



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: **2025-221553**

In the matter between:

SNAP SHOT INVESTMENTS 1043 CC
(Registration Number: 1998/066546/23)

First Applicant

BOSSA COUNTRY (PTY) LTD
(Registration Number: 2021/676315/07)

Second Applicant

R AND D FOODS (PTY) LTD
(Registration Number: 2016/216174/07)

Third Applicant

and

TYGER LAKE BODY CORPORATE
(Registration Number: SS177/2006)

First Respondent

CAPITALGRO (PTY) LTD
(Registration Number: 2010/003039/07)

Second Respondent

TYGER FALLS OWNERS ASSOCIATION

Third Respondent

THE CITY OF CAPE TOWN

Fourth Respondent

Heard: 18 February 2026

Judgment: 23 February 2026

Summary: Application for mandatory interdict to provides parking spaces for use of restaurant patrons, grounded in the zoning conditions, the City of Cape Town Municipal Planning By-law, 2015 and the statutorily prescribed body corporate rules read with the Sectional Title Management Schemes Act 8 of 2011; joinder of necessity.

ORDER

1. The matter is postponed *sine die*, subject to the following steps to be taken:
 - 1.1. The second respondent shall, within ten (10) days from date of this order, provide the applicants, in writing, with the following information in respect of each entity that currently leases a parking section from the second respondent in the Tyger Lake Sectional Title Scheme (“**the lessees**”):
 - 1.1.1. The name of each lessee;
 - 1.1.2. The contact details of each lessee including phone number and email address;
 - 1.1.3. The section number of the parking section leased by each lessee.
 - 1.2. The applicants shall, within ten (10) days after receipt of the aforementioned information, deliver to each lessee, a notice (“the Notice”) informing each lessee as follows:
 - 1.2.1. That this application under case number 2025-221553 is currently pending before the Western Cape High Court, that it has been postponed *sine die* (without a date, which is to be allocated in due course) subject to the provisions of this order and that their rights as lessees of sections in the Scheme are potentially affected by an order that may be made in the matter which is being sought by the applicants (this last aspect to be in bold and larger font than the rest of the wording in the Notice).
 - 1.2.2. Attaching a copy of this order as well as the Notice of Motion.
 - 1.2.3. That the full court papers can be accessed by a digital link provided in the Notice, and a hard copy thereof may be viewed at the offices of the first respondent during normal business hours, who shall not be responsible for making any copies thereof.
 - 1.2.4. That, should any of the lessees wish to oppose the application:

- 1.2.4.1. It/they is/are required to serve and file Notice(s) of Opposition within five (5) days of receipt of the Notice in which it includes an address for service of all notices and process in these proceedings;
- 1.2.4.2. within 5 days of service of any Notice of Opposition, a copy of the papers in the application will be served by the applicants on the applicable lessee(s) who have served and filed a Notice of Opposition at the service address contained therein (this is also to be done in respect of any Notices of Opposition served and filed after the 5 days in 1.2.4.1 above);
- 1.2.4.3. within 5 days of service of any Notice(s) of Opposition, the applicable lessee(s) shall be granted access to this matter on the Court Online system;
- 1.2.4.4. the applicable lessee(s) shall serve and file answering papers within fifteen (15) days of service of the founding papers on it/them;
- 1.2.4.5. the applicants shall, without the need to serve a notice in terms of Rule 28, file an amended Notice of Motion which includes in the heading thereof as further respondents any lessees who have opposed the application, by means of which those lessees will be formally joined as respondents in the application (any other amendments will have to be made in the ordinary course).
- 1.2.5. Any lessee which does not oppose the application as aforesaid will be deemed (1) to have waived its right to oppose the matter and (2) to abide the decision of the court that might be made in the matter.

