

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2024-059279

(1)	REPORTABLE: <i>No</i>
(2)	OF INTEREST TO OTHER JUDGES: <i>No</i>
(3)	REVISED:
<i>19.7</i>	
DATE	SIGNATURE

In the matter between:

**THE APPOINTED TRUSTEES OF THE MADISON AT
AMBERFIELD BODY CORPORATE**

First Applicant

**THE BODY CORPORATE OF THE MADISON AT
AMBERFIELD**

Second Applicant

and

CSI PROPERTY MANAGEMENT (PTY) LTD

Respondent

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines/Court online and by release to SAFLII. The date and time for hand- down is deemed to be 10h00 on 19 July 2024.

Order: Paragraph [46] of this judgment.

JUDGMENT

TODD, AJ:

- [1] This matter came before me on the urgent roll on 11 June 2024.
- [2] The application is brought on behalf of the body corporate of a section title scheme known as The Madison at Amberfield. Relief is sought against the Respondent, which has served for some four and a half years as the managing agent of the sectional title scheme. The trustees also seek certain declaratory relief regarding the governance of the body corporate and the identity of its trustees.
- [3] What is most immediately in dispute is whether or not the Respondent continues to be the lawfully appointed managing agent of the sectional title scheme or whether, as the Applicant contends, that appointment came to an end on 15 May 2024.
- [4] That is a matter of significant consequence for the parties because the Respondent was, in its capacity as managing agent, in control of the body corporate's bank accounts and funds and all other financial information relating to the body corporate and the sectional title scheme. Since the Respondent disputes that its appointment has been terminated, it remains in possession and control of those accounts and funds and that information.
- [5] The Applicants contend that a new managing agent has been appointed. Since, however, the Respondent disputes that its appointment has been lawfully terminated it refuses to hand over to the newly appointed managing agent the

information necessary to enable it to manage the affairs of the scheme on behalf of the body corporate.

- [6] The Applicants assert that if they cannot secure the urgent return of all relevant information this will have dire consequences for owners and residents in the estate, because without the funds from levies, the Applicants will not be able to continue to pay for security services or the local authority for electricity, water and related municipal services.
- [7] The Applicants further contend that the Respondent has, by refusing to relinquish its position as managing agent, created confusion among owners with some owners now refusing to pay levies, something which is likely to escalate problems facing the scheme.
- [8] The Respondent disputes that the matter is urgent, and also raises the dilatory point of non-joinder of trustees who it asserts were duly appointed at a meeting held on 18 May 2022, and the new managing agent appointed by the erstwhile trustees prior to that date. As regards urgency, the Respondent contends that since the Applicants rely on a notice to terminate the Respondent's appointment given on 14 March 2024 effective during May 2024, the matter was not sufficiently urgent to be heard when it came before me on 11 June 2024.
- [9] The Respondent accepts, however, that the current state of affairs, in which there is contestation around the validity of the appointment of the managing agent, and there are two managing agents seeking to perform that function for the body corporate, is untenable.
- [10] I am satisfied that the matter was sufficiently urgent to be brought on the time frames within which it was brought. A reasonable opportunity was given to the Respondent to deliver answering papers, which it has done, and the parties have prepared written argument. I am satisfied that the matter was urgent, and I deal with it on that basis.
- [11] As to the non-joinder point, I do not agree that it was necessary to join the persons purportedly elected as trustees at the meeting on 18 May 2024. Similarly, the newly appointed managing agent does not in my view have a direct

and substantial interest in the matter in the sense that the relief may not be sustained and carried into effect without prejudicing their interest. In any event both the new managing agent and the persons purporting to have been elected as trustees on 18 May 2024 are fully aware of the proceedings and have had an opportunity to intervene should they so wish, and I do not believe that any purpose would be served in adjourning these proceedings so that they may be joined.

[12] There are two main issues between the parties to the litigation. The first concerns the question whether or not the Respondent's appointment as managing agent has been lawfully terminated or otherwise came to an end on 15 May 2024. If that appointment has indeed come to an end then the Respondent should be ordered to hand over all information in its possession relevant to that appointment which would enable a newly appointed managing agent to conduct the affairs of the body corporate.

[13] The second issue in dispute concerns the governance of the body corporate and the identity of its trustees, and related questions concerning decisions taken during May 2024 at two separate meetings purporting to be special general meetings of the body corporate, on 18 and 22 May 2024 respectively.

[14] First, on the question of the Respondent's appointment as managing agent, this commenced on 1 November 2019 in terms of a written management agreement concluded with the body corporate on 29 November 2019. The duration of that agreement was a period of 36 months, ending 31 October 2022.

