

A TRUSTEE RESIGNS & NEW LETTERS OF AUTHORITY NOT YET ISSUED: CAN THE REMAINING TRUSTEES PASS A RESOLUTION?

Die Orffer Landgoed (Pty) Ltd v Orffer N.O and Others (17494/2024) [2025] ZAWCHC 14

Case law repeatedly emphasises the importance of passing appropriate resolutions when a transaction is to be concluded on behalf of a trust. A question that has not yet been conclusively answered by our courts, is what the consequences are if one trustee resigns and the remaining trustees pass a resolution to sell a property prior to the Master issuing new Letters of Authority. The judgment below deals with one scenario in which the resolution passed in these circumstances is regarded as valid authority for transacting on behalf of the trust.

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

FACTS

Die Offer Landgoed (Pty) Ltd ('the Landgoed') had made funds available to the Bloubank Boerdery Trust ("the Trust") for its farming activities. However, after Covid and extensive damages to crops after hail storms, the Trust's financials were dire. By December 2022, it owed the Landgoed in excess of R17 million.

The parties then reached agreement that the Trust would pass a Special Power of Attorney ('SPA') in favour of the Landgoed, empowering it to sell the Trust's farm property and to use the proceeds to settle the outstanding debt. The SPA would subsist until such time as the farm is sold and transferred, and the full purchase price is paid and distributed in accordance with the terms of the SPA.

Prior to signing the SPA, the Trust's two trustees passed a resolution to this effect, and appointed one of them to sign the SPA. Both documents were signed on the same day, 14 December 2025.

The Landgoed sold the Trust's farm, by virtue of the SPA, in May 2024. When it was asked to provide the original document (for purposes of passing transfer in the Deeds Office), the Landgoed realised that it had misplaced the original. A request to the Trust to assist it with the necessary to procure a duplicate original of the SPA, was unsuccessful. The Trust communicated its view that the SPA was invalid and even if it was valid, that it had been revoked. (Regarding the invalidity, the Trust advised that it had three trustees initially, in respect of whom the Master of the High Court ('the Master') had issued Letters of Authority. The independent trustee was Boshoff Visser Trustdienste (Pty) Ltd, represented by AJ Stofberg. The latter had however resigned as a trustee during 2019, by notification in writing to the remaining two trustees and to the Master. Eighteen months later, the Master responded, acknowledging the resignation, and requesting supplementary information so that it can issue new Letters of Authority to the remaining/new trustees. No-one attended to this. However, they argued, until amended Letters of Authority were issued, the resignation was not valid. Accordingly, the resolution passed by the two trustees to grant the SPA, was also invalid.)

The Landgoed therefore approached the court for an order declaring Landgoed's copy of the SPA an original, or otherwise obliging the Trust to do the necessary for the issuance of a duplicate original SPA. The Trust opposed the application, the main argument being the invalidity of the trust's resolution passed in December 2022. It argued, amongst other things, that resignation as a trustee is effective from the date that the Master acknowledges the notice of resignation.

HELD

Lapsing of the principal agreement

- Section 21 of the Trust Property Control Act (the 'TPCA') establishes a general power of resignation of a trustee. It stipulates that '[w]hether or not a trust instrument provides for the trustee's resignation, a trustee may resign by notice in writing to the Master and the ascertained beneficiaries who have legal capacity, or to the tutors or curators of the beneficiaries of the Trust under tutorship or curatorship.'
- The entitlement to resign is not subject to the Masters or the Court's permission. A trustee may resign, regardless of whether the trust instrument provides therefor.
- Section 21 is a change from the common law, which provides that a trustee cannot resign from that position without good reason and a court's consent, unless the trust instrument provided otherwise. This 'strict' approach follows from the consideration that a trustee willingly assumed office from which fiduciary obligations arose. Accordingly, he or she cannot resign at any time and regardless of the needs of the trust and the interests of the beneficiaries. If resignation would prejudice the trust, the policy of giving effect to validly constituted trusts must at least temporarily prevail, at least until a suitable successor is available (thus overriding considerations of private convenience of the relevant trustee).
- In the present matter, the trust deed provides that a trustee may resign by giving written notice to the other trustees. Mr Stofberg adhered hereto.
- The trust's argument that the provisions in section 21 for resignation, had to be complied with for the resignation to be valid, is not supported by precedent or academic interpretation.
- Section 21 does not establish a rule which must be complied with for resignation; rather it is a method by which a trustee can resign where a trust deed makes no provision for resignation.