2. The Notice to the lessees may be given by e-mail or such other means of service as may be necessary and sufficient to ensure that the Notice has been received by each of the lessees and shall be confirmed by the filing by the applicants of an affidavit of service together with the practice note provided for below.
3. In the event that any lessee enters opposition and files answering papers, the applicants may file replying papers thereto within fifteen (15) days after service of such answering papers.
4. In the event of opposition by any lessee:

- 4.1. the applicants may file any supplementary heads of argument within five (5) days after the time period for the delivery of any answering papers has expired or with five (5) days of filing its replying papers, and the respondents (including any of the lessees who have opposed the application and should have been added as respondents in terms of this order) may file any heads of argument within five (5) days thereafter;
 - 4.2. within five (5) days after receipt of the respondents' heads of argument, or expiry of the time by which such heads of argument should have been filed, the applicants shall file a Practice Note setting out the state of affairs and requesting a date for hearing of the matter.
5. In the event that no notice of opposition is filed in accordance with paragraph 1.2.4 above, the applicants shall file a Practice Note in accordance with paragraph 4.2 above within five (5) days after expiry of the time for entering opposition.
6. The applicants are to pay, jointly and severally, the first respondent's and the third respondent's wasted costs of the postponement, including the costs of the hearing on 18 February 2026, with scale C applying.
7. The wasted costs of the postponement insofar as the second respondent is concerned shall stand over for later determination.

JUDGMENT

Handed down by email to the parties on 23 February 2026

Judgment handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII.

KANTOR, AJ:

1. In Part A of the Notice of Motion in this application, the applicants sought an urgent interim interdict. On 5 December 2025, an order was granted by

agreement between the parties providing for an interim arrangement, with the costs of the urgent interim proceedings to stand over for later determination.

2. On 18 February 2026, the application for the relief sought in Part B of the Notice of Motion was set down for hearing. In essence, this was for final mandatory interdictory relief directing the respondents to make available at least 40 parking bays for use by patrons of the BOSSA Tyger Lake restaurant situated in the Tyger Lake complex in Bellville ('the Restaurant'). The wording of the relief sought in Part B of the Notice of Motion reads as follows:

"5.1 That the First, Second and Third Respondents be directed to take all necessary steps to comply with Rule 3(2) of the First Respondent's Conduct Rules, and the Constitution of the Third Respondent respectively to comply with the conditions of approval of the rezoning of erven 25169, 25170, 29034 and 28952, insofar as they relate to the provision of parking to restaurants in the Scheme, namely one parking bay for every three (3) seats in such restaurant.

5.2 Without derogating from the generality of the foregoing, that the Respondents make available at least 40 parking bays for use by patrons of the BOSSA Tyger Lake Restaurant situated in the Scheme."

3. Besides this main relief, the respondents raised a question of non-joinder. The general context of this matter will be sketched whereafter the joinder issue will be considered. If it is upheld, the application will require to be postponed. If not, the main relief will be considered.
4. The 'Scheme' in the above quoted relief is the Tyger Lake Sectional Title Scheme complex located at Niagara Way, Tyger Falls, Bellville. It will be referred to as 'the Scheme' in this judgment.
5. The first applicant ('Snap Shot') is the owner of Unit 50 in the Scheme. It leases Unit 50 to the second applicant ('BOSSA Country'), which is the owner the BOSSA restaurant franchise group. The third applicant ('RD Foods') is a

franchisee of the BOSSA franchise which operates a BOSSA restaurant as a franchisee at Unit 50 ('the Restaurant', as defined above).

6. The first respondent is the Body Corporate of the Scheme ('the Body Corporate'). The second respondent is a company which owns and leases to third parties certain parking bays in the scheme ('Capitalgro'). The third respondent is the Tyger Falls Owners Association ('the TFOA').
7. The specific zoning conditions upon which the applicants rely in this matter are not disputed and are contained in a rezoning approval letter addressed to the attorneys who dealt with the rezoning by the erstwhile City Manager of the fourth respondent (the City of Cape Town – 'the City'), dated 5 March 1996 ('the Rezoning Approval Letter'). On 23 July 2025, the City confirmed the continued applicability of the zoning conditions contained in the Rezoning Approval Letter. These shall be referred to as the Zoning Conditions.
8. It has long been settled law that a zoning scheme is passed in the interests of the property owners who hold property in the area where the zoning scheme applies: Spilhaus Property Holdings (Pty) Ltd and Others v Mobile Telephone Networks (Pty) Ltd and Another 2019 (4) SA 406 (CC) at paragraph 24.
9. The Zoning Conditions require, *inter alia*, that for restaurants, provision must be made for one parking bay for every three seats in a restaurant. For the Restaurant, this translates to 40 parking bays.
10. It is also common cause that the Scheme is subject to the relevant municipal by-laws, in particular the City of Cape Town Municipal Planning By-law, 2015 ('the By-Law'), which prescribes minimum off-street parking for restaurants of 6

bays per 100m² of gross leasable area ('GLA'). This translates to 21 parking bays for the Restaurant, by operation of section 137 of the By-Law and the table therein containing the minimum off-street parking requirements.

