



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 2025-168009

In the matter between:

**DM THIRIPATHI 150325 (PTY) LTD
HEMCHUND GANESSUNKER MAHARAJ**

**FIRST APPLICANT
SECOND APPLICANT**

and

**BODY CORPORATE OF 4[...] on M[...]
JOSHUA GOVENDER
ANDREA SATAR
LEASH MAHARAJ
HEMSUNKER MAHARAJ
VICKASH SOMAYI
MFUYI VIP AND SECURITY PROTECTION
SERVICES (PTY) LTD
THALENTE STEVEN MDLETSHE**

**FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT
SIXTH RESPONDENT
SEVENTH RESPONDENT
EIGHTH RESPONDENT**

Coram: MOSSOP J
Heard: 18 February 2026
Delivered: 4 March 2026

ORDER

The following order is granted:

1. The first to eighth respondents and any other persons, juristic or natural, acting upon their instructions, are interdicted and restrained from preventing the first and second applicants and their employees, agents, and contractors from performing renovation work on the first applicant's property, namely section 1, comprised of unit numbers 4[...], 4[...] and 4[...], of the Body Corporate of '4[...] on M[...]', situated at 4[...] M[...] Drive, Umhlanga Rocks, Durban (the first applicant's property) and which is fully identified and described in the approved building plan marked 'X' attached to the applicants' founding affidavit (Plan X).
2. The first to eighth respondents and any other persons, juristic or natural, acting upon their instructions, are directed to afford the first and second applicants and their employees, contractors and agents, access to the first applicant's property to conduct the renovation work in accordance with Plan X.
3. Insofar as costs are concerned:
 - (a) The first respondent shall pay the applicants' costs, which may be taxed on scale C; and
 - (b) The applicants shall pay the seventh and eighth respondents' costs jointly and severally, the one paying the other to be absolved.

JUDGMENT

MOSSOP J:

Introduction

[1] This opposed application, initially brought by the applicants on an urgent basis, involves a dispute between an owner of a section in a body corporate and the board of trustees of that body corporate (the board). The dispute relates to whether the owner of the section in question, in this case the first applicant, was required to seek the further approval of the board to carry out improvements to its section, ordered and approved by the eThekweni Municipality (the Municipality), when the

board had twice before granted its approval for the first applicant to carry out improvements. The board inclines to the view that its consent for a third time was required, while the applicants assert that the consent had already been given and did not need to be given again.

The building and the tenant of section 1

[2] The scheme in question is known as '4[...] on M[...] (the building) and is located in the relatively newly developed area of Umhlanga Ridge, in the northern part of the city of Durban. The name of the road that the building is located on is reflected in its name, and M[...] Drive has become largely synonymous with the motor vehicle trade, housing a great number of new and second-hand motor vehicle dealers.

[3] The building was developed by an entity called Dwarika Maharaj Properties (Pty) Ltd. The second applicant and his two brothers, Hemsunker, who is the fifth respondent in this application, and Dhaneshwar (Dhaneshwar), all bear the surname of Maharaj and the Maharaj brothers were actively instrumental in the construction of the building. The second applicant has subsequently fallen out with his two brothers, and it is alleged by him that they have orchestrated the dispute that is the subject matter of this application.

[4] The building is a mixed use scheme, having three commercial units and fifteen residential units. The commercial units are section 1 (section 1) and sections 2 and 3. Section 1 is located on the ground floor of the building, section 2 is located on the first floor and section 3 is located on the second floor. Section 1 is owned by the first applicant, while sections 2 and 3 are jointly owned by the fifth respondent and Dhaneshwar.

[5] Section 1 is comprised of unit numbers 4[...], 4[...] and 4[...] and it is presently let by the first applicant to Chery, a Chinese motor vehicle manufacturer and dealer (Chery). Section 1 is zoned as commercial and was previously let by the first applicant, inter alia, to an entity that traded under the name of 'Travis Scooters' (Travis Scooters). Travis Scooters utilised section 1 both as a showroom and as a

workshop facility to repair scooters over a period of 12 years. Section 1, accordingly, has a history of accommodating tenants involved in the general automotive trade.

