




IN THE NORTH GAUTENG HIGH COURT, PRETORIA /ES

(REPUBLIC OF SOUTH AFRICA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
(3) REVISED.	
DATE 5/12/2012	 SIGNATURE

CASE NO: 16173/2012

DELIVERED: 5 Dec 12

IN THE MATTER BETWEEN

THE BODY CORPORATE OF THE FALCONS

APPLICANT

AND

MARTINUS PETRUS RADEMAN

1ST RESPONDENT

HOFFIE HOFFMEYER

2ND RESPONDENT

JOHANNA MARIA PISTORIUS

3RD RESPONDENT

LENA ERSKINE

4TH RESPONDENT

JACQUES HODSON

5TH RESPONDENT

JUDGMENT

MOLEFE, AJ

[1] This is an application concerning the dispute that had arisen between the former trustees and the newly elected trustees of the body corporate of the Falcons, constituted in terms of section 36(6) of the Sectional Title Act 95 of 1986 ("the body corporate") situated at 131 Eastwood Street, Arcadia, Pretoria. The application is made by the former board of trustees who cited themselves as the body corporate. The first to fifth respondents are all newly elected members of the board of trustees of the body corporate.

[2] The applicant seek the following relief:

- "1. Setting aside a resolution taken by the members of the applicant to terminate the appointment of persons as trustees and to appoint new trustees at a special general meeting on 9 February 2012.
2. That the respondents be interdicted from:
 - 2.1 representing themselves to be the elected board of trustees;
 - 2.2 interfering illegally and contrary to the provisions of the Sectional Title Act and the Rules issued thereunder, with the business and management of the applicant in any way or manner.
3. That the respondents be ordered to pay the costs of this application on the attorney and client scale jointly and severally the one paying ~~the other to be absolved.~~
4. That such further and/or relief be granted to the applicant as the High Court may deem fit."

A rider was included by the applicant at the end of prayer 2 "that the respondents be interdicted from representing themselves to be the elected board of trustees until such time as they are duly elected to act as trustee(s)".

[3] For the sake of clarity the applicants are hereinafter referred to as "the former trustees" and the respondents as "the new trustees".

[4] The application is essentially about the management and administration of a sectional title body corporate by its board of trustees. The applicants are the former trustees who were elected on 30 July 2011 and were removed from office by the majority vote on 9 February 2012. They approached the court citing themselves as the body corporate which is a legal *persona*. The former trustees occupied office as the applicant's board of trustees prior to 9 February 2012.

[5] During the tenure of the former trustees, the owners of the body corporate gave notice of the proposed special general meeting which was scheduled for 9 February 2012 by circulating a written notice as required by the Sectional Title Act 95 of 1986 ("the Act") and the Regulations issued under the Act.

~~[6]~~ At the special general meeting on 9 February 2012 it was decided that a vote should be cast for the inclusion in the agenda of an item to remove the former trustees. The vote was successfully carried out and the removal of the trustees

was added to the agenda. A vote was cast and the trustees were removed from office due to "no confidence". The respondents were appointed as the new board of trustees at the same special general meeting on 9 February 2012.

- [7] The newly appointed trustees (the respondents) scheduled an annual general meeting ("AGM") and convened the AGM on 27 March 2012, where the respondents were again elected as the applicant's new board of trustees.
- [8] The former trustees seek that the court should set aside the resolution taken at a special general meeting on 9 February 2012 to add an item to the agenda to remove them from office and to appoint the respondents as trustees as it was irregular. It is their contention that the notice calling for the special general meeting did not deal in any way nor specify the proposed removal of the trustees and as such the removal took place in direct conflict with Management Rule 13(e)¹ and is illegal. The result of this illegality is that the decision to remove the former trustees is to no effect.
- [9] The former trustees also argued that the annual general meeting of 27 March 2012 was not duly convened and that no valid decision could be taken at such meeting. This is based on the former trustees' submissions that the respondents who were "illegally appointed", ostensibly gave such notice to convene the AGM and as such the AGM was not duly called and as such no valid decision could be taken at the AGM as the AGM was not convened by the "*de jure* trustees".

¹ Management Rule 13 forms part of Annexure 8 to the Act

[10] The following two issues are to be determined in this application:

- (a) whether the election of the new trustees at a special general meeting on 9 February 2012 was irregular and should be set aside; if yes
- (b) whether the subsequent election of the new trustees at an annual general meeting on 27 March 2012 rectified the irregularity.

[11] The nub of the application concerns a resolution taken at a special general meeting on 9 February 2012 by the owners, in terms of which it was *inter alia* resolved that the former trustees be removed as trustees of the applicant whereafter the respondents were elected as the new trustees of the applicant. Irrespective of the validity or not of the resolution, the respondents have since been duly elected as the trustees of the applicant at a duly convened annual general meeting held on 27 March 2012. The validity of the resolutions taken at the annual general meeting of 27 March 2012 has not been questioned by the former trustees nor is it the subject-matter of any dispute. Notice of the aforesaid meeting was given to the members of the applicant and the former trustees.