11. Before the Restaurant commenced business, another restaurant conducted business from Unit 50, namely the Buena Vista Social Café. There was, since the tenure of this prior restaurant and thereafter, a pool of 40 parking bays available for visitors to the complex, including patrons of the Restaurant.
12. During October 2024, the developer of the Scheme, Dormell Properties 193 (Pty) Ltd ('the Developer'), sold certain parking sections to Capitalgro in terms of a Sale of Letting Enterprise Agreement ('the Sale Agreement').
13. The Sale Agreement was itself subject to the Zoning Conditions by virtue of it being made subject to the conditions contained in the title deed by means of which Capitalgro holds title, namely title deed ST 7692/2006. This is because, in Title Deed ST 7692/2006, each of the sections is made subject to the schedule of conditions referred to in section 11(3)(b) of the Sectional Titles Act 95 of 1986 ('the STA').
14. Whilst not denying that its title deed and the Sale Agreement are subject to the Zoning Conditions, Capitalgro refers to the applicants' contentions in this regard as "baffling" because Snap Shot's title deed is subject to the same conditions. Capitalgro argues that it is Snap Shot that is not compliant, whereas its own land use is compliant.
15. Capitalgro has leased 25 of the parking sections acquired by it from the Developer to various other unidentified entities, which lessees have been

provided with exclusive use of those parking bays. Three of the parking bay sections were sold by Capitalgro to third parties. It owns 18 other parking bays which have not been leased or sold (they are available for casual monetized parking). Subsequent to this, there were insufficient parking bays available for visitors to the Scheme, including patrons of the Restaurant, to comply with the Zoning Conditions and the By-Law.

16. The respondents contend that it is the applicants' own obligation to ensure that there are sufficient parking bays available for the Restaurant on Unit 50, which they should have acquired or leased from the Developer or its successor in title in respect of parking bay sections.
17. The applicants aver that they were at no stage made aware that they would have to purchase or lease parking bays for the Restaurant and that Unit 50 was at all times marketed, let and subsequently sold for the operation of a restaurant, being equipped for such business.
18. The applicants submit that the stance that the respondents adopt is fundamentally flawed. They contend that, by the nature of sectional title ownership, it is impossible for individual owners to ensure and enforce compliance with statutory prescripts applicable to the Scheme as a whole, including the provision of sufficient parking facilities. They contend that the conduct rules of the Scheme provide that there must be parking bays for visitors.
19. The applicants submit that the facts of this matter illustrate this. The applicants contend that they were not, and could not have been, aware of transactions

between the Developer and Capitalgro, which had the result that the parking bays available for visitors and patrons of the Restaurant became reduced to the extent that there was no longer compliance with the zoning, title deed and statutory prescripts. They contend further that this is precisely why a sectional title scheme is governed by legislation which provides *inter alia* for a body corporate to be tasked with the overall management of the scheme including ensuring and enforcing compliance with all relevant laws.

20. The applicants contend further as follows: the approach that the respondents adopt appears to overlook the fact that the Zoning Conditions and the By-Law do not prescribe that visitors parking bays be registered as common property (which they are not). The applicants contend that the parking sections that were initially made available for the public and visitors complied with the requirements, notwithstanding that they were owned, and monetized (paid parking), by the Developer and thereafter Capitalgro. By letting the parking sections for exclusive use by its tenants, Capitalgro caused the Scheme to be in non-compliance with the Zoning Conditions and the By-Law to which the whole Scheme is subject, including Capitalgro itself. The Body Corporate contends that the scheme was non-compliant before that.
21. In my view, this begs the real questions, which include (1) whether Capitalgro was obliged to make its property available for this purpose and (2) whether the Body Corporate is obliged to take all reasonable steps to secure the prescribed number of parking bays for use by patrons of the Restaurant OR whether that is for the Restaurant (the applicants, or any combination of them, as owner or the

Unit 50, lessee thereof and operator of the Restaurant thereon) to ensure as a land-use requirement.

