

COMPANIES TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case Number CT00241ADJ2019

Maudi Lentsoane

Applicant

and

Busisiwe Maureen Brown

Respondent

DECISION (Reasons and Order)

Presiding Member of the Tribunal: Lucia Glass

1. The Applicant instituted action against the Respondent for her removal as a Director in terms of Section 71(8) read with Section 69 of the Companies Act 71 of 2008 ("the Act").
2. This is an Application for a default order in terms of Regulation 153, praying for an order to remove the Respondent as a director of Theromba Group Propriety Limited Registration No 2018/388625/07.
3. This application is brought by one of the two directors of Theromba Group Propriety Limited, one Maudi Lentsoane, who avers that he is authorized to do so, by virtue of the fact that he is a Director of the Applicant.
4. In his founding affidavit, he states that there was a tacit agreement between the two directors, himself and the Respondent, that both Directors would partake in the necessary business activities, inter alia, the decision making, be present at

all meetings, best decisions to be made to benefit the company, contribute financially or otherwise towards the success of the company, act in good faith, taking necessary care and diligence and skill that a reasonable director would exercise in the circumstances and complying with the companies Act.

5. Furthermore he alleges that the Respondent pleaded with him and or the company to loan her money to fund Theromba Travelling Agency and never paid the money back.
6. It is averred that the respondent advised that she wished the papers to be served by email at findbusi@gmail.com, and requested that the document be whatsapped to her. This application was served on the Respondent in this manner on the 11 November 2019. To date the Respondent has not responded.
7. I am convinced that this Application was duly served on the Respondent without any response from the Respondent and is now properly before me.
8. Applicant applies for an order of removal of the other Director in terms of Section 71 of the Act, Removal of Directors; *“(8) If a company has fewer than three directors— (a) subsection (3) does not apply to the company; (b) in any circumstances contemplated in subsection (3), any director or shareholder of the company may apply to the Companies Tribunal, to make a determination contemplated in that subsection “.*
9. It is stated in his founding affidavit, that there was a “tacit agreement” between the two Directors, and that both directors would partake in certain activities as mentioned above. It is obvious that there was no written agreement, if the agreement was tacit.

10. It is averred that the Respondent, did not comply with any of the “tacit clauses” of the agreement.

11. After contemplating the word “tacit agreement” I conclude that it is not possible for me to conclude that the Respondent knew in specific, what she was transgressing. Should the Agreement have been in writing, and the facts given, on how the agreement was specifically transgressed, it would have been clear to me, as to whether, I can grant the order as prayed.

I proceed to make the following order.

Order;

The order as prayed, that the Respondent be removed as Director is NOT granted.

LUCIA GLASS

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Dated this 21 December 2019