[6] The first applicant and Chery negotiated the terms of a lease of section 1 in July 2024. Chery indicated from inception that it intended to use section 1, as Travis Scooters had, namely as a showroom and workshop. To render section 1 fit for that purpose, however, Chery required certain alterations to be made to it. The alterations involved the installation of stackable aluminium doors in a portion of section 1, and also the installation of an automatic oil and compressor system within that section.

The first plan and the first approval by the board

[7] The first applicant consequently caused architectural plans to accommodate Chery's requirements to be prepared, and, in due course, those plans were presented to the board of the first respondent (the first plan).

[8] On 30 July 2024, the first respondent approved the first plan in writing. The letter notifying the first applicant of that approval bore that date and was signed personally by the chairman of the board, being the second respondent in this application. The first applicant was therefore granted permission to install the stackable aluminium doors and the automatic oil and compressor system.

[9] The stackable aluminium doors were installed, and Chery took occupation of section 1 in August 2024 but did not immediately sign the lease agreement that had been negotiated earlier. Chery indicated that it was only prepared to do so once all the changes that it required to be made to section 1 were complete and once it was satisfied that all statutory requirements relating to the health and safety aspects of the alterations had been met.

The fire complaint

[10] Three months after the first plan was approved by the board, and in October 2024, the chairman of the board, the second respondent, lodged a complaint with the Fire and Emergency Services Unit of the Municipality, alleging a suspicion that the

first applicant had not complied with the relevant fire regulations applicable to section 1.

[11] Mr *Camp*, who appeared for all the respondents, submitted in argument that the second respondent had, in fact, requested the Fire and Emergency Services Unit to inspect section 1, as well as sections 2 and 3 and, in fact, all the other units in the body corporate. That may well be so, and I shall discuss this aspect further later in this judgment, but as the second respondent makes clear in his answering affidavit, the primary concern was not so much with the other units making up the building but with the fact that large quantities of oil were to be stored in section 1. That explains his statement in his answering affidavit that:

‘Pressure was also being placed on the trustees by the owners of units in the Development to do something about the concerns at oil being stored at section 1.’

[12] Sight must not be lost of the fact that by the time the complaint was made to the Municipality by the second respondent, the board, knowing what was to be stored in section 1, had already approved the first plan, which included the installation of the automatic oil system.

[13] The complaint registered by the second respondent brought about an inspection of section 1 by the Municipality. Those that conducted the inspection determined that further improvements were required: in particular, a bund wall¹ had to be constructed around the oil storage area and an epoxy-coated floor had to be installed, both in the oil storage area and in the compressor room. The Municipality permitted Chery to continue trading while this was attended to but stopped it from using the compressor room, and the oil storage tanks, until the first applicant had submitted compliant plans for these areas.

The second plan and the second approval of the board

[14] As a consequence of the inspection by the Municipality and the further improvements required by it, the second applicant was required to have an additional

¹ A bund wall is a barrier, typically constructed of concrete, surrounding a storage tank that is designed to contain any potential leaks or spills from the storage tank, thereby preventing hazardous materials from flowing out. It is designed to be impervious and usually features an impervious floor, with its volume often required to be at least 110% of the storage tank’s capacity.

architectural plan prepared (the second plan). The second plan was duly commissioned, prepared by an architect, and then first submitted to the board.

[15] The second plan did not cause any controversy with the board nor was there anything unclear in what it provided. The board must have clearly understood what the second plan contemplated, for it raised no issue with it and approved it on 9 January 2025. The approval was again recorded in writing, was dated with the date just mentioned, and was signed by the chairman, the second respondent, and the five other trustees of the building.

[16] The board's approval secured for a second time, the second plan was then submitted to the Municipality for approval. A further inspection by the Municipality resulted, which was carried out on 21 February 2025. The official who conducted the inspection raised three further issues, with the first applicant now being required to install:

- (a) an overhead sprinkler system in the area proposed to be utilised as a workshop;
- (b) a block wall in its exclusive use area in order to separate the oil storage room and the compressor room from each other; and
- (c) fire doors in the oil storage and compressor rooms.