22. In the context of the foregoing, the respondents' contention of non-joinder must be considered. If it is upheld, then the determination of the application for final relief will postpone. If not, then the determination of the application for final relief will proceed.
23. The respondents contend that the applicants' relief is to the effect that it be allowed to use parking sections that belong to and/or are leased by third parties who are not parties to this application ("the Third Parties"). They contend further that the failure to join any of those parties (owners and lessees of the parking bays) is fatal to the application and should result in it being dismissed with costs. In argument, it was accepted by the respondents (with some initial resistance by Capitalgro), in my view correctly, that, if the joinder point is upheld, then the application should postpone, as opposed to the application being dismissed.
24. The argument of the parties centred on the application of the judgment in Rosebank Mall (Pty) Ltd and Another v Cradock Heights (Pty) Ltd 2004 (2) SA 353 (W), a full bench decision, which was approved by the Supreme Court of Appeal in Standard Bank of South Africa Ltd v Swartland Municipality and Others 2011 (5) SA 257 (SCA) at paragraph 10, footnote 4.
25. The applicants rely on Rosebank to contend that there was no duty on them to have joined the parties who own or lease parking bays in respect of which they (the applicants) seek relief. The respondents rely on the same judgment to contend the converse.

26. In Rosebank the relief sought involved the demolition of structures in a shopping mall which were the subject of a number of leases. The Court ordered that certain lessees which were affected by the proposed demolition would have had to be joined and postponed the application in that respect for this purpose.

27. Rosebank identified the legal principle as follows in paragraph 37

“There is a distinction between the case of a party whose rights are derived purely from ‘the right which is the subject-matter of the litigation’ and in which he has a legal interest, on the one hand, and the case where the third party has a right acquired aliunde the right which is the subject-matter of the litigation and which would be prejudicially affected if the judgment and order made in the litigation to which he was not a party were carried into effect. Indeed *Collin v Toffie* (*supra*) [1944 AD 456] and *Home Sites (Pty) Ltd v Senekal* [1948 (3) SA 514 (A)] (*supra*) were clearly cases falling into the latter category.”

28. Accordingly, as I understand it, the legal position is that joinder is not required where the right of the third party is *derived purely from the right which is the subject-matter of the litigation* and not if it is derived *aliunde* (i.e. from something other than the right which is the subject-matter of the litigation).

29. The classic case of a right *derived purely from the right which is the subject-matter of the litigation* is when a landlord seeks to evict a lessee who has a sub-lessee: the sub-lessee’s rights derive purely from the lease rights of the lessee which are the subject matter of the litigation and therefore the sub-lessee need not be joined (*United Watch & Diamond Co (Pty) Ltd and Others v Disa Hotels Ltd and Another* 1972 (4) SA 409 (C)).

30. In paragraph 38 of Rosebank it was held as follows:

“The lessees presently under consideration also fall into the latter category. The right which is the subject matter of the litigation between the respondent and the appellants is essentially the negative right conferred on the respondent by clause 5.1.2, read with clause 4.1.2 of the co-operation agreement, namely that the appellants should do nothing to prejudice the attainment of the objective of the

respondent set out in clause 4.1.2. It is that right which the respondent sought specifically to enforce by seeking the demolition order in terms of prayers 2 and 3, and the interdict in terms of prayer 5 of the amended notice of motion. In that contractual right the lessees of the offending structures or areas had no direct legal interest. But they had nevertheless acquired rights of possession. These rights were not derived from the rights which the appellants had acquired under the co-operation agreement; they were acquired *aliunde* that agreement and from the appellants as owners and possessors of the areas leased – albeit that the appellants may have been contractually bound towards the respondent not to have erected the offending structures or to have leased and given possession of sections of the road portion to Nescafé Café, Doug’s and DeliFrance, but instead to have kept the area shown on the plan as pedestrian areas with the right of way for the general public. These rights of the lessees are in conflict with the personal rights of the respondent arising from the co-operation agreement and they would necessarily be adversely affected if the demolition order or the interdict in prayer 5 granted by the Court *a quo* were carried into effect.”

