



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 053716/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 29 JANUARY 2025

SIGNATURE

In the matter between:

**SABLE HILLS WATERFRONT ESTATE
HOMEOWNERS ASSOCIATION (NPC)**

NATASJA MULDER

MARIETTE VAN STADEN

PATRIC GEORGE WHELAN

FLORIS CORNELIUS BUYS

DAWIE BOTHA

JAN ANTONIE NEL

JOHAN BURGER MARAIS

KEVIN KENNETH CLARKE

PIETER LE ROUX

First Applicant

Second Applicant

Third Applicant

Fourth Applicant

Fifth Applicant

Sixth Applicant

Seventh Applicant

Eighth Applicant

Ninth Applicant

Tenth Applicant

WOUTER VAN GINKEL N. O

Eleventh Applicant

and

**COMPANIES AND INTELLECTUAL
PROPERTIES COMMISSION**

First Respondent

SABLE HILLS WATERFRONT ESTATE CC

Second Respondent

**THE HOMEOWNERS OF THE SABLE HILLS
WATERFRONT ESTATE**

Third to 398th Respondent

**SABLE HILLS WATERFRONT ESTATE
CONCERNED MEMBER'S INTERESTS
("SHWECMI")**

**399th Respondent
(Intervening Respondent)**

Summary: *Home Owners Association – management of and election of directors. The coup by a group of members by electing an extended number of directors without prior notice set aside, issues of quorum at general meetings and election of directors discussed.*

ORDER

1. The resolution taken at the annual general meeting of the first applicant on 30 April 2024 in terms of which the board of directors of the first applicant was increased from 8 to 12 directors, is set aside.

2. The appointment of Benny Serepong, Jan Matladi, Nigel Clark, Leandi Schalekamp, Maboko Schilajoe, Kea Mpane and Henry Lubbe as directors of the Sable Hills Waterfront Estate Homeowners Association (NPC) at the annual general meeting of 30 April 2024 is set aside.
3. The Sable Hills Waterfront Estate concerned Members Interest (the 399th respondent) is ordered to pay the costs of the application.
4. The *ad hoc* director appointed in terms of the order of this court on 5 June 2024 is hereby discharged.
5. The liability of the 399th respondent for the costs of the *ad hoc* director, as provided for in par 7 of the order of 5 June 2024, is extended to the date of his discharge.
6. The counter-application is dismissed.
7. The 399th respondent shall pay the costs occasioned by its counter-application.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it

to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 29 January 2025.

DAVIS, J

Introduction

[1] This matter essentially concerns a dispute over the control of a home owners association and whether the taking over of such control by an interest group, in what can only be described as a coup, was legally valid or not. The association in question, is that of a luxury development bordering Roodeplaat dam, north of Pretoria (the Estate).

The parties

[2] The first applicant is the Sable Hills Waterfront Estate Homeowners Association (NPC), hereafter referred to as the HOA. The second to eleventh applicants are property owners (or representatives of owners) in the Estate and as such, members of the HOA.

[3] The first respondent is the Companies and Intellectual Properties Commission (the CIPC). The second respondent is the Sable Hills Waterfront Estate CC, a close corporation incorporated in terms of the HOA's Memorandum of Incorporation (the MOI). The third to 398th respondents are the members of the HOA who are all property owners in the Estate. None of these respondents opposed the application.

[4] The only opposing respondent is the 399th (intervening) respondent. It is a voluntary association known as the Sable Hills Waterfront Estate Concerned Members' Interest (NPO). It was created in May 2024 by three property owners and has its own constitution. At the time of the launch of its counter-application,

it had 101 members. In communications circulated by the board of the HOA, these members were called “the dissident members group”.

The factual background

[5] Despite the numerous and extensive disputes between members of the HOA, primarily driven by the 339th respondent and despite the extensive correspondence disseminated and heated opinions exchanged, the background facts to this application are largely common cause. I will summarise them hereunder as succinctly as possible.

Background facts

[6] The HOA is governed by its MOI and the provisions of the Companies Act¹.

