

SECTIONAL SCHEMES: WHEN OLD AND NEW RULES CLASH

Royal Palm Body Corporate v Vahlati Investments (Pty) Ltd and Another (7214/2020P) [2021] ZAKZPHC 28 (1 June 2021)

When the Sectional Title Schemes Management Act came into force in 2016, it changed large parts of the existing Sectional Titles Act. It brought with it, amongst other things, new sets of rules that apply to schemes. An active legal debate exists on the question whether the new rules automatically replaced the existing rules of schemes that existed prior to the new Act's existence. This judgment dealt with the consequences of the difference between the new and old rules pertaining to the developer's right to vote at an AGM.

It does not address all the issues and consequences of this legal and practical problem at all. Visit our [Sectional Title Headquarter](#) for more information.

The Judgment can be viewed [here](#).

FACTS

Vahlati Investments (Pty) Ltd was an owner of a unit in the Royal Palm sectional title scheme. It was successful in a dispute that it referred to the Community Schemes Ombud Service (that was established in terms of the Community Schemes Ombud Services Act 9 of 2011 ("CSOSA")) for resolution. The Adjudicator at the Ombud's office issued an order to the effect that, amongst other things: (i) the body corporate's annual general meeting (AGM) that was held on 25 June 2019 was void; and (ii) that the management rule 57(2)(c) of the scheme was invalid because it did not comply with the provisions of the Sectional Titles Schemes Management Act 8 of 2011 (the "STSMA" or "the new Act").

The body corporate appealed and argued amongst other things that: (i) it was wrong to declare the AGM of 25 June 2019 void and invalid simply because the developer's share had been considered when the quorum was established; and (ii) it was incorrect to declare the scheme's management rule 57(2)(c) invalid and of no force and effect because it did not comply with the provisions of the STSMA and its regulations. This was because the rule was valid under the old Sectional Titles Act of 95 of 1986 ("the old Act"), which had been replaced by the STSMA in 2016.

The law

The old

The Royal Palm sectional title scheme was incorporated in terms of the old Act. Section 35(2) of the old Act made provision for the creation of management rules for the body corporate (the 1988 Management Rules), which may be added to, amended or repealed from time to time by the body corporate. The body corporate adopted the 1988 Management Rules in terms of the old Act.

Rule 57(1) of the 1988 Management Rules provides that 'no business shall be transacted at any general meeting unless a quorum of persons is present...at the time when the meeting proceeds to business', and rule 57(2)(c) of the old rules provides that a quorum at a general meeting shall be the number of owners holding at least 20% of the votes.

The new

In 2011, Parliament adopted the STSMA which commenced in October 2016. Section 20 of the new Act amended

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certain provisions of the old Act. Importantly, **section 10(1)** of the new Act provides that a scheme “must as from the date of the establishment of the body corporate be regulated and managed, subject to the provisions of this Act, by means of rules.” Thus, like the old Act, the new Act of 2011 requires the schemes to be managed by means of management rules.

Section 10(12) of the new Act of 2011 provides that **any rules made under the old Act are deemed to have been made under the new Act**. In terms of regulation 6(1) issued under the new Act, it is provided that:

“Rules, as prescribed and as amended by a body corporate in accordance with section 10 of the Act, must be considered to be and interpreted as laws made by and for the body corporate of that scheme.”

Section 10 of the new Act of 2011 thus preserves the management rules adopted under the 1986 Act, as management rules under the new Act of 2011.

Rule 19(1) of the Management Rules under the new regulations, also requires a quorum for constituting a valid AGM. Rule 19(2)(b) provides that *“a quorum for a general meeting is constituted by members entitled to vote and holding one third of the total votes of members in value ...”, provided that “in calculating the value of votes required to constitute a quorum, the value of votes of the developer must not be taken into account”*.

Further of relevance in the matter is the definition of a developer. In section 1 of the new Act, it is defined as a *“person who is the registered owner of land ... on which is situated or to be erected a building or buildings which he or she has divided or proposes to divide into two or more sections in terms of a scheme ...”*.