When does the resignation take effect?

- Section 21 of the TPCA is a progression beyond the common law in that a trustee has the liberty to resign without providing justification for relinquishing his or her fiduciary obligations.
- There appears to be no safeguards to prevent arbitrary resignations of trustees. Nonetheless, it cannot be so that it is competent for a trustee to give up his or her fiduciary duty by simply electing not to fulfil them. Fiduciary obligations must override private convenience in circumstances where no cogent reasons have been advanced by a resigning trustee.
- In *Investec v Adriaanse* the court determined, in the circumstances of that matter, that there was no limitation on remaining trustees' powers in respect of execution of certain documents, after the resignation of one trustee. This perspective is instructive on the Courts' approach. It is the trustees' primary obligation to act in accordance with the dictates of the trust deed - but each matter must be determined on its own merits, bearing in mind that there may be practical constraints.
- In the present matter, Mr Stofberg had already resigned in 2019 and by 2024, no new letters of authority were issued.
- A 2017 Chief Master's Directive may be informative and could provide valuable insights into the relationship between Trust instruments and the TPCA. In this regard, The Chief Master's Directive 2 of 2017, dealing with various Trust matters stipulated as follows regarding the resignation of a Trustee:

'Procedures for the resignation of a Trustee may be contained in the Trust instrument in which instance such procedures should be adhered to. Section 21 of the Trust Property Control Act does not exclude or override the provisions of a Trust instrument which allow a Trustee to resign... Where the Trust instrument fails to make provision for the resignation of a Trustee the provisions of section 21 of the Trust Property Control Act, 1988 will apply.'

In terms of section 21 of the Trust Property Control Act, 1988 a Trustee must give notice of his or her resignation in writing to the Master and to the ascertained beneficiaries. The Courts have not, on the date of this directive, had the opportunity to decide what ascertained beneficiaries in the context of section 21 of the Act means, Masters must therefore give the words their normal meaning, namely beneficiaries with vested rights that are known to the Trustees.

The Trust Property Control Act, 1988 does not contain any provision authorising the Master to refuse to accept the resignation of the Trustee. Masters must note that upon his or her resignation a Trustee is not absolved from any liability incurred while he or she was a Trustee.'

- Notwithstanding the general principle that a trustee cannot just 'abandon ship' after resigning (due to the importance of his or her fiduciary duties), the facts of the present matter are unique. If the timeline was considered, it is evident that although Mr Stofberg resigned in 2019, by May 2024 the Master had yet to issue new letters of authority. Given the circumstances, it would be unreasonable to expect a trustee to continue to hold office for such an inordinate duration.
- Considering the unique and cumulative factors of this matter, it must be accepted that Mr Stofberg's resignation became effective (at least) when the Master noted the resignation. This determination is furthermore premised on the fact that section 21 of the TPCA does not override the provisions in the trust instrument, with which Mr Stofberg had complied.

.(The Court went on to note that: "To maintain a balance, it is essential to adopt an approach that addresses both fairness and legal certainty regarding the effective date of the resignation of a Trustee. I propose that Section 21 of the TPCA be read in conjunction with Section 20(3) of the TPCA which makes it peremptory for the written letter of authority to be returned to the Master without delay. To my mind, once the written letter of authority has been returned by the resigning Trustee's, his or her fiduciary obligation ceases.)

CONCLUSION

The Court accordingly ordered that the SPA constitutes an original for purposes of the Deeds Registries Act..