[7] The HOA had at all relevant times to this application been managed by a board, consisting of eight directors. These were elected and appointed at consecutive annual general meetings in accordance with the MOI.

[8] An annual general meeting of the members of the HOA had been scheduled for 30 April 2024 (the AGM).

[9] Leading up to the AGM, three vacancies for directors were envisaged, which had to be filled.

¹ 71 of 2008.

[10] Notice of the AGM was given to members, no less than 15 days prior to the AGM, as prescribed by Section 62(1)(a)² of the Companies Act, read with Article 4.4.1 of the MOI³.

[11] The agenda for the AGM contained only three items that were tabled for voting as provided for in section 62(3)(c)⁴. These were: (1) an ordinary resolution to adopt the Chairman's report; (2) an ordinary resolution to adopt the audited financial statements for the year ending 28 February 2023 and (3) the election of directors for the three vacancies on the board.

[12] In respect of the third agenda item, members were informed as follows: *"The directors are elected by the members from their ranks for a period of two years or such shorter period as the members may determine, and the directors shall be subject thereto that one-third of the directors must retire each year at the annual general meeting. Retiring directors are re-eligible. There will be three vacancies on the board that must be filled"*.

[13] The notice also contained information regarding the provisions relating to voting by proxy and the need for nomination of directors to be delivered by 16h00 on the day before the AGM.

[14] The AGM itself was scheduled to commence at 18h30 on 30 April 2024. For purposes of a quorate meeting, at least 25% of members with voting rights had to be present.

² Section 62(1)(a) "The company must deliver a notice of each shareholders meeting ... at least (a) 15 business days before the meeting is to begin, in the case of a ... non-profit company that has voting members".

³ "4.4. Members meetings. 4.4.1. The minimum number of days for the Company to deliver a notice of a members meeting ... as required by section 62, is 15(fifteen) business days ...".

⁴ 62(3) "A notice of a shareholders meeting must be in writing and must include ... (c) a copy of any proposed resolution ...".

[15] The quorum verification process was undertaken by an independent firm of chartered accountants, SCW Consulting CC (SCW). It was determined that of the 321 eligible members, 109 were present, consisting 37% of the members. A valid quorum had therefore been established.

[16] After the meeting had commenced and the formalities had been disposed of, which included the adoption of items 1 and 2 of the agenda, objections against the agenda were raised from the floor. The gist of the objections was that a previously undisclosed motion, calling for the increase of the number of directors on the board from eight to twelve, had not been tabled in the agenda.

[17] The proponents of the proposed new agenda item were very vocal, as were opponents thereto. The chairperson of the board described the atmosphere amongst members as becoming hostile and intimidating. Despite this, and after extensive debate, the agenda was amended to include the newly proposed agenda item and voting proceeded in respect thereof.

[18] As a result of the hostile environment at the AGM, a large number of members had left the meeting after the proposed resolution had been adopted by a majority. No record had been kept of the dwindling attendance and it remains uncertain whether the minimum of 25% of members thereafter remained present.

[19] The exchanges made by the remaining members continued to become increasingly heated and personal, resulting in even more members leaving the meeting. Those few remaining then nominated new directors and elected them. These were the members featuring in the applicants' notice of motion. They are Benny Serepong, Jan Matladi, Nigel Clark, Leandi Schalekamp, Maboko Schilajoe Kea Mpane and Henry Luble (the new directors).

[20] The meeting was thereafter called off at approximately 00h30 on 1 May 2024. By that time it was estimated that only about 30 members were then still present.

[21] The board of directors (excluding those purportedly newly elected and appointed at the AGM) met the next day and resolved to institute legal proceedings in order to obtain clarity from this court regarding the validity of the resolution to increase the number of directors and the consequential election of new directors.

The litigation history

[22] Pursuant to the above, the board of the first applicant launched an urgent application, to be heard on 4 June 2024. The relief sought was to have the resolution whereby the number of directors had been increased to twelve and the appointment of the new directors, set aside.