31. Accordingly, the third parties in Rosebank were required to be joined because the right which was the subject matter of the litigation therein was in terms of the ‘co-operation agreement’ while the right of possession of the third parties was obtained “*aliunde that agreement and from the appellants as owners and possessors of the areas leased*” (as per paragraph 38 of Rosebank).
32. Mr Joubert, who appeared with Mr Potgieter for the applicants, argued that the rights of the Third Parties (lessees and owners) were *derived purely from the right which is the subject-matter of the litigation*, in that such subject matter, being the Zoning Conditions, By-Law, Conduct Rules and Management Rules, applied to the properties leased and owned by them.
33. In my view, the rights of the third-party lessees derive purely from the leases concluded between them and Capitalgro – the fact that the Zoning Conditions, By-Law, Conduct Rules and Management Rules apply to the immovable properties in question (the parking bay sections) does not make them the source of such rights nor do they alter the source of the third parties’ rights. In

other words, the rights as lessees were derived from something other than the right which is the subject-matter of the litigation (*aliunde*), being the Zoning Conditions, By-Law, Conduct Rules and Management Rules. Similarly, the rights of the third-party owners derive purely from the sales concluded between them and Capitalgro.

34. In my view, therefore, Rosebank is authority for the necessary joinder of the Third Parties (lessees and owners).
35. I raised with Mr Joubert and Mr Heunis, who acted for the Body Corporate, that the relief sought in Part B of the Notice of Motion as quoted above is different to the interim relief which was sought in Part A therein in that, while the relief in Part A was directed at particular parking bays owned or leased by third parties not joined to this application, the Part B relief is not to the effect that parking bays owned or leased by third parties must be made available in terms of the relief sought, but rather that bays be made available by the respondents without specifying which they are to be. This is to be contrasted with the interim relief sought in Part A of the Notice of Motion which targeted specific parking bays as depicted on annexure 'X' to the Notice of Motion.
36. Mr Heunis pointed out, however, that the pool of parking bays not tied to sectional title units was effectively limited to the 25 parking bays owned by Capitalgro and leased by it to third parties, the 18 owned by Capitalgro which were not leased out (they remained available for casual monetized parking) and the 3 which had been sold and transferred to third parties, a total of 46 parking bays. This meant that in order for the relief relating to 40 parking bays sought in prayer 5.2 of the Notice of Motion to be put into effect, bays leased by

Capitalgro to third parties which have to come into play (and bays sold to third parties could come into play). Mr Joubert accepted this in reply, in my view, correctly.

37. In the result, the difference in wording in Part B from Part A of the Notice of Motion, did not, as I thought could have been the case, resolve the situation and there is, in my view, a material non-joinder of the Third Parties (lessees and owners of parking bay sections).

38. In their heads of argument the applicants raised the point that even if joinder was necessary, it was not an absolute rule and whether it was to be required depended on the circumstances of the matter, relying on Bester NO v Mirror Trading International 2024 (1) SA 112 (WCC). This was not raised in oral argument, but I will deal with it for the sake of completeness. I had occasion recently to consider this question and Bester in the matter of Armer v Naude (12000/2024) [2025] ZAWCHC 577 (1 December 2025). The relevant parts of that judgment will be quoted as they explain the position without the need for further elaboration:

“30. Parallel to the above aspect, is the question as to whether non-joinder must result in the court not dealing with the matter until the non-joinder is cured, as held in Khumalo v Wilkins 1972 (4) SA 470 (N) at 475A. Other cases have held that the court takes a practical and common sense approach to the matter: Marais v Pongola Sugar Milling 1961 (2) SA 698 (N) at 702F, Wholesale Provision Supplies CC v Exim International CC 1995 (1) SA 150 (T) at 158 and Bester NO v Mirror Trading International 2024 (1) SA 112 (WCC) at paragraph 22-25.

31. In Bester, this court held, relying on Wholesale Provision Supplies:

“[In] Economic Freedom Fighters and others v Speaker of the National Assembly and others [2016] 1 All SA 520 (WCC), the court considered earlier authorities and explained, in summary, that when considering the necessity of joinder, it must be done within the context of the case and more particularly with reference to what the nature and effect of the relief sought or that may be granted, is.