[17] As a consequence, the first applicant caused the second plan, already approved by the first respondent, to be amended to incorporate the latest requirements of the Municipality. The amended second plan is attached as an annexure to the founding affidavit, marked as 'X', and I shall hereafter refer to it as 'Plan X'

[18] None of what has been stated thus far is controversial, for the first to sixth respondents acknowledge that:

'For purposes of this application, we can accept that the First Applicant had trustee approval for the renovation works as outlined in plans as submitted to the First Respondent as at 9 January 2025, such approval having been granted by the trustees of the First Respondent at that time, as evidenced by annexure 'HGM3' to the founding affidavit.'

The plan submitted on 9 January 2025 was the second plan.

Plan X

[19] It may be helpful at this stage to describe what appears on Plan X.

[20] It is comprised of two sheets. The first sheet, which is dated 10 December 2024, and is described as being 'revision one', contains a large floor plan drawing but also has certain smaller sectional drawings. One such drawing, entitled 'SE Elevation', contains a drawing of the stack doors and is accompanied by the following description:

'Ex swing doors to be removed and replaced with stack door system.'

Where the stack doors were to be positioned is depicted on the floor plan. It seems to me that sheet one was, in fact, the second plan mentioned earlier, and which was previously approved by the board on 9 January 2025.

[21] The second sheet appears to be dated 24 June 2025, but I cannot be entirely sure of that as the court file is a digital file and the date on the second sheet becomes indistinct when the plan is enlarged and is too small to be easily read when it is not enlarged. But from what can be discerned, the date appears to be as just mentioned. The second sheet appears to have the same floor plan on it as appears on sheet one but reduced to a smaller scale. The floorplan drawing, having been reduced in size, is surrounded on sheet two with smaller drawings of component parts of the fire system to be installed and those drawings are, in turn, surrounded with extensive printed notes on what is to be done.

[22] Plan X was not submitted to the board but was resubmitted to the Municipality and was finally approved by it on 10 July 2025. The rationale behind this approach by the applicants was that they took the view that Plan X was not a new plan but simply an iteration of the second plan, with added detail of the further additional safety requirements that the Municipality now required to be in place in order for the proposed works to be compliant with its requirements. The applicants took the view that the additional improvements required by the Municipality simply served to enhance the safety of the works demanded by the board when it mandated its chairman to lodge the initial complaint with the Municipality.

[23] The first applicant was now in a position to commence with the works depicted in Plan X. Or so it believed.

Plan X sent to the board

[24] While the applicants were of the view that they were not obliged to seek any further approval of Plan X from the board, approximately one month after Plan X was approved by the Municipality, and before any construction work commenced, the first applicant nonetheless sent Plan X to the board, through the offices of the building management company employed by the board (the managing agents). This happened on 18 August 2025 and was, according to the second applicant, simply an act of courtesy by the first applicant.

[25] It is not disputed that Plan X was sent to the managing agents, for the second respondent confirmed this in his answering affidavit when he said the following:

'By way of email sent at 11h19 on 18 August 2025, the Second Applicant provided the amended plans, referred to as "drawings" as an attachment. A copy of that email is annexed marked "JJG5". Within an hour of Mr Moses having received the amended plans, they were provided to the trustees.'

Mr Moses is an employee of the managing agents.

[26] Physically, the board therefore had Plan X in its possession by 18 August 2025, at the latest.²

The attempted commencement of the works

[27] The works were scheduled by the first applicant to commence on 15 September 2025, almost a month after Plan X was received by the board. The managing agents were sent a courtesy letter on 12 September 2025, advising them of this fact and pointing out that the appointed building contractors would require access to the first respondent's property in order to perform the scheduled work.

² An attempt had been made on 15 August 2025 to send Plan X to the managing agents, but for some unexplained reason, a copy was not included with a covering email, probably due to human error. Plan X was delivered, however, on 18 August 2025 as described above.

