

Lewis investor battle escalates

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25 Jul 2016

The battle between shareholder activist Dave Woollam and the directors of Lewis Stores escalated this past week, with the lodging of papers at the High Court in Cape Town on Wednesday that could see the minority shareholder have the directors declared delinquent.



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If successful, the court action will propel shareholder activism in SA to new and more aggressive levels.

Woollam's application is in terms of section 165 of the Companies Act, described by one corporate lawyer as the most potent weapon available to minority shareholders. The act enables a shareholder to ask a court to appoint a third party to investigate a company.

The hundreds of pages of arguments reveal how high the stakes are.

On the one hand, four directors of Lewis Stores are facing charges of delinquency that if confirmed could end their careers. On the other, the accuser, Dave Woollam, faces crippling legal bills if he is unable to persuade the court of the directors' delinquency as well as the possibility of a counter-attack by the four directors.

The four directors are chairman David Nurek, CEO Johan Enslin, chief financial officer Les Davies and audit and risk

committee chairman Hilton Saven.

Woollam's delinquency allegations include lack of corporate governance, multiple breaches of the National Credit Act and the issuance of consolidated annual financial statements that do not conform with international financial reporting standards.

In its papers, the Lewis board says Woollam is motivated by malice and "is in pursuit of a vendetta". It says he is not acting in good faith and that he bought his shares long after he had investigated the company and identified issues. It also accuses him of launching the action in the hope of benefiting from a short position he has in the shares. In early July, the board reported Woollam's shorting to the Financial Services Board, which subsequently launched an inquiry into possible insider trading in Lewis shares between January and July 2015.

Shorting shares is a common trading practice. Lewis shares, in particular, are shorted frequently and, in recent years, are reported to be the second most shorted shares in global emerging markets.

Woollam has previously acknowledged he shorted Lewis shares, but says he has not done so for several months.

He says he has added significantly to his holding in Lewis, believing that if the directors are removed, the company's outlook would considerably improve.

The board says Woollam opted for the section 165 derivative action in a bid to get publicity. If he wanted the directors removed, he could have used section 71 of the Companies Act.

But Woollam says the Lewis board's filings focus on attacking his motives and integrity and fail to tackle the problems his legal action attempts to deal with. He calls on the court to appoint an independent third party to investigate the problems properly.

The board's dismissive treatment of Woollam's concerns are reminiscent of its response at 2015's annual general meeting, when it pooh-poohed Woollam's criticisms of its accounting policies and practices. At that stage, it said its auditors were satisfied the accounts presented the position of the company fairly.

Months later, it implemented most of the changes Woollam had called for.

As for using section 165, Woollam explains it is the only option that does not require the backing of 75% of shareholders.

Source: Business Day

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