[23] The rationale for joinder is that all substantially and directly interested parties may be heard before the order is given, which is a matter of fairness.

[24] Flexibility based on pragmatic grounds was remarked upon as follows in the matter of Wholesale Provision Supplies CC v Exim International CC and Another 1995 (1) SA 150 (T):

“the rule which seeks to avoid orders which might affect third parties in proceedings between other parties is not simply a mechanical or technical rule which must ritualistically be applied, regardless of the circumstances of the case.”

...

[27] ... it would simply not have been pragmatic to join all known members/investors of MTI. In the circumstances I am of the view that the applicants should not be non-suited as a result of non-joinder.”

32. I am bound by Bester unless I consider it to be clearly wrongly decided, which I do not. On the contrary, I consider its approach to be appropriate and correct. I am mindful of the fact that it and other cases involved a situation of a great number of interested parties and whether it was pragmatic for them to be joined, which does not apply on the facts of this matter. That being said, I do not think that the intention was to limit the application of the principle to such types of situations. Rather, I consider the principle to have been intended to be general in nature, taking into account wording such as ‘*it must be done within the context of the case and more particularly with reference to what the nature and effect of the relief sought or that may be granted, is*’ and that non-joinder should not be applied ‘*regardless of the circumstances of the case*’.
33. There appear to be some compelling factors in the circumstances of this case:
(1) The sole director of each of the corporate entities is one or the other of the parties. (2) They have filed very voluminous papers running to almost 1000 pages (of which the answering affidavit, excluding annexures, runs to 130 pages). (3) It was not suggested, both in the papers and in written and oral argument, that anything else material could or would be raised by the corporate entities. (4) With each of them having one of the parties as their sole director, each of those corporate entities would perforce adopt the same approach as their applicable sole director has done. (5) Bearing in mind these factors and the facts of the matter considered in this judgment, I think that this case is a good example in which the practical common-sense approach would apply to hear the matter even if there may have been a non-joinder.
34. As a result, even were the joinder to have been necessary, the circumstances of the matter do not require the joinder of the applicable entities.”

39. Essentially, in Armer, the sole director of each of the corporate entities not joined and in respect of which joinder had been raised was one or the other of the parties. That does not apply in the instant matter. Nor does what is a common consideration in these situations, namely a vast number of interested parties, many of which are unknown.

40. I therefore do not consider the circumstances of this matter to exclude requiring joinder in the instant matter.

41. As to the consequences of non-joinder, the respondents sought dismissal of the application. As mentioned above, their attitude softened in argument and postponement was submitted to be appropriate if the joinder point was upheld. I consider this to be correct (Cuducap (Pty) Ltd v De Bruyn (69/2023) [2024] ZASCA 62 (29 April 2024) at paragraph 9). Further in this regard, the following from Rosebank is apposite:

41.1 Paragraph 41, which reads as follows:

“It was the duty of the respondent to ensure that persons falling into the fifth category were identified and joined. The order made at the end of the judgment seeks to cater for such persons to be joined before the application proceeds further.”

41.2 The order in regard to joinder, which reads as follows,

“(T)he respondent is given leave, after effecting joinder of the lessees of the premises referred to as Clockwise Restaurant, Doug’s, DeliFrance, and Néscafé in the application, and supplementing its application as it may be advised, to seek from the Court *a quo* the relief sought in prayers 2, 3 and 5 of the amended notice of motion.”

42. Failure to join can be cured in an informal manner if the party in question, as held in In re BOE Trust Ltd 2013 (3) SA 236 (SCA) at paragraph 20, “... was properly informed of the nature and purpose of the proceedings and

unequivocally indicated that it would abide the decision of this court.” The Supreme Court of Appeal in that matter dispensed with the need for joinder because (see also paragraph 20) *“Eventually each of the charitable organisations was properly informed of the nature and purpose of the proceedings and unequivocally indicated that it would abide the decision of this court.”*