[12] A basic premise of the Sectional Title Act is that the purchaser taking transfer of a unit becomes the owner of his or her section.² It is a matter of fact that a community of sectional owners cannot function properly and efficiently without a rigid organisation to handle the many problems and daily details involved in streamlining the activities of the scheme. Therefore the Sectional Title Act

² s1(1) "owner"

organises the sectional owners in a central management called the corporate body of which a sectional owner automatically becomes a member on registration of a unit in his or her name.³

- [13] Through membership of the body corporate, owners acquire the right to take part in general meetings of the association and to elect trustees who act as executive organ of the association.⁴ Strictly speaking, the body corporate is expected to act in accordance with the statute and the rules in taking decisions on the management and administration of wide aspects of communal living. Thus, the body corporate is a statutory creature: their powers are derived either expressly or by necessary implication from the provisions of the Act and the regulations. The body corporate is expressly empowered to enforce the prescribed rules. Membership to it ensures each sectional owner has a say in the control, management and daily operation of the sectional title scheme.

- [14] The body corporate is described by commentators as a juristic person without an intellect.⁵ It acts through its main organs, namely the owners in general meetings and the trustees. The general meeting sets the standards and policies for the management and administration of the scheme; the trustees on the other hand handle the daily running of the scheme by the execution of resolutions and the exercise of the powers and the performance of the duties of the body corporate.⁶

³ s36(1) of the Sectional Titles Act 95 of 1986

⁴ See annexure 8 rule 4(1) and section 39

⁵ LAWSA 24 (2) 430

⁶ s39

[15] Although all owners automatically act as trustees from the moment of the establishment of the body corporate,⁷ in reality, sectional title development begins with the election of the first board of trustees at the first general meeting. Once the first trustees have been elected, the operational of the development is transferred from the developer to the trustees.

[16] The legal issue to be determined in this case, is whether the trustees in the form of a body corporate have the powers to overrule a decision of the majority (owners) to replace them in a general meeting or add to the agenda an item referring to their competency in office. It is against this background that I turn to consider the relief sought by the applicants.

[17] I will first deal with the special meeting which was held on 9 February 2012. The rules provide for two classes of general meetings, namely annual and special general meetings.⁸ A special meeting is normally convened whenever the trustees think fit upon receipt of a written request by sectional owners entitled to 25% of the total of the quotas of all sections or by mortgage bonds over not less than 25% of the total number of units.⁹ Accordingly, it is still the responsibility of the trustees to organise the meeting with regard to place, time and notice. If they fail to do so within fourteen days, the responsibility passes to the sectional title owners.

⁷ Annexure 8 r4(2)

⁸ Annexure 8 rules 51-53

⁹ Rule 53

The purpose of requiring substantial report is to ensure that special meetings are convened for urgent and important matters only, such as dismissal of the chairperson or a trustee(s) or a motion to raise special levy for unforeseen circumstances.¹⁰

[18] *In casu*, on 14 November 2011, some of the owners of units in the scheme gave notice to the former trustees that they wanted a special general meeting to be convened. The request was made by more than 25% of the owners. The former trustees responded to the request on 28 November 2011 and stated that a special general meeting would be arranged for 30 March 2012. The owners were dissatisfied with the former trustees' response and proceeded to arrange, as owners, the special general meeting for 9 February 2012. It was at this special general meeting that the removal of current trustees due to no confidence point was added to the agenda and the former trustees were removed.

[19] It is my view that the owners in this case were empowered to call the extraordinary special meeting, to pass a vote of no confidence and to remove the trustees. They submitted the notice of the special general meeting to the body corporate which was signed by the statutory prescribed number of owners and I find nothing unlawful about their actions. Annexure 8 rule 13(e) also supports my view, in terms of this rule a trustee may be removed from office before the expiry of his or her term of office by a resolution passed by a simple majority at a special meeting of the body corporate.

¹⁰ LAWSA 24 (2) 440

[20] At a general meeting held on 27 March 2012, the respondents were elected as the new trustees for the second time, clearly showing the wishes of the majority of the owners. The former trustees were notified of the annual general meeting of 27 March 2012 and that an election of new trustees will take place. They did not take any steps to prevent the annual general meeting and have clearly associated themselves with the validity and the result of the election at the annual general meeting. Furthermore, in terms of management rule 11, any act performed by the trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any trustee, be as valid as if such trustee has been appointed.

[21] The issue of the appointment of the new trustees at the annual general meeting of 27 March 2012 has become purely academic. Even if it was found that the resolution taken at the special general meeting on 9 February 2012 was invalid, (which is not the case) it is irrelevant in the face of the annual general meeting held on 27 March 2012. The appointment of the new trustees on 27 March 2012 is therefore valid.

[22] Regarding the issue of punitive costs, it would be unfair to grant a costs order against the applicant ("the body corporate") in the circumstances as the applicant is in reality the former trustees.

[23] I therefore make the following order:

- (a) The application is dismissed.
- (b) The former trustees are ordered to pay the costs of the application.



Ms D S MOLEFE

ACTING JUDGE OF THE NORTH GAUTENG HIGH COURT

16173-2012

HEARD ON: 12 NOVEMBER 2012
FOR THE APPLICANT: ADV J VORSTER
INSTRUCTED BY: E Y STUART INC
FOR THE RESPONDENTS: ADV A G SWART
INSTRUCTED BY: JARVIS JACOBS RAUBENHEIMER INC