[23] Only the 399th respondent opposed the application. It did so by way of a counter-application wherein leave to intervene and to oppose was sought as well as extensive relief aimed at the appointment of a forensic auditor, Adendorff, as the sole director of the HOA. Adendorff was to be mandated to conduct a full investigation into the HOA's management and financial affairs for the previous five years and to compile a report thereon.

[24] In the end, an interim order was made by Potterill J, by agreement between the parties. The primary thrust of the interim order, was to maintain the status quo pertaining to directorship of the HOA as it was prior to the AGM and to suspend the disputed resolution and the appointment of the new directors.

[25] In addition, Adendorff was appointed as an "ad hoc director". His powers and that of the other directors were catered for as follows in the interim order:

“4. That the mentioned ad hoc director would be able to veto any decisions of the board, provided that the following issues be excluded from such veto right:

4.1 any decision relating to the restaurant on the estate;

4.2 the appointment of new auditors for the First Applicant;

4.3 the arrangement, schedule and determination of the next Annual General Meeting of the First Applicant;

4.4 These exclusions are with reservation of the 399th Respondent's rights.

5. That the ad hoc director is authorised and mandated to fully and comprehensively investigate all possible financial and all other irregularities and conflicts of interest that may have occurred in respect of the management and corporate governance of the First Applicant during the previous 10 years, and to compile a written report to be presented to the members of the First Applicant, to the 399th Respondent, and to this Honourable Court;

6. The current management agent and representatives of First Applicant shall make available to the appointed the ad hoc director all documents and information pertaining to the management and corporate governance of First Applicant, including all financial records and minutes of meetings, and all documents and information requested by the ad hoc director.

7. That the fair and reasonable fees of the ad hoc director for services in terms of this order shall be paid, in the interim, by the 399th

Respondent up to the date of the hearing of 16 September 2024, when the court will make a specific order, as to which party is responsible for payment of the above to the ad hoc director”.

[26] The costs of the applications were reserved.

[27] A number of events occurred since the granting of the above order and during subsequent postponements of the matter. These were set out in a supplementary affidavit, the contents of which were not disputed on any reasonable grounds.

[28] The facts contained therein are briefly the following: Having considered representations made by the 399th respondent, Mr. Adendorff submitted a scope of work consisting of approximately 93 items for investigation, together with a cost estimate of R1, 5 million.

[29] Upon receipt of the proposed scope of work, as well as estimated fees, the first applicant and the 399th respondent agreed to stay the litigation process, pending possible mediation and or the negotiation of a settlement. Unfortunately, and with time pressing on, the 399th respondent remained inactive in its participation in finding a sensible way in addressing the matter at hand.

[30] On 20 August 2024, the first applicant informed the 399th respondent that it could no longer remain idle, and as such formally submitted three proposals for consideration by the 399th respondent.

[31] On 22 August 2024, the 399th respondent reverted by agreeing to the scope of work for the forensic audit to be restricted to only four items, together with two minor additional items.

[32] On 26 August 2024, the first applicant confirmed that it was in agreement, and subsequently a meeting was arranged with Adendorff for 28 August 2024.

[33] During the said meeting, the scope of work was discussed and finalized. The parties set down strict timelines, so as to ensure the timeous delivery of the audit report. It was also agreed that Adendorff would again provide a cost estimation, which was done and which amounted to R500 00.00.

[34] On 30 August 2024 the first applicant confirmed that it had compiled most of the required supporting documents and that it was ready to proceed with the envisaged audit. The 399th respondent was requested to make payment of the required deposit and to secure the balance of Adendorff's fees by placing same in its attorney's trust account.

[35] The 399th respondent again remained idle for weeks, and on 26 September 2024 the first applicant received a formal letter from the 399th respondent's attorneys which stated that the costs associated with the forensic audit was too expensive and that the only alternative for the 399th respondent was to refer the matter to the Companies and Intellectual Properties Commission (CIPC) for investigation. The letter further mentioned that the counter-application of the 399th respondent could not proceed and that it should therefore be postponed sine die, pending the outcome of the findings of CIPC.

