IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

NOT REPORTABLE
Case No: 12886/2014

In the matter between:

THE BODY CORPORATE OF REDBERRY PARK **Applicant**

And

ANDRÈ GRUNDLER **Respondent**

JUDGMENT

Gorven J:

[1] Redberry Park is a scheme administered under the Sectional Titles Act.[1] On 12 March 2009, a rule nisi was issued calling upon the Body Corporate of Redberry Park (the Body Corporate) to show cause why the respondent should not be appointed as administrator in respect of the scheme for a period of 36 months. This rule nisi was confirmed on 18 October 2010.

[1] Sectional Titles Act 95 of 1986.

[2] The order stipulated that the respondent would have all of the powers and duties of the Body Corporate provided for in the Act to the exclusion of the Body Corporate. This pursuant to s 46(3) of the Act which reads as follows:

'The administrator shall, to the exclusion of the body corporate, have the powers and duties of the body corporate or such of those powers and duties as the Court may direct.'

[3] The present application was launched with an affidavit deposed to by the owner of a unit in Redberry Park, Clementine Lindiwe Mfeka. She purported to do so on behalf of the Body Corporate. In the founding affidavit, she averred that she was the chairperson of the trustees of the Body Corporate having been 'elected in a meeting which was held following the regulation of the Sectional Titles Act . . .' The case made out by her for the removal of the respondent is that his term of appointment by the court terminated 36 months after confirmation of the rule nisi on 18 October 2010. Despite his appointment having lapsed, she averred, the respondent 'sought to reinstate himself' by continuing operating on the bank account and taking legal actions against members of the Body Corporate. The order envisages that a board of trustees, which Ms Mfeka says has been elected by the Body Corporate, resumes running the scheme on behalf of the Body Corporate.

[4] The respondent, in answer, put up the court orders relating to his appointment. After the confirmation of the rule nisi in October 2010, two further orders were made. The first was granted on 12 March 2012 and the second on 25 February 2013. The latter appointed the respondent as administrator for 36 months from that date. This means that, absent some other intervening factor, the appointment terminates in February 2016. In reply, Ms Mfeka did not deny that the court orders referred to above were granted and have not been set aside.

[5] Mr Thango, who appeared in support of the application, conceded that the court order in question meant that the application did not make out a case that the respondent was no longer clothed with the authority of an administrator under s 46 of the Act. This means that the averment of Ms Mfeka that the order appointing the respondent as administrator has lapsed through effluxion of time must be rejected. This also means that the Body Corporate remains divested of its powers, and those who claim to have been elected trustees, have no powers in relation to the Body Corporate or the running of the scheme.

[6] Mr Thango went on to submit that the respondent had behaved improperly as administrator. Section 46(4) of the Act entitles a body corporate, a local authority, a judgment creditor of the body corporate or any owner or other person having a registered real right in or over a unit to apply to court to remove from office or to replace an administrator. However, in the present matter, no such case was made out on the papers. The only case made out was that the order appointing the respondent had lapsed. This, too, Mr Thango candidly and correctly conceded. There is therefore no basis to grant the order sought.

[7] The question of costs then arises. Since the application must fail, the costs should follow the result unless there is some other basis to order the respondent to pay the costs. Although submissions were made in argument that the respondent had not acted in the interests of members of the Body Corporate, there were no averments to that effect in the papers. The submissions were therefore without foundation. There is therefore no basis for a costs order against the respondent.

[8] Ms Mfeka, who deposed to the founding and replying affidavits, did not, in law, have the authority to represent the Body Corporate. She did not even aver under oath that the application had been authorised by the Body Corporate. The

Body Corporate is therefore not properly before the court. If a costs order were granted against the named applicant, this would mean that the Body Corporate would be liable to pay costs. This, in turn, means that the costs would be funded by all the members of the Body Corporate by way of levies, whether general or special. I can see no basis on which members of the Body Corporate should be saddled with any costs, whether on a party and party basis or as between attorney and client. The appropriate costs order is therefore that Ms Mfeka should pay the costs on the scale as between attorney and client.

[9] There is clearly no basis for granting the relief sought. There is also clearly no basis for ordering anyone other than the deponent to pay the costs of the application. There is also no basis on which the members of the Body Corporate should be liable for the attorney and client portion of the costs.

[10] In the result:

1 The application is dismissed.

2 The deponent to the founding and replying affidavits, Clementine Lindiwe Mfeka, is ordered to pay the costs of the application on the scale as between attorney and client.

T R GORVEN

DATE OF HEARING:	2 June 2015
DATE OF JUDGMENT:	2 June 2015
FOR THE APPLICANT:	P Jorgensen, instructed by ERASMUS VAN HEERDEN ATTORNEYS.
FOR THE RESPONDENTS:	K Thango, instructed by THANDI SIMA AND ASSOCIATES.