[15] Following the expiry of that period, the Respondent continued to serve as the managing agent without a written agreement in place. This continued for some months, until May 2023, when the parties entered into what they described as an addendum to the agreement whose term had expired. In terms of the addendum the parties agreed to extend the term of the Respondent's appointment on the same terms set out in the expired agreement, for a period of 12 months from the date on which the addendum was concluded.

[16] Mr Bhima, who appeared for the Applicants, submitted that since the term of the original agreement had expired some months earlier, the addendum extending

the term for a further 12 month period was invalid. This submission relies on the proposition that a new or extended term could only be entered into during the validity of the agreement whose term it purported to extend. Although there is some force in this submission from a contractual perspective, the *de facto* position is that the Respondent remained the managing agent after expiry of the original agreement, on the same contractual terms. The better view, it seems to me, is that the subsequently concluded addendum served to regularise an informal or oral arrangement under which the Respondent had continued to render services following expiry of the agreement, and introduced a defined new term of 12 months.

- [17] This is, in fact, the basis on which the Applicants brought the application in the first place. They pleaded the existence of the addendum and relied on the further conduct as between the parties which occurred on the strength of their mutual assumption that the addendum had been validly entered into. This is accepted by the Respondent in the answering papers. For that reason I intend to deal with the matter on the pleaded basis that the addendum regulated the relationship between the parties during that further 12 month period.
- [18] There was some debate in argument about the date on which the addendum was entered into, the significance of which will appear shortly. The Applicants allege that the parties signed the addendum on 8 May 2023 and 16 May 2023 respectively. The consequence of this is that the 12 month term commenced on 16 May 2023. In its answering papers the Respondent first pleads that it is “common cause” that the addendum was signed by the parties respectively on 8 May 2023 and 10 May 2023, although the latter date is clearly not common cause. Later, however, the Respondent’s deponent admits the Applicants’ averment (in paragraph 15.2 of the founding affidavit) that the addendum was entered into on 8 May and 16 May 2023.
- [19] It seems to me that the factual basis on which I must determine the matter in these urgent proceedings is that the addendum was concluded on 16 May 2023.
- [20] The addendum specifically regulated, in clause 5, the circumstances in which the extended term would come to an end. This was dealt with in the following terms:

“The Parties hereto shall be entitled to terminate this agreement during its term on 2 months’ written notice, if cancellation is first approved by way of a special resolution at a General Meeting. The body corporate or trustees may by ordinary resolution cancel the management agreement in accordance with its terms or refuse to renew the management agreement when it expires.” (emphasis added)

- [21] These provisions essentially reflect the material terms of sub-regulations 27(7) and 27(8) of the Sectional Title Schemes Management Regulations, to which I will return shortly. Regarding the renewal of its term, the addendum continued as follows:

“This agreement shall automatically renew itself for successive additional terms of 12 months if the Managing Agent is not provided notice of termination by the board of trustees no later than 2 calendar months prior to the expiration of the term / successive terms.”

- [22] These provisions must be read together with the relevant provisions of the Sectional Title Schemes Management Regulations made in terms of section 19 of the Sectional Title Schemes Management Act, 2011. Regulation 28 provides, in relevant part, as follows:

“(7) A management agreement may not endure for a period longer than three years and may be cancelled, without liability or penalty, despite any provision of the management agreement or other agreement to the contrary –

*(a) by the body corporate on two months’ notice, if the cancellation is first approved by a special resolution passed at a general meeting;
or*

(b) by the managing agent on two months’ notice.

(8) The body corporate or trustees may by ordinary resolution cancel the management agreement in accordance with its terms or refuse to renew the management agreement when it expires.”

- [23] For the Applicants, Mr Bhima submitted that the effect of sub-regulation 28(7) was that a management agreement may not endure for a period longer than three years and consequently that a management agreement could not validly be extended by further agreement beyond that period. This was a further basis on which he contended that the addendum was invalid. That is not, however, how I understand the provisions of the sub-regulation, particularly when regard is had to the provisions of sub-regulation (8). That sub-regulation clearly contemplates the possibility of a management agreement being renewed when it expires. What sub-regulation 28(7) means, it seems to me, is simply that the term of an agreement may not extend for more than three years before its term expires, but there is nothing to preclude the parties from agreeing to a further term.
- [24] By reason of the provisions of sub-regulation 28(8), the question whether or not an agreement should be renewed on its expiry is a matter for decision by the body corporate or trustees by ordinary resolution. Read together, in my view, and despite the terms of any management agreement that might allow this, these provisions do not contemplate or permit the automatic renewal of a management agreement beyond a period of three years in the face of a decision of the body corporate or its trustees to the contrary.
- [25] What happened in the present matter is that the trustees decided, at a meeting on 7 March 2024, that the services of the Respondent should be terminated. The term of the existing management agreement (under the addendum, assuming it was validly concluded) was due to expire 12 months after 16 May 2034, that is on 15 May 2024.
- [26] On 14 March 2024, the chairperson of the board of trustees sent an email to the Respondent giving the Respondent two months' notice that "*we will not be renewing the management agreement when it expires*". The email continued that the trustees "*would like to exercise our option of not renewing this agreement when it expires*". It went on to express the desire that the parties would part ways in an amicable manner and that the Respondent would respect the decision.
- [27] Mr Jansen van Rensburg, who appeared for the Respondent, submitted that this communication did not constitute valid notice under the terms of the agreement