[36] By that time, the first applicant had provided the 399th respondent with a formal Management Report, which was compiled by Van Sitterts, an auditing firm that had been appointed at the 2023 Annual General Meeting.

[37] Van Sitterts, as part of the financial audit conducted by it, had enquired about the pending litigation. Subsequent to the enquiry Van Sitterts were made aware of these proceedings, and the allegations contained in the counter-

application. Consequently, as part of the auditing process, the allegations that were levied against the board of the first applicant were investigated.

[38] The findings of Van Sitterts were summarized as follows:

- “1 *The board of directors had in fact followed the correct tender process when awarding the waste management contract to The Waste Group (Pty) Ltd,*
- 2 *The board of directors had also followed the correct tender process when acquiring the insurance policy,*
- 3 *Upon review of the agreement, it was found that the procedures followed for this transaction adhered to the established guidelines and protocols. The necessary steps were thus taken to ensure that the agreement was properly negotiated and executed.*
- 4 *The first applicant had entered into a formal agreement with Tapuch van der Heever and Associates (Pty) Ltd and as such it was found that the first applicant had adhered to the established governance practices, promoted transparency, accountability, and fairness”.*

Issues to be determined by this court

[39] The primary disputes were whether the resolution contained in the new agenda item could validly have been taken and whether the new directors had validly been appointed. The resolution of these disputes are dependent upon the determination of two preceding issues, namely whether the AGM could have been proceeded with where the requisite quorum was no longer present and

whether prior notice had been required in respect of both the new agenda item and the subsequent election.

The quorum issues

[40] As already pointed out, SCW had verified that the requisite quorum of members had been present when the AGM had commenced.

[41] Article 4.6.1 of the MOI provides for the quorum to be present at the start of a meeting as well as at the commencement of consideration of a matter as follows: "*Pursuant to section 64 and subject to article 4.6.2 to 4.6.5, a members meeting may not begin until at least 25% of persons with voting rights are present at the meeting; and a matter to be decided at the meeting may not begin to be considered unless at least 25% of persons with voting rights are present at the meeting*" (articles 4.6.2 to 4.6.5 provide for adjournment of meetings or matters where the requisite quorum is not present). The contents of this article accord, virtually verbatim, with section 64(1) of the Companies Act.

[42] The continuation of a meeting after its commencement, despite members leaving the meeting, has been provided for as follows in article 4.6.4 of the HOA's self-styled "unique" MOI: "*Unless the Company's Memorandum or Rules provide otherwise, after a quorum has been established for a meeting, or for a matter to be considered at a meeting, the meeting may continue, or the matter may be considered, so long as at least 1 (one) member with voting rights entitled to be exercised at the meeting or on that matter, is present at the meeting*". The contents of this article accords, again almost verbatim, with the contents of section 64(9) of the Companies Act.

[43] This article therefore contemplates two things. Firstly that, if a quorate meeting commences, it may continue until the last member is still present, despite the leaving of other members, even to the extent that those present no longer

represent 25% of the membership. Secondly, should there be a quorum present when a matter is being considered, such matter may continue to be considered, despite the number of members dwindling below 25%.

[44] Applying the above to the present facts, the AGM validly commenced and could validly have continued until 00h30, when there were still some 30 eligible members present.

[45] As to the consideration of matters, there were no disputes about the first three agenda items and it appears from SCW's report, that, when the placement of the new item was debated, as well as when voting thereon took place, the requisite quorum was also present. Their report indicated that in respect of item 1 (adoption of the Chairman's report), of the 109 votes (including proxies) 61,47% voted in favour thereof. In respect of item 2 (adoption of the financial statements) 54,13% voted in favour thereof. For each of these two resolutions, the minimum required was 50%.

