BODY CORPORATE TERMINATING ITS AGREEMENT WITH A MANAGING AGENT

Casablanca Body Corporate v Astrodon (Pty) Ltd and Others (2022/041580) [2025] ZAGPJHC 160 (24 February 2025)

This judgment deals with the hurdles that the trustees of a body corporate had to overcome in order to cancel their agreement with a managing agent. The outcome was successful for the trustees, based on well-known principles relating to the cancellation of agreements. However, the position is slightly different under the Sectional Titles Schemes Management Act, which was passed after the parties in this matter had contracted with each other, and we highlight these in the below judgment summary.

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

FACTS

In January 2017, body corporate of the Casablanca sectional title scheme, duly authorised by its trustees, and Astrodon (Pty) Ltd (Ástrodon') entered into a management agreement.

Clause 5 of the management agreement records that the agreement would endure for one calendar year ('initial period'), whereafter it would automatically renew for further calendar years ("renewal period"), unless written notice of termination is given by either party three calendar months before the date that the management agreement is set to be renewed automatically. In terms of clause 5.3.1, the agreement may further be cancelled by the body corporate on two months' notice to Astrodon, provided the cancellation is supported by a special resolution passed by the owners. Clause 6.1 provides that the agreement may be cancelled if the other party breaches any provision or term of the agreement and fails to remedy the breach within fourteen days of written notice requiring it to do so.

The relationship between the body corporate and the Astrodon broke down and, in July 2021, the trustees called a Special General Meeting ('SGM') and called for the owners to vote on the termination of the agreement with Astrodon and to appoint a new managing agent. This was opposed by Astrodon, but the SGM went ahead and a unanimous vote was obtained that an alternate service provider should replace Astrodon as the managing agent. Astrodon, however contended that the Management Agreement is valid until 31 January 2022.

After an inconclusive effort to resolve the matter with the assistance of the Community Schemes Ombud Services, a further SGM was convened in February 2022, and again the members of the body corporate unanimously voted to cancel the management meeting with Astrodon.

Astrodon denied that the agreement had come to an end in the time frames alleged by the body corporate, and the latter approached the court for assistance.

Astrodon raised two defences *in limine* – the main point being that the Court had no jurisdiction because the agreement provided that the parties would first refer any dispute to arbitration,. On the merits, it argued that the agreement did not terminate after the SGM, but would only terminate at the expiry of the calendar year in which the resolution was passed at the SGM.

HELD

The points in limine

- Section 6(1) of the Arbitration Act reads as follows:

  "If any party to an arbitration agreement commences any legal proceedings in any court…against any other party to the agreement in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time after entering appearance but before delivering any pleadings or taking other steps in the proceedings, apply to that court for a stay of such proceedings."

- Accordingly, an arbitration agreement is not an automatic bar to legal proceedings in respect of disputes covered by the agreement. If, however, a party to an arbitration agreement commences any legal proceedings in any court against any other party to the agreement in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time after entering appearance, but before delivering any pleadings or taking any other steps in the proceedings, apply to that Court, in terms of s 6 (1) of the Arbitration Act, for a stay of such proceedings. In the absence of an order for the stay of legal proceedings, such proceedings continue. "By entering into an agreement of settlement which disposed of the application so far as the merits were concerned, it took a further step in the proceedings and thus precluded itself from making an application for a stay".

- Astrodon has misconceived the legal position. The fact that no application had been instituted by it for a stay of proceedings prior to the filing of its answering affidavit, is fatal to its point *in limine*. By filing an answering affidavit, it took a further step in the proceedings.

- Accordingly, Astrodon, is precluded itself from making an application for a stay.

Merits

- In opposing this application, Astrodon asserted that it had a lien over the body corporate's account for payment of outstanding fees, and that the management agreement is extant.

- Regarding the lien, as Astrodon has failed to establish how much is due and payable to it for services rendered, this cannot be a bar to the relief that the body corporate seeks. In any event, if such a debt exists, it has various legal remedies by which to collect it from the body corporate.

- It was further common cause that the agreement could be cancelled by the body corporate on two months' notice to Astrodon, provided the cancellation is supported by a special resolution passed by the owners. This was indeed done on two occasions. Astrodon nonetheless argued that the management agreement remained extant until the end of the current calendar year.

- The body corporate is correct in contending that in terms of clause 5.1 of the agreement, no resolution was required for the termination of the agreement by effluxion of time, all that was required is notice. Thus the body corporate's letter stating that it wished to cancel the contract in August 2021 was sufficient. Astrodon cannot under the circumstances legitimately assert that the agreement remained extant.

CONCLUSION COMMENT

The application by the body corporate succeeded. Astrodon is ordered to hand over access to all accounts and provide records of its financial management.

COMMENT

Note that up until 7 October 2016, managing agents could enter into management agreements with body corporates for a one year period. At the end of this initial period, the agreement would automatically renew from year to year (Prescribed Management Rule ('PMR') 46 to the Sectional Titles Act 95 of 1986). When the Sectional Titles Schemes Management Act 8 of 2011 became operational on 7 October 2016, PMR 28 therein replaced the previous PMR 46.

PMR 28 states that a management agreement may be for a maximum period of 3 years. The rule does not provide for any automatic renewal and provides for a mechanism to terminate the agreement-despite any contrary provision in the management agreement. PMR 28(7) provides as follows:

"A management agreement may not endure for a period exceeding 3 years and may be cancelled, without liability or penalty, despite any provision of the management agreement or other agreement to the contrary – by the body corporate on two months' notice, if the cancellation is first approved by a special resolution passed at a general meeting…".