgent one in accordance with Uniform Rule of Court 6(12).
2. The first respondent, Sailing Puppy (Pty) Ltd is directed to convene a shareholders meeting, as demanded by the Rodzina Carbonile Trust ("the Trust") in terms of Section 61(3) of the Companies Act, 71 of 2008.
3. The first respondent is ordered to:
4. convene a shareholders' meeting within 14 days of date of this order; and
5. make suitable arrangements for the shareholders meeting to take place at the 4th Floor Katherine & West Building, 1[...] W[...] Street, Sandown.
6. Advocate Darryl Williams (who has confirmed his preparedness to act as an independent Chairperson in the separate affidavit placed before this Court) is appointed to act as Chairperson of the shareholders meeting and to exercise all powers as Chairperson of the shareholders meeting and to keep and prepare a minute of the meeting and cause such minute to be pasted in the minute book of Sailing Puppy.
7. The second respondent is ordered to pay the costs of this application including costs of senior counsel on the scale as between attorney and client. To be taxed on scale C.

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 18/10/2024

Date of Judgment: 20 May 2025

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[1] Founding Affidavit para 127 to 130.

[2] Founding affidavit: heading G and the paragraphs thereunder.

[3] Mr Reyneke Answering affidavit para 25.

[4] 1961

(3) SA 314 (W).

[5] Ibid at p316.

[6] 2018

(3) SA 157 (GJ) confirmed on appeal on other grounds by the SCA as CDH Invest NV v Petrotank South Africa (Pty) Ltd and Another 2019

(4) SA 436 (SCA); [2019] ZASCA 53.

[7] At para 82.

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