[46] In respect of the resolution for the increase of the number of directors, the SCW report reads as follows: "*Hence were the 3 open positions on the board of 8 to be chosen from ... 5 nominations. However, a motion was tabled from the floor that the board of directors to be increased from 8 directors to 12 directors, which motion was seconded and subsequently voted on. In order for such a motion to be adopted, 50% or more of the members [present] with voting rights ... must vote in favour of the resolution to be passed. The outcome of the motion was voted for by raise of hands, of which 58 members voted for the resolution and 45 against, so 53% (58/109) of members voted in favour of this motion and the resolution was adopted*". The slight mathematical inaccuracy (unless some members abstained) is immaterial as both the quorum and majority requirements were satisfied.

[47] The situation regarding the quorum requirements, for and during the voting process, is, however, much more murky. It is common cause that, of the 8 serving directors, 3 had to be replaced. In respect of these 3 vacancies, 6 nominations had been received prior to the AGM, as per the preceding notice, one of which had withdrawn, leaving the 5 nominations referred to in paragraph 47 above.

[48] However, the SCW report stated that the following then happened: *"As a result of the increase of the number of board members from 8 to 12, there was a further "suggestion" from the floor that the additional 2 directors required to fill up the number of 12 directors be nominated from the floor; 3 additional directors were then nominated from which 2 had to be chosen"*.

[49] It was not indicated in the report how the 5 nominations in respect of the initial 3 vacancies now came to be accepted as 5 nominations for 5 vacancies (i.e. the remaining directors plus those already nominated), resulting in only 2 more vacancies to be filled (to make up the new board of 12 directors). I shall deal with this aspect later but, in the meantime, the report listed the number of votes cast (in an undisclosed manner) in respect of all 8 nominations. The votes ranged from 45 to 86, but there was no recordal of number of members present when this "matter" was considered, nor was there any recordal of total votes cast.

[50] Although there are no quorum requirements in respect of voting in elections of directors, as there are for the passing of resolutions, the number of members present, are relevant to the determination of the outcome of the election itself.

Notice of the new resolution and of the election and nomination of further directors

[51] The new agenda item (to increase the number of directors from 8 to 12), was not a resolution proposed by the board of the HOA, but one proposed by some of its members.

[52] Section 65(3) of the Companies Act, provides as follows in this regard:
“(3) Any two shareholders of a company (a) may propose a resolution concerning any matter in respect of which they are entitled to exercise voting rights, and (b) when proposing a resolution, may require that the resolution be submitted to shareholders for consideration (i) at a meeting demanded in terms of section 61(3); (ii) at the next shareholders meeting or (iii) by written vote in terms of section 60”.

[53] The resolution contained in the new agenda item, was not proposed in terms of section 61(3)⁵, nor was it demanded to be considered at a next meeting and neither was a written vote called for. The demand was for a consideration during an already existing meeting. The conduct of the dissenting members at the AGM, therefore fell foul of section 65(3) and could, for this reason alone, not validly have been entertained at that meeting.

[54] Furthermore, section 65(4) provides that any proposed resolution must not only be expressed with sufficient clarity and specificity, but must be *“accompanied by sufficient information or explanatory material to enable a shareholder who is entitled to vote on the resolution to determine whether to*

⁵ In terms of section 61(3) *“... the board of a company ... must call a shareholders meeting if one or more written demands for such a meeting are delivered to the company ...”.*

participate in the meeting and to seek to influence the outcome of the vote on the resolution"⁶.

[55] While the simple proposal to increase the directors from 8 to 12 might have been clear and simple enough, it is equally clear that the latter part of the above-quoted subsection had not been complied with.

[56] Sections 65(3) and 65(4) further envisage advance notice to members of proposed resolutions. The purpose of this is obvious. It is to enable members to decide before-hand whether they would wish to attend a meeting and to support or oppose a proposed resolution. Advance notice of this availability of options, as well as the required particularity referred to above, would enable a member to properly participate in the debate on the proposed resolution.

[57] The advance notice of the call for nominations for board members and the option to exercise or furnish a proxy serves the same purpose, namely to enable members to come to an "intelligent conclusion on matters in issue"⁷.

[58] The provisions of section 62(3) clearly serve to satisfy the above requirements. It provides that, not only must a notice of a shareholders meeting be in writing, but it must be accompanied by "(c) a copy of any proposed resolution of which the company has received notice and which is to be considered at the meeting and a notice of the percentage of voting rights that will be required for that resolution to be adopted".