[28] No response was received from the managing agents to this letter. This is, perhaps, unsurprising, for 12 September 2025 was a Friday and the work was to commence on the Monday following the intervening weekend.

[29] Not suspecting that anything was amiss, the building contractors hired by the first applicant arrived at the building on the morning of 15 September 2025 but were denied access to it by a security guard employed by the seventh respondent.

[30] Upon observing the arrival of the workmen at the building, the security guard in attendance had apparently contacted the second respondent, being the chairman of the board, and the eighth respondent, being the proprietor of the seventh respondent, which was the security company that employed him, and he was apparently instructed by both to deny the builders access to the building. This he dutifully did.

[31] According to the second applicant, when a protest was raised over the exclusion of the builders from the building, the security guard, who was allegedly armed, threatened to assault those who had arrived at the building, an allegation that the respondents fiercely denied. The second applicant stated in the founding affidavit that:

‘This was a very serious threat, and I feared for the lives of the first applicant’s employees and the contractors on site, including my own life as the security guard was armed with a gun.’

It was this conduct that prompted the applicants to seek the relief contained in the notice of motion that seeks an interdict prohibiting certain individuals, including the seventh and eighth respondents, from initiating an assault upon the second applicant and the first applicant’s employees.

[32] The consequence of this standoff at the building was that a letter was sent by the first applicant’s attorneys to the first respondent’s attorneys that very day, 15 September 2025, protesting what was occurring at the building. That letter elicited a swift response from the first respondent’s attorneys. The significant part of the response reads as follows:

‘Your Ms. Gounden is correct in pointing out that the security company has halted the process and the same has been done as a result of the absence of the required approval by the homeowners contained in a Resolution passed on 3rd September 2025. Please find enclosed herewith a copy of the Resolution for your client’s perusal and consideration.’

[33] It appears from this response that the complaint was not that the applicants had not complied with the conduct rules, as would later be alleged by the board in its answering affidavit, but that there had been non-compliance with a resolution passed on 3 September 2025 (the resolution).

[34] It is to that resolution that I now turn.

The resolution

[35] The first three parts of the resolution read as follows:

- ‘1. Major alterations to common property require approval or disapproval of the entire body corporate (all homeowners) through either a special general meeting (SGM) or a round robin resolution. This is necessary due to the use of exclusive areas for business purposes and potential increases in insurance premiums, leading to higher levies.
2. The owner of section 1’s proposal to ensure the storage unit’s fire compliance will undergo a 14-day objection period for homeowners, consistent with the process followed by sections 2 and 3.
3. The trustees do not approve the installation of stack doors at the former Travis Scooters shop location. No engineering documentation has been submitted. Furthermore, commercial vehicles over 2 tons are prohibited from entering the property this is stated in the conduct rules, point 6, 5 hence the request from section 1 was denied.’

[36] The applicants appear to have several misgivings about the propriety of this resolution. Firstly, they complain that they were not given any notice of the intended meeting at which the resolution was to be passed and believe that as the resolution that was passed related only to it, they should have been. Secondly, the resolution related only to ‘major alterations to common property’. The applicants argue that the proposed renovations were not major, nor did they relate to any common property but related, rather, to the first applicant’s exclusive use area. Finally, they assert that approval had already been given for the installation of stack doors in a part of section

1 and that the apparent refusal to permit this to occur was meaningless, as approval had already been given and the work had been carried out.

[37] The second applicant holds the view that the objections by the board are petty and simply serve to establish the existence of the feud between himself and his two brothers.