because it did not satisfy the requirements of Regulation 10 of the Sectional Title Scheme Management Regulations. These, he submitted, require that any such notice be signed by two trustees, or alternatively by one trustee and the managing agent.

[28] In fact, it seems to me, the notice concerned, which was sent by email, did not constitute notice of termination of the agreement. This was not required as a matter of law to bring the agreement to an end on expiry of its term. All that was required, and all that the notice served to communicate to the Respondent, was that the board of trustees had resolved not to renew the agreement when it expired.

[29] This disposes of Mr Jansen van Rensburg's further submission as well, that notice of termination of the agreement was required two months' before expiry of its term, that is on or before 9 May 2024, failing which the addendum would "automatically renew itself" for a further 12 month period. This submission was founded on the contention that as a matter of fact the addendum had been concluded by 10 May 2023 and not 16 May 2023.

[30] I have found that on the papers the relevant date was 16 May 2023 and not 10 May 2023. In addition, any such "automatic renewal" is inconsistent with the provisions of the regulations referred to earlier. While two months' notice of termination of a management agreement can be given at any time during the term of the agreement if approved by special resolution passed at the general meeting of the body corporate, absent any such notice the agreement will ordinarily expire on conclusion of its term. Any question of renewal for a further period is a matter to be decided by the body corporate by ordinary resolution.

[31] Since trustees are clearly entitled by ordinary resolution to decide not to renew a management agreement when it expires, this makes it clear in my view that the regulations do not contemplate or permit a situation in which an agreement may "automatically renew itself" in the face of a decision by the body corporate or its trustees to the contrary.

[32] In my view, therefore, the communication to the Respondent by email dated 14 March 2024 was as a matter of fact given more than two months before the expiry

of the term of the extended management agreement, and in any event no formal notice of termination was required. The email merely served to communicate a decision that the management agreement would not be renewed further. This is something which both the regulations and the relevant clause of the addendum itself (underlined in the extract set out in paragraph [20] above) expressly contemplate.

- [33] In those circumstances, it seems to me, the addendum cannot be said to have automatically renewed itself when the trustees had passed a resolution that they would not renew it.
- [34] Furthermore, I agree with Mr Bhima that, for the reasons set out in *Liberty Group and others v Mall Space Management CC*¹, even if the communication of 14 March 2024 was not consistent with the terms of the termination clause in the addendum agreement, the decision of the trustees of 7 March 2024 and the communication to the Respondent on 14 March 2024 nevertheless served to bring the mandate of the Respondent to an end at the expiry of the current term, at the end of 15 May 2024. The Respondent cannot treat that decision as a nullity or one that can simply be ignored. Its mandate was terminated. If that termination breached the terms of its contract with the body corporate or otherwise caused actionable prejudice the Respondent's remedy lies in a claim for damages.
- [35] As regards the governance issue, there is no dispute about the composition of the board of trustees of the body corporate during March 2024 when the relevant decision was taken and communicated to the Respondent. The issue that has arisen and in respect of which declaratory relief is sought by the Applicants concerns the composition of the board of trustees following meetings held on 18 May 2024 and 22 May 2024.
- [36] The main issue in this regard concerns the status of a meeting held on 18 May 2024. The Respondent contends that this was a special general meeting which it convened, having been requisitioned by members of the scheme.