[59] The manner in which consideration of the new resolution had been demanded, i.e without prior notice and unaccompanied by any explanation, not

⁶ Section 65(4)(b).

⁷ *Trinity Asset Management (Pty) Ltd v Investee Bank Ltd* 2009 (4) SA 89 (SCA)(Trinity).

only failed to satisfy any of the above requirements, but was never conveyed to those who had not attended the AGM.

399th respondent's opposition

[60] Apart from a number of highly technical and largely superficial defences (including the initial objection relating to urgency before the order of Potterill J was acceded to), the only defence of some substance raised in the 399th respondent's papers against the declaration of invalidity sought by the first applicant, was the reliance placed on article 4.1.3.4 of the MOI. This provides as follows: "4.1.3. *An annual general meeting convened ... must, at a minimum, provide for the following business to be transacted:* 4.1.3.1 *Presentation of –*

4.1.3.1.1. *the directors' report and*

4.1.3.1.2 *audited financial statements ...*

4.1.3.2. *election of directors, to the extent required by the Act or the Memorandum ...*

4.1.3.2. *Appointment of an auditor for the ensuing financial year;*

4.1.3.4. *Any matters raised by members, with or without advance notice to the company...*" (the underlining portion is that relied on).

[61] It is clear that the springing of a surprise on those members who attend a meeting such as an AGM, is not an aspect contemplated in the Companies Act. In fact, the proposal and consideration of a resolution, of which those members who are not present at a meeting and of which they would have no prior

knowledge, is so inimical to the principle of providing members with sufficient information and opportunity to participate in the governance of a company, that any provision in a memorandum of incorporation which provides for such inroads in members' rights, must be restrictively interpreted.

[62] There can conceivably be many matters, even of an operational nature, which relate to the running of an estate such as the one in question, which can be raised "from the floor" and which can be discussed by members. These might range from the trivial (e.g. colour of staff uniforms) to the extreme (such as doubling the levies), but one thing must immediately be apparent and that is that any resolution which would materially affect the governance of the company, would be one for which advance notice would be required.

[63] Article 4.1.3.4. of the MOI should, in order to make it statutorily compliant, therefore have to be interpreted to have the words "... *except where such prior notice would be contemplated by the Companies Act*" inserted at the end thereof.

[64] Such an interpretation would also accord with section 15 of the Companies Act which expressly provides that "*each provision of a company's Memorandum of Incorporation (a) must be consistent with this Act and (b) is void to the extent that it contravenes or is inconsistent with this Act*".

[65] Should the interpretation described in paragraph 63 be followed, it would lead to a sensible and businesslike interpretation of the MOI, which accords with the state of the law pertaining to members' rights as set out by the Supreme Court of Appeal in *Trinity* (referred to in paragraph 57 above) and would obviate a

declaration of voidness of article 4.1.3.4. Such an interpretation would therefore also comply with the tenets of interpretation of documents such as the MOI⁸.

[66] In a last-ditch attempt to avoid the consequences of not having given prior notice of the proposed resolution, it was argued (but not canvassed in the 399th respondent's papers) that no notice needed to have been given because the resolution itself was not even needed. This argument was based on the fact that the MOI provided as follows in respect of the number of directors: "5.1.1. ... *the board of Directors of the Company comprises of at least 3 directors and not more than 12 directors each of whom is to be elected by members in accordance with the provisions of section 68(2) ...*".

[67] This argument is without foundation. It is clear that the above-quoted article in the MOI is only directive in respect of the minimum and maximum permitted number of directors, and that it does not address the number of directors which the members might have resolved at any given time, should govern the HOA. Where there is a change in the mode of governance, such as when an existing composition of a board is to be changed, that is clearly something about which members have a right to have a say. The way in which members exercise those rights, is by way of taking a resolution, in respect of which prior notice is a requirement.

