

SECTIONAL TITLE SCHEME ADMIN CHAOS: WHAT A COURT WILL CONSIDER BEFORE APPOINTING AN ADMINISTRATOR

The Body Corporate of Stamford Hall v Molapo and Another (A3086/2021;9568/2020) [2022] ZAGPJHC 498 (3 August 2022)

Sectional title management law is, presently, premised on the basis that proper management and administration of a scheme is best achieved by putting owners in the scheme in charge. Owners therefore choose trustees who, in turn, may appoint managing agents to assist with this substantial responsibility. The premise is further that an owner will take care in these appointments because it affects his own investment in the scheme. A court will therefore not easily interfere in this legislative 'self-management' model. But, as this judgment illustrates, where the scheme management is in such disarray that the interests of the owners therein are at risk, a court will interfere and put the management in the hands of an outsider, an administrator.

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

FACTS

Mr Molapo was the owner of a unit in the Stamford Hall sectional title scheme. He approached the Magistrate's Court for an order appointing an administrator for the scheme, as provided for in section 16 of the Sectional Titles Schemes Management Act ("the STSMA").

According to him this was necessary because the management of the scheme was in serious disarray. There was no duly constituted board of trustees in existence as no annual general meeting had been held for at least five years prior to when the application was launched (July 2020). Due to the apparent absence of duly appointed trustees, the body corporate had been non-functional and non-compliant with the STSMA.

In addition, it appeared that there was no bank account opened and operated in the name of the body corporate, as prescribed by law, and that owners' levy payments were deposited into an account with the name Sechaba Building ("Sechaba"). There were no financial reporting processes in place nor were there annual financial statements or audits conducted. No annual general meeting had been called for a period in excess of 5 years. The collection of levies was being handled by a Ms Mafalo, the owner of a unit. Ms Mafalo also managed the finances of the body corporate and refused to give other owners access to the financial records. No repairs or maintenance of the building and common property was being done and the building was deteriorating. Statutory documentation, such as proof of the building being insured, scheme governance documentation (including rules, regulations, articles, constitution, terms and conditions or other provisions that control the administration or occupation of private areas and common areas); minutes of meetings; and annual audited financial accounts were not at hand.

The body corporate purported to oppose the application in the Magistrates' Court on the strength of a document which opened with the line 'we the members ... conclude'. According to the document, what was concluded by the members is that the application by Mr Molapo was to be opposed. It appears that the intention of this document was to constitute a resolution of members authorising the valid and lawful opposition of Mr Molapo's application. However, the list of persons who signed the document and purported to conclude that the application must be opposed, included a vast number of tenants. Only members of the body corporate were entitled to vote at annual general meetings (a member being an owner of a unit in the scheme); tenants therefore did not have voting rights. The trustee(s) of the body corporate could therefore not purport to rely on this document.

There was also a purported resolution of trustees, signed by three trustees. The difficulty posed in this regard is that Ms Mafalo stated in an affidavit filed in the matter, that there were in fact five trustees. Ms Mafalo did not sign the

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trustee resolution and there was no indication why the fifth trustee did not sign it or whether he/she even received the document.

[“Purported trustees”, because Mr Molapo alleged that there were in fact no elected trustees. In terms of Management Rule 7(4) in the STSMA regulations, trustees must be elected at annual general meetings.]

The Magistrate’s Court found in favour of Mr Molapo and the body corporate appealed.

HELD

General regarding application for appointment of an administrator

- Relief sought in terms of section 16 of the STSMA has been described as the exercising of a ‘drastic power’, because a court takes the control from the scheme out of the hands of its members and chosen trustees and places it in the hands of a third party, the administrator. Hence, the exercise of the discretion to make such an order must be exercised judicially based on the circumstances before the court in each particular matter.
- Where a duly constituted board of trustees is in existence, an order for the appointment of an administrator should not be granted unless it is established that there have been breaches of Sections 3, 4 and 8 of the STSMA and, in addition to the breaches, that substantial prejudice will be suffered by the owners of units if the appointment of an administrator is not granted.

The duties and obligations of the body corporate and its elected trustees under sections 3,4 and 8 of the STSMA

- The body corporate must establish and maintain an administrative fund which is reasonably sufficient to cover the estimated annual operating costs to be incurred by the body corporate which is to include payment of rates, taxes and charges for the supply of water and electricity and insurance premiums relating to the building or land.
- It must open and operate an account with a registered financial institution in the name of the body corporate and it must ensure that the building is insured.
- It must not only ensure that the common property is kept in a state of good and serviceable repair, but also control, manage and administer the common property for the benefit of all owners.
- It is obliged to hold annual general meetings, for which a written notice must be provided, with the notice to be accompanied by, at least, the meeting’s agenda and a copy of any document to be discussed at the meeting. The trustees must compile minutes, with the minutes to set out the date, time and place of the meeting, who attended the meeting, the text of all resolutions and the results of the voting on motions.

Evaluation

- Assuming that the elected trustees remain in office in the absence of an annual general meeting, it still does not assist the body corporate in this matter. This is because it had not provided any proof that, for the last five years, annual general meetings had been called, agendas’ distributed, quorate meetings held and resolutions taken and recorded, as required by the STSMA and the Management Rules.
- In addition, in the absence of having held any AGMs, compliance with Management Rule 27(2)(a) was absent.

- The body corporate's allegations relating to the election of trustees were vague. They were also unsubstantiated by evidence it should have had in its possession.
- It was clear that there were serious issues of mismanagement and that the appointment of an administrator was necessary, otherwise there could be harm to the interests of all owners.

CONCLUSION

The body corporate's appeal against the magistrate's court decision that an administrator should be appointed therefore failed.