The relief claimed

[38] The resolution taken on 3 September 2025 and the events of 15 September 2025, sparked the bringing of this application. In its notice of motion, the applicants seek the granting of a rule nisi with the following effect:

‘1.1 The first to eighth respondents and any other persons, juristic or natural acting upon their instructions are interdicted and restrained from preventing the first and second applicants and its (sic) employees, agents, and contractors from performing renovation work on the first applicant’s property, namely Section 1, and unit numbers 4[...], 4[...] and 4[...] on the premises of the Body Corporate of 4[...] on M[...], situated at 4[...] M[...] Drive, Umhlanga Rocks, Durban (“the first applicant’s property”) and which is fully identified and described in the building approval plan marked “X” hereto;

1.2 The first to eighth respondents and any other persons, juristic or natural acting upon their instructions, are directed to afford the first and second applicants and their employees, contractors and agents, access to the first applicant’s property to conduct the renovation work in accordance with the building plans marked “X” hereto;

1.3 The second, third, fourth, fifth, seventh and eighth respondents and any other persons, juristic or natural acting upon their instructions are interdicted and restrained from threatening, harassing, intimidating, and assaulting the first and second applicants and their employees, agents, lessees and contractors who are performing any work on the first applicant’s premises at any time hereafter;

1.4 The second, third, fourth, fifth, seventh and eighth respondents are directed to pay the costs of this application on the scale as between attorney and client including counsel’s fees on Scale C of Uniform Rule 69, jointly and severally, the one paying the other to be absolved.

2. The provisions of paragraphs 1.1 to 1.3 shall operate as an interim interdict with immediate effect pending the finalisation of this application.’

[39] It must be mentioned that the relief sought by the applicants is not sought against the sixth respondent, also a trustee of the first respondent, who the applicants indicate has conducted himself appropriately and has apparently not associated himself with the conduct of the second to fifth respondents, who are all trustees of the first respondent. In this the applicants may be mistaken, for it does appear that the sixth respondent has associated himself with the position taken by his fellow trustees. Be that as it may, the applicants do not seek a costs order against him.

The first to sixth respondents' answer

[40] While all eight respondents gave a single notice of intention to oppose the application, the first to sixth respondents delivered an answering affidavit and the seventh and eighth respondents delivered their own answering affidavit. I shall refer to the first to sixth respondents from here on as 'the respondents' and shall refer to the seventh and eighth respondents by those names when referring to them.

[41] The answering affidavit of the respondents is some 40 pages long and has numerous annexures attached to it. Despite its length, on the issue of the first applicant's plans, two principal pillars of resistance may be discerned, namely the issue of urgency and the requirements of conduct rule 3 of the building.

[42] As regards urgency, the respondents take the point that the matter is not urgent, a common complaint of respondents on the receiving end of an urgent application. In elaboration of this point, they complain that section 1 was inspected by the Municipality on 21 February 2025, but that Plan X was only approved by the Municipality on 10 July 2025, and that:

'No explanation is given for this delay in having the amended plans approved.'

[43] The respondents submit that if any urgency is found to exist, then it is self-created.

[44] The second pillar of resistance proposed by the respondents is that they assert that the applicants are wrong in contending that the further consent of the

board was not required consequent upon the final approval by the Municipality of Plan X. This was because:

'35.1 ... owners of sections should not do anything which could materially alter the general appearance without first referring the matter to the trustees - see Conduct Rule 2;
35.2 in respect of improvements and alterations to property, except as specifically provided for in the Conduct Rules, no improvements or alterations could be made by any owner to the external portion of his/her section or Exclusive Use Area or common property without prior consent of the trustees - see Conduct Rule 3.1.' (Underlining forming part of the extract quoted.)

[45] Conduct rule 2 reads as set out in the extract mentioned above and need not be repeated. Conduct rule 3 reads, in full, as follows:

'Improvements and Alterations to Property

'3.1 Except as is provided hereunder, no improvements or alterations shall be made by any owner to the external portion of his/her section or exclusive use area or common property without the prior consent of the Trustees.

3.2 *Air Conditioners*

3.2.1 Permission shall be required from the Trustees to install any air conditioner and, in such event, they may make such conditions as they deem appropriate.

3.2.2 Applications for permission to install any air conditioner must include full details the proposed installations (sic).

3.3 *Burglar Guards*

Burglar guards and safety doors may not be fitted in such a manner that they protrude beyond the boundaries of the walls of any section.

3.4 *Internal Improvements*

Internal improvements which require the destruction or partial destruction of any internal wall or support column may not be carried out without prior permission of the trustees who may make such conditions as are considered appropriate in the particular circumstances.'