[68] The incorporated reference to section 68(2) of the Companies Act, which otherwise applies to for profit companies, underscores this. This section provides for the manner in which directors are elected. The relevant part thereof reads: "68(2)(a) *the election is to be conducted as a series of votes, each of which is on the candidacy of a single individual to fill a single vacancy, with a series of votes continuing until all vacancies on the board at that time have been filled and (b)*

⁸ As set out in *Capitec Bank Holdings Ltd v Coral Lagoon Investments 194 (Pty) Ltd* 2022 (1) SA 100 (SCA) at par 25 per Unterhalter AJA (as he then was).

in each vote to fill a vacancy is filled only if a majority of the voting rights exercised support the candidate”.

[69] It is doubtful whether this procedure incorporated in the MOI had been followed on the night in question, but that point had not been canvassed on the papers and I am neither at liberty nor obliged to deal with it. But what is obvious, is that a resolution to bring about such a procedure, in respect of four additional directors, is something about which members would have had to be informed of, together with the particularity required in section 62 already referred to earlier.

The counter-application

[70] At the hearing of the application, it became clear that the counter-application had run its course. The 399th respondent did not have the funds to participate in the funding of an extensive forensic exercise and neither had it even participated in the proposed limited investigation to be conducted by Adendorff.

[71] In addition, the report by Van Sitterts appears to have cleared the HOA's board and its members of any wrongdoing.

[72] The 399th respondent faintly hinted at either a postponement of the counter-application or a referral of the contents thereof to the CIPC. In my view, there is nothing which supports the motion of a postponement and neither were there compelling reasons disclosed which necessitate a further forensic investigation. Nothing prevents the 399th respondent from resorting to the CIPC, but on the papers it is not entitled to the relief sought in its counter-application and neither did it pursue that relief.

[73] It is also clear that the interim appointment of Adendorff had served its purpose and that it should be terminated, now that the litigation has been concluded.

Conclusion

[74] Although both parties had extensively debated the quorum issue, I find that the whole dispute about the commencement and continuation of the AGM and the consideration of the new proposal raised thereat, was a red herring. The more substantive and relevant consideration is the absence of prior notice, not only of the resolution for the increase in the number of directors, but also the nomination of further directors, the lack of furnishing of particularity and the failure to provide an opportunity for all members, not only those present on the night, to decide whether to support or oppose such a resolution and thereafter to vote or not in the election of each nominated director and further to decide whether to do so in person or by proxy.

[75] I find that the prior notice requirements for the new agenda item had not been complied with and that the purported passing of the resolution in question, as well as the subsequent election of the new directors, were invalid. Those steps should be set-aside.

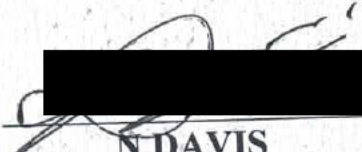
[76] Having reached the above conclusions, I find no reason to deviate from the general proposition that costs should follow the event. This would include the costs of the urgent application reserved by Potterill J on 5 June 2024.

Order

[77] In the premises, an order is made in the following terms:

1. The resolution taken at the annual general meeting of the first applicant on 30 April 2024 in terms of which the board of directors of the first applicant was increased from 8 to 12 directors, is set aside.

2. The appointment of Benny Serepong, Jan Matladi, Nigel Clark, Leandi Schalekamp, Maboko Schilajoe, Kea Mpane and Henry Lubbe as directors of the Sable Hills Waterfront Estate Homeowners Association (NPC) at the annual general meeting of 30 April 2024 is set aside.
3. The Sable Hills Waterfront Estate concerned Members Interest (the 399th respondent) is ordered to pay the costs of the application.
4. The *ad hoc* director appointed in terms of the order of this court on 5 June 2024 is hereby discharged.
5. The liability of the 399th respondent for the costs of the *ad hoc* director, as provided for in par 7 of the order of 5 June 2024, is extended to the date of his discharge.
6. The counter-application is dismissed.
7. The 399th respondent shall pay the costs occasioned by its counter-application.


N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 30 October 2024

Judgment delivered: 29 January 2025

APPEARANCES:

For the Applicants:

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