ACCESS TO FINANCIAL RECORDS OF A BODY CORPORATE: IS A PAIA APPLICATION REQUIRED?

Montrose Mews Body Corporate v Moela (2023/019308) [2024] ZAGPJHC 198 (7 March 2024)

The Sectional Titles Schemes Management Act grants owners various rights to access records relating to a scheme's management and administration. This enhances transparency and participation by owners, but is often not a smooth-sailing process. Frequently owners report that they are advised to first apply in terms of PAIA (the Promotion of Access to Information Act) before the request may legally be considered by the body corporate. Is this correct? No, for reasons explained in this judgment.

The Summary can be viewed [here]

FACTS

This matter deals with a request from an owner in the Montrose Mews sectional title scheme, Ms. Mokoka, for access to certain bank statements reflecting the state of Montrose Mews' administrative fund, as well as a statement of the fund's expenditure for a certain period. This was apparently motivated by Ms. Mokoka's suspicion that an irregular loan had been made to the body corporate and that the auditor's report was not complete.

On receipt of Ms. Mokoka's request, Montrose Mews referred her to the PAIA manual it had prepared. It took the view that the Promotion of Access to Information Act 2 of 2000 ('PAIA') applies to any request made by a member for information held by the body corporate. Montrose Mews undertook that any request made under PAIA would not be unreasonably refused.

Ms. Mokoka did not agree and considered that Montrose Mews' reliance on PAIA was no more than a tactic meant to conceal information to which she was entitled under the Management Rules (contained in the regulations to the Sectional Titles Schemes Management Act 8 of 2011 ('the STSMA')).

She accordingly approached the Community Schemes Ombud for assistance. Her application was successful and the adjudicator directed Montrose Mews to hand certain bank statements to her.

Montrose Mews took issue with the order, arguing that Ms. Mokoka's entitlement to see the bank statements is not regulated only by the STSMA, but primarily by PAIA. Hence its appeal to the High Court.

HELD

What are the "books of account" (referred to in Management Rule 26) that a member of a body corporate has the right to view?

- Rule 26 directs that a body corporate must maintain "proper books of account". Management Rule 26(2) requires of a body corporate, "on application" by any member, to "make all or any of [its] books of account and records available for inspection and copying". This is the provision which allows Ms. Mokoka to have access to certain records.
- A "book of account" is not defined in the STSMA or its regulations. It should therefore be understood in the context of the STSMA and relevant case law.
- Case law shows that the reference to "a book of account" is not literally to a ledger which must be always

open to inspection. The reference is rather to a record or set of records that shows transactions entered into that can reasonably be expected to be recorded, as dictated in a "particular trade or calling". (ii) For a sectional title body corporate, these records should include the records listed of section 3(1)(a) and (b). The latter requires of a body corporate to establish and maintain an administrative fund (out of which operating expenses are met) as well as a reserve fund "in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of common property". (This is also confirmed in the wording of Management Rule 26(1)(b) which provides that the body corporate must "keep separate books of account and bank accounts for its administrative and reserve funds …".).)

- Statements reflecting the state of each of these funds, the deposits into and withdrawals from, are accordingly the "books of account" that Montrose Mews is required to keep. As to the content of these records, Management Rule 26 (1)(a)(iv) requires that these books of account must contain such "information to allow members to assess the body corporate's financial situation".
- It is in terms of these provisions that Ms. Mokoka is entitled to view the financial records.

Was an application under PAIA required?

- The manifest purpose of PAIA is not to displace other statutes which provide for defined rights of access to information to individuals who are embedded in specific legal relationships.
- PAIA was therefore not applicable to Ms. Mokoka's request to see the bank statements. PAIA is rather intended to apply where a person seeking information from a private body would otherwise have no right to it. To hold otherwise would lead to absurd results, mostly by imposing an additional burden on the exercise of existing rights of access to information.

Limitations on the right to have access to financial information

- The fact that Ms. Mokoka is entitled to the information by virtue of Management Rule 26, does not mean that she is entitled to unrestricted access to the books of account. Her right of access to the bank statements springs from the scheme's statutory obligation to afford her access to its books of account, but the right is circumscribed by Management Rule 26(1)(a)(iv) which states that the *purpose* for keeping the books of account is to ensure that members have access to information which would enable them to "assess the body corporate's financial situation …".
- It follows that, where the documents to which Ms. Mokoka has a right of access contain more information than is necessary to achieve that end, the information non needed by her may be redacted from them.
- This permits Montrose Mews to protect other confidential information that may be contained in the bank statements, as long as sight of that information is not necessary to allow Ms. Mokoka to assess Montrose Mews' financial situation.
- Whether and to what extent the information may be redacted is primarily a matter for the body corporate to decide on, subject to Ms. Mokoka's right to challenge the redactions before the Community Schemes Ombud.

The appeal accordingly failed.