HELD

Analysis of the law

- It is apparent from the reading of section 10(12) of the new Act that the management rules adopted under the old Act were not repealed, but preserved as rules under the new Act. These rules continue to be valid unless they are substituted, added to, amended or repealed by resolution of the body corporate in terms of section 10(2)(a) of the new Act.
- The new regulations established an alternative set of management rules for body corporates, without repealing the management rules created under the old Act (and which are preserved by section 10 of the new Act, as stated).
- Consequently, there are two separate sets of management rules existing parallel to each other.
- It is evident that the provisions of the two sets of management rules conflict with regard to: (i) a quorum that should be present at a general meeting and (ii) the categories of members who are entitled to vote at the meeting. Under the old Act and in terms of rule 57(2)(c), the quorum at a general meeting is constituted by 20% of the votes by representatives who are entitled to vote, and developers may vote if they are owners of units in the scheme. On the other hand, in terms of rule 19(2)(b) of the management rules under the new regulations, the quorum at a general meeting is constituted by one third of the votes by representatives who are entitled to vote. The developer (as defined) is specifically excluded from voting at the general meeting.

What was the effect of the conflicting rules on the decision of the adjudicator?

- At the AGM of 25 June 2019, 44.74% of the persons holding voting rights were present. This number exceeded the threshold of 20% in terms of the management rules prescribed under the old Act of 1986 and

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exceeded one third prescribed by the management rules under the regulations in the new Act.

- But the vote of the developer (Gateway Royal Palm (Pty) Ltd) at the 2019 AGM constituted 36% of the 44.74% voting representatives at the meeting. At the time, the developer was no longer the owner of the land (on which the scheme is situated), but one of the owners of sections in the scheme.
- Faced with the conflicting provisions of the legislation, the adjudicator ruled that rule 57(2)(c) of the Management Rules under the old regulations had to be declared invalid and of no force and effect as it did not comply with the new Act of 2011 and that the management rules were to be brought in line with the new legislation and the implementation of any resolutions passed at the general meeting of 25 June 2019 was suspended.
- In determining the legality of the order of the adjudicator, the principle of interpretation of statutes are important.

Interpretation of the law

- Section 12(1) of the Interpretation Act provides that:
"Where a law repeals and re-enacts with or without modifications, any provision of a former law, references in any other law to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted."
- This provision of the Interpretation Act does not squarely resolve the conflict in the current case, because although the new Act repealed the old Act of 1986, **section 10 of the new Act of 2011 preserves the management rules of the old Act of 1986 and renders them to operate parallel with the management rules under the new Act of 2011.**
- When resolving an inconsistency between two existing statutes, our law dictates that where a later statute is irreconcilable with an earlier one, the earlier must be regarded as having been impliedly repealed. (There is an exception to this principle, but it is not relevant here.)
- Therefore, the adjudicator was correct in finding that rule 57(2)(c) of the old management rules was repealed by the provisions of the new management rules created by the new regulations.

Was the adjudicator correct in excluding the vote of the developer at the AGM?

- The definition of a developer conveys the understanding that it is a person who is the registered owner of land. Giving the words their ordinary grammatical meaning, the definition of the developer in the new Act of 2011 pertains to someone who is the owner of the land which has been converted into a sectional title scheme. The provision is coached in the present tense, not in the past tense. This leads to the conclusion that the developer in this matter was no longer the "developer" for purposes of the definition in the STSMA, at the time of the AGM. It was an owner and therefore entitled to vote at the annual general meeting in accordance with the provisions that applies to owners.
- The developer of the Royal Palms sectional title scheme developed the land some years ago. It no longer owns the land, but owns units in the scheme which gives it a 36% voting share.
- The adjudicator therefore erred in excluding the 36% votes of the developer. This error was based on his

failure to determine the definition of a developer in section 1 of the new Act of 2011. This leads to the conclusion that the general meeting of the body corporate of 25 June 2019 was quorate.

CONCLUSION

In summary:

1. Rule 57(2)(c) of the old management rules was impliedly repealed by Rule 19(2)(b) of the new management rules under the regulations of the new Act.
2. The developer as owner of sections in the scheme was entitled to be considered for purposes of the quorum and to vote at the AGM.
3. The general meeting was quorate.