

TRUSTEES' GOOD FAITH OBLIGATION: LEAVE PERSONAL BATTLES ASIDE

Body Corporate of Sunnyside Gardens v Perreira ZAGPPHC 1960 (28 November 2023)

Making oneself available as a trustee in a sectional title scheme is not without challenges. It obliges the appointed person to, amongst other things, act in good faith, this including the need to keep personal disputes separate from the matters to which the trustees are by law required to attend. Take this November 2023 judgment which tells the story of a chairman and trustee whose dislike of a co-trustee landed the body corporate with a R50 000 defamation liability after the two published unsupported allegations about the other trustee to all the trustees and managing agent.

The Judgment can be viewed [here](#)

FACTS

Mr Perreira, 67 years old, previously a police reservist and involved in community security and training, including teaching primary school children to act responsibly at traffic lights and adhere to laws, owns a sectional title unit in Sunnyside Gardens and is a member of its body corporate. At the time of the present matter, he was also a trustee of the body corporate. He has lived in this scheme for 15 years already.

In November 2015 (whilst he was still a trustee) he received a letter from the attorneys of the body corporate alleging that complaints have been received to the tune that he was causing a nuisance to other residents; was illegally running a carpentry business from his garage and unlawfully using the common property electricity to sustain such business. In the letter Perreira was reminded of the duties of owners of units and there was a demand that he become compliant. It was stated that the trustees would no longer tolerate any nuisance from him and that non-compliance would result in their approaching a Court for relief. Perreira was accordingly instructed immediately to stop being a nuisance to other owners and occupants; cease running his business from his garage; and cease using the electricity of the common property to sustain such business. The letter was also sent to all the other trustees as well as the managing agent. Perreira was deeply offended by the letter. He responded to the attorneys, denied the allegations and requested an apology. He received no reply. (The chairperson of the trustees, K, is an employee at the attorneys, performing the functions of a debt collector. He did not reside in the scheme.)

According to Perreira, a neighbour alerted him to the fact that the letter was also placed on a notice board in the scheme's foyer (although Perreira did not lead evidence in this regard). This prompted Perreira to consult with his attorney and the latter then sent a letter to the body corporate attorneys regarding this issue. Still no response was received, resulting in the issuing of a summons against the body corporate for damages based on defamation. Perreira advised that, having been elected to a position of trust (as trustee) and being on the subcommittee dealing with rules and maintenance, these allegations were insulting. He felt hurt, slandered, embarrassed and understood the accusation of "illegitimately utilising the electricity of the common property" to be calling him a thief – stealing from the body corporate. Perreira believed that anyone who read the letter would get the impression that he is a transgressor of rules and a thief. Perreira further advised that, as trustee, he was neither consulted nor aware of a complaint having been made against him, nor of the instruction to the attorneys to send him the letter. Neither was there a resolution of the trustees authorising the letter. According to Perreira, K was not empowered to make such a decision on his own on behalf of the body corporate.

The magistrate found that the letter - which was sent to all the trustees and the managing agent - was defamatory and awarded Perreira R50 000 in damages. The magistrate also found that whilst Perreira was a good witness, the two witnesses for the body corporate (K, the chairman and one L, a co-trustee) were at times unreliable, with aspects of

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their testimony being nonsensical or improbable. It was evident, moreover, that there was a history of conflict between Perreira and the two body corporate witnesses (K and L).

HELD

In our law:

- To succeed in a claim for defamation in our law, a plaintiff must allege and prove (i) publication of (ii) a defamatory statement. Publication of a defamatory statement is considered *prima facie* wrongful (i.e., wrongful at first glance) and a defendant will have to prove facts which dispel wrongfulness, if he can. *Animus iniuriandi* is further presumed - in other words, it is accepted in such circumstances that there was an intent to defame with knowledge of the wrongfulness thereof.

Was the Magistrate correct in finding that the letter was defamatory?

- The letter was indeed defamatory of Perreira, as the Magistrate had concluded: In its use of the words 'you are causing ...' and 'you must stop / immediately cease ...', the letter clearly indicated that Perreira was both accused *and* found guilty of wrongdoing. The letter conveyed that he is a nuisance, does not abide the rules and is untruthful and dishonest in his misuse of the electricity of the common property to sustain his own business from his garage. The letter was not merely a notification to inform Perreira of complaints that have been received and provide an opportunity to respond thereto, as K and L argued on behalf of the body corporate. The inference was therefore that it was the intention of the responsible trustees to defame Perreira and injure his reputation amongst the trustees and the managing agent.

Rebutting the presumption of wrongfulness

- As mentioned above, because the statement is defamatory, it is presumed also to be unlawful and wrongful, unless the person who made the statement can rebut this presumption by showing that, on a balance of probabilities, the statement was justified because it was the truth and in the public benefit (or otherwise that a qualified privilege existed).
- In the present matter there was no evidence that Perreira had indeed contravened the conduct rules as alleged in the letter. There was also no record of a complaint that was received by the trustees from any owner, nor an investigation into the merits of the alleged transgression. It was uncertain how Perreira's garage was inspected and on which basis K stated that he saw work benches in Perreira's garage. And to add fuel to the fire, there was no plug point on the common property from which Perreira could 'steal' the electricity, as alleged by the trustees. (Perreira advised, in addition, that should he have transgressed any of the rules, the correct approach would have been an inspection whereafter a warning would follow if he was found "guilty".)

Was there "publication" of the defamatory statement?

- The Court hearing the appeal agreed with the magistrate on this point too. There was communication to all the trustees as well as the managing agent. A body corporate is not somehow immune from liability for defamation perpetrated within its own ranks, or within the ranks of its governing body. In any event, apart from the publication to the trustees, there was also publication to the managing agent.

CONCLUSION

The appeal accordingly had to fail.

A NOTE TO TAKE HOME ...

Trustees of a body corporate are duty bound to act in good faith and cannot advance their personal agendas in their capacities as trustees.