43. While the number of the Third Parties is not vast, it remains fairly significant at 28, and joining all of them would be somewhat cumbersome. Accordingly, if they do not wish to be joined and rather wish to abide the decision of the court, the avoidance of their formal joinder would be convenient. I therefore raised with the parties whether a mechanism for bringing the application under the above case number to the attention of the Third Parties and requesting them whether they require to be joined, failing which they would be deemed to consent to not being joined, whether by rule *nisi* or otherwise, would be appropriate, and, if so, invited them to submit their proposed mechanisms embodied in draft orders, or an agreed mechanism, which I would consider and grant as I consider appropriate, with or without changes.
44. The parties submitted the terms of an agreed draft order which I was requested to grant by agreement in the event that the joinder point were to be upheld (which it has been). The draft order only dealt with the third parties who lease parking bay sections from Capitalgro, and not those who purchased parking bay sections from Capitalgro. This is because, as communicated to me in the covering email from the applicants, copied to the other parties, the applicants will not seek any relief that might implicate third-party owners of parking

sections and that this will be placed formally before the court at the appropriate time. I have accepted this assurance. The email reads as follows:

“Please provide [Acting] Judge Kantor with the attached draft order containing agreed terms in the event that the judge decides to postpone the matter on the basis that there are parties that have to be joined.

By agreement between the parties I bring to the attention of [Acting] Judge Kantor the following two points:

1. The applicant has indicated to the respondent that it will not seek relief that might implicate any owners of parking sections other than those owned by the second respondent. This will be formally placed before the court in the appropriate manner and at the appropriate time.
2. The parties have not included a paragraph dealing with costs, which is left entirely in the court’s hands.”

45. I consider the draft order to be appropriate in general. I have made some changes (mainly additions) which I consider appropriate which are reflected in the order in this judgment which include:

46.1 Correcting some typographical errors.

46.2 Providing for the wording in the ‘Notice’ as defined therein to the effect that the lessees are potentially affected by an order that may be made in the matter to be in bold and larger font than the rest of the wording and adding ‘(without a date, which is to be allocated in due course)’ after *sine die* (paragraph 1.2.1 of the order below).

46.3 Replacing ‘the’ with ‘any’ (paragraph 1.2.4 of the order below).

46.4 Providing that, should any of the lessees serve and file a notice of opposition, it should include a service address (paragraph 1.2.4.1 of the order below).

46.5 Providing that the applicants must serve a copy of the papers filed of record to date in the application on any lessees file a notice of opposition at their service addresses (paragraph 1.2.4.2 of the order below).

- 46.6 Providing that, within 5 days of service of any Notice of Opposition, the applicable lessee(s) shall be granted access to this matter on the Court Online system (paragraph 1.2.4.3 of the order below).
- 46.7 Providing for an amended Notice of Motion which include as respondents any lessees which oppose the application, to be served and filed, which would formally join them as respondents in the application (paragraph 1.2.4.5 of the order below).
- 46.8 Providing that any lessee which does not oppose the application will abide the decision (as opposed to consent to any order) of the court that might be made in the matter (paragraph 1.2.5 of the order below).
- 46.9 Adding 'and sufficient' after 'necessary' (paragraph 2 of the order below).
- 46.10 Providing for the service and filing of heads of argument by the lessees joined as respondents (paragraph 4.1 of the order below).
46. As to costs, with these having been left in my hands, the question is who should pay the wasted costs arising from the postponement of the matter, which includes the costs of the hearing on 18 February 2026 and any other wasted costs allowed on taxation or agreed. It was common cause in argument that the wasted costs were so limited. I think that the Body Corporate and the TFOA ought to be awarded those costs, with scale C applying. Capitalgro, however, possibly stands on a different footing depending on what facts are placed before the court as to the position of the third parties in due course. The wasted costs of the postponement insofar as Capitalgro is concerned will therefore stand over.