¹ [2019] ZASCA 142 at para 24 and para 36

- [37] In advancing that contention, however, the Respondent relies on the underlying proposition that it remained the managing agent of the scheme as at that date. For the reasons set out above, I have concluded that the Respondent ceased to be the managing agent at the end of the day on 15 May 2024. That being so, it was not in a position to convene or conduct a special general meeting on behalf of the body corporate or members of the scheme on 18 May 2024. It follows, it seems to me, that the trustees purportedly elected at that meeting were not validly appointed.
- [38] Insofar as the Applicant seeks relief confirming the identity of the persons who are currently trustees of the scheme, it seems to me that even on the Respondent's version none of the existing trustees was said to have been removed from office at the meeting held on 18 May 2024 purportedly as a special general meeting. Nor, if that was not in fact a special general meeting properly convened, could they have been. In terms of Regulation 7 trustees hold office for a term which continues until the subsequent annual general meeting. A replacement trustee may be appointed by members in a general meeting or by the remaining trustees only if a trustee has ceased to hold office.
- [39] There is no dispute on the papers about who the trustees were during March 2024, nor any averment that one or more of those trustees ceased to hold office at or in the period leading up to the meeting held on 18 May 2024. Nor is it alleged that they were validly removed from office.
- [40] In those circumstances it seems to me that there are no grounds for any contention that any such trustees have ceased to be trustees or ceased to hold office. Similarly, for reasons I have mentioned, it seems to me that none of the trustees purportedly appointed at the meeting on 18 May 2024 was as a matter of law properly so appointed.
- [41] As to the question whether any additional trustee was appointed at the subsequent meeting held on 22 May 2024 (in addition to the three trustees who then held office) it is not sufficiently clear to me on the papers which trustees were said to have been appointed under what resolutions of that meeting. The minute of the meeting confirms the appointment of the existing three trustees and

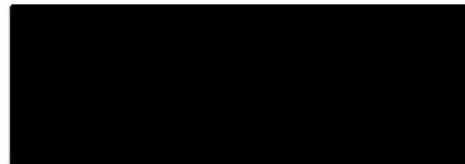
mentions the appointment of two additional trustees as well, while the notice of motion seeks confirmation of the appointment of one additional trustee. This discrepancy is not explained.

- [42] In the circumstances I am not inclined to make a declaratory order in this regard. It is clear that the office of the existing trustees had not expired or been vacated, and there are insufficient facts set out in the founding papers regarding any additional appointments made on 22 May 2024. I make no finding that additional appointments made at the meeting on 22 May 2024 were not validly made. I am simply not satisfied that a proper case has been made for the declaratory order sought in this regard.
- [43] Furthermore, in the course of argument reference was made to the fact that an annual general meeting or some other special general meeting was to be convened or was imminent. This judgment will be delivered a little over a month after argument in the matter, and since I do not know whether any further general meetings or an annual general meeting may have been convened in the interim, this is a further reason why I do not intend to make further order in this regard.
- [44] The Applicants include, in the draft order sought, an order that the Respondent hand over access to all of the bank accounts in the name of the body corporate and scheme. They also seek an order that the Respondent is to transfer all funds from those accounts into a different specified account, within 24 hours. It seems to me that if the first order is granted and complied with the second is unnecessary and may lead to problems if, for example, it is not consistent with the banking terms applicable to any one or more of those accounts.
- [45] The Applicants sought costs on a punitive scale. In my view there are good grounds for costs to follow the result, but I do not see reason to award costs on a punitive scale.

[46] In the circumstances I make the following order:

1. The matter is treated as one of urgency in terms of the provisions of Rule 6(12).
2. The Respondent's mandate, to act as managing agent for the body corporate of the Madison at Amberfield Sectional Title Scheme ("**the Scheme**") is terminated.
3. The Respondent is ordered forthwith, upon service of this order, to hand over to the body corporate or new managing agent nominated by the body corporate, the following:
 - 3.1 the contact information of all owners in the scheme;
 - 3.2 the current levy roll and the meter readings for the last four months;
 - 3.3 the latest audited financial statements;
 - 3.4 the sectional plans;
 - 3.5 the insurance policies and detail of the insurance brokers; and
 - 3.6 the conduct rules and any amendments to the management rules.
4. Within 24 hours of service of this order, the Respondent is to hand over access to all of the bank accounts in the name of the body corporate or scheme under its administration and control to the body corporate or new managing agent nominated by the body corporate.
5. The Respondent is interdicted and restrained from:
 - 5.1 making payments with the funds of the body corporate or from the aforementioned bank accounts to any third parties or to itself;
 - 5.2 holding, convening or call for any meeting of the members of the Scheme or body corporate;

- 6.3 communicating with owners, residents or occupants of the Scheme whether on grounds that it purports to be the appointed management agent or otherwise;
- 6.4 entering the premises of the Scheme without written permission of the body corporate.
6. The Respondent is ordered to pay the costs of this application.



C TODD
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

Date of Hearing: 11 June 2024

Date of Judgment: 19 July 2024

APPEARANCES

Counsel for the Applicant: Adv R Bhima

Instructed by: Pisanti Attorneys Incorporated

Counsel for the Respondent: P L Jansen van Rensburg (Attorney)

Instructed by: Jansen van Rensburg & Partners Inc