Order

47. In the result, the following order, as agreed between the parties (save as to costs and as amended by me) in the event that the joinder point is upheld, as it has been, is granted:

1. The matter is postponed *sine die*, subject to the following steps to be taken:
 - 1.1. The second respondent shall, within ten (10) days from date of this order, provide the applicants, in writing, with the following information in respect of each entity that currently leases a parking section from the second respondent in the Tyger Lake Sectional Title Scheme (“**the lessees**”):
 - 1.1.1. The name of each lessee;
 - 1.1.2. The contact details of each lessee including phone number and email address;
 - 1.1.3. The section number of the parking section leased by each lessee.
 - 1.2. The applicants shall, within ten (10) days after receipt of the aforementioned information, deliver to each lessee, a notice (“the Notice”) informing each lessee as follows:
 - 1.2.1. That this application under case number 2025-221553 is currently pending before the Western Cape High Court, that it has been postponed *sine die* (without a date, which is to be allocated in due course) subject to the provisions of this order and that their rights as lessees of sections in the Scheme are potentially affected by an order that may be made in the matter which is being sought by the applicants (this last aspect to be in bold and larger font than the rest of the wording in the Notice).
 - 1.2.2. Attaching a copy of this order as well as the Notice of Motion.
 - 1.2.3. That the full court papers can be accessed by a digital link provided in the Notice, and a hard copy thereof may be viewed at the offices of the first respondent during normal business hours, who shall not be responsible for making any copies thereof.
 - 1.2.4. That, should any of the lessees wish to oppose the application:

- 1.2.4.1. It/they is/are required to serve and file Notice(s) of Opposition within five (5) days of receipt of the Notice in which it includes an address for service of all notices and process in these proceedings;
 - 1.2.4.2. within 5 days of service of any Notice of Opposition, a copy of the papers in the application will be served by the applicants on the applicable lessee(s) who have served and filed a Notice of Opposition at the service address contained therein (this is also to be done in respect of any Notices of Opposition served and filed after the 5 days in 1.2.4.1 above);
 - 1.2.4.3. within 5 days of service of any Notice(s) of Opposition, the applicable lessee(s) shall be granted access to this matter on the Court Online system;
 - 1.2.4.4. the applicable lessee(s) shall serve and file answering papers within fifteen (15) days of service of the founding papers on it/them;
 - 1.2.4.5. the applicants shall, without the need to serve a notice in terms of Rule 28, file an amended Notice of Motion which includes in the heading thereof as further respondents any lessees who have opposed the application, by means of which those lessees will be formally joined as respondents in the application (any other amendments will have to be made in the ordinary course).
 - 1.2.5. Any lessee which does not oppose the application as aforesaid will be deemed (1) to have waived its right to oppose the matter and (2) to abide the decision of the court that might be made in the matter.
2. The Notice to the lessees may be given by e-mail or such other means of service as may be necessary and sufficient to ensure that the Notice has been received by each of the lessees and shall be confirmed by the filing by the applicants of an affidavit of service together with the practice note provided for below.
3. In the event that any lessee enters opposition and files answering papers, the applicants may file replying papers thereto within fifteen (15) days after service of such answering papers.

4. In the event of opposition by any lessee:
 - 4.1. the applicants may file any supplementary heads of argument within five (5) days after the time period for the delivery of any answering papers has expired or with five (5) days of filing its replying papers, and the respondents (including any of the lessees who have opposed the application and should have been added as respondents in terms of this order) may file any heads of argument within five (5) days thereafter;
 - 4.2. within five (5) days after receipt of the respondents' heads of argument, or expiry of the time by which such heads of argument should have been filed, the applicants shall file a Practice Note setting out the state of affairs and requesting a date for hearing of the matter.
5. In the event that no notice of opposition is filed in accordance with paragraph 1.2.4 above, the applicants shall file a Practice Note in accordance with paragraph 4.2 above within five (5) days after expiry of the time for entering opposition.
6. The applicants are to pay, jointly and severally, the first respondent's and the third respondent's wasted costs of the postponement, including the costs of the hearing on 18 February 2026, with scale C applying.
7. The wasted costs of the postponement insofar as the second respondent is concerned shall stand over for later determination.

A Kantor

Acting Judge of the High Court

APPEARANCES

For the Applicant: Adv C Joubert SC & Adv G Potgieter

Instructed by: Theron & Partners Attorneys

For the first Respondent: Adv J Heunis SC

Instructed by: Stadler & Swart Incorporated

For the second Respondent: Adv J Barlow

Instructed by: Dorrington Jessop Incorporated

For the third Respondent: Adv J P White

Instructed by: Mostert & Bosman