3.5 *Compliance with Improvements Rules*

Failure to comply with any of the rules under this section will render the Owner liable to make good any damage caused, directly or indirectly, as a result of such work or to compensate the Body Corporate for any remedial work required to make good such damage caused.'

[46] In advancing their argument, the respondents assert that:

‘At all material times hereto, the Conduct Rules have been (and remain) valid and binding upon the members of the First Respondent. Such appears to be common cause in that the Applicants have put up a copy of the Conduct Rules and nowhere have they suggested that those Conduct Rules do not have application.’

[47] The conduct rules are accordingly the source of the allegation made by the respondents that the further consent of the board was required by the applicants.

[48] The respondents sum up the dispute that exists in the following terms:

‘58. The Applicants did not seek authority from the trustees to proceed with the renovation works as set out in the amended plans.

59. Nowhere do the Applicants claim that they sought authorization from the trustees to carry out the renovations as per the amended plans.

60. The Applicants appear to believe that, as they had trustee approval in respect of the initial plans (as at 9 January 2025), it was unnecessary to obtain trustee approval in respect of works consequent upon an amendment to the initial plans.

61. The Applicants are simply wrong in this regard.’

[49] The respondents argue that it is obvious that approval from the board was required by virtue of the further requirements of the Municipality. The position adopted by the board is that until such time as its approval was sought by the applicants, and was given by it, the first applicant could not be permitted to take any steps to perform the proposed works. The board therefore does not shy away from the fact that the works proposed by the applicants to commence on 15 September 2025 were prevented from occurring by a decision taken by it.

[50] In a submission allied to this objection, the respondents state that they could not understand what Plan X envisioned and accordingly sought explanations from the second applicant through either a meeting or the submission of a written explanation in understandable English. Neither of these proposals was embraced by the second applicant. It is therefore submitted by the respondents that in those circumstances, the board was entitled to withhold its approval of the proposed works until it fully understood what work was, in fact, to be undertaken.

[51] Finally, the respondents rely upon the resolution, already mentioned. The applicants did not comply with its terms and therefore the board was justified in not considering Plan X and granting approval.

Analysis

Urgency

[52] I consider first the allegation by the respondents that there is no urgency in the matter.

[53] It is apparent that the urgency that is said to exist by the applicants does not involve a threat to life or limb, traditionally the touchstone in this division that determines whether a matter was truly urgent, but, instead, relates to the alleged presence of a species of commercial urgency.

[54] It is settled law that commercial urgency, while admittedly not dealing with life or death issues, may, nonetheless, be invoked to have a matter heard urgently and out of turn. As was said in *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd*:³

‘... the urgency of commercial interests may justify the invocation of Uniform Rule of Court 6(12) no less than any other interests. Each case must depend upon its own circumstances.’

[55] As to the delay in having Plan X approved by the Municipality, it does not appear to me to be something that can be explained by the applicants, for neither of them has any responsibility for the workings of the Municipality.

[56] The first applicant has a tenant in section 1 who requires the completion of the works. The first applicant incurred the expense of hiring the builders to carry out the works and the builders were prohibited from doing so by the board. The issues need to be speedily determined. Given the unique facts of this matter, I am satisfied that the matter is, indeed, commercially urgent and that the point taken by the respondents must consequently fail.

³ *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W) at 586F-G. See also *Blue Crest Holdings (Pty) Ltd v Body Action Health Clubs (Pty) Ltd* [2020] ZAGPJHC 407 para 9; *Avis Southern Africa (Pty) Ltd and Others v Porteous and Another* 2024 (2) SA 386 (GJ) para 21.

Consent

[57] The principal defence raised by the respondents relates to the assertion that the board's approval was required for the final requirements imposed by the Municipality. As previously mentioned, its argument on this point is largely predicated on the conduct rules.

[58] The respondents advise that the conduct rules were adopted by the first respondent at an annual general meeting held on 26 July 2016. The conduct rules consequently continue to apply to all those who own, or occupy, units within the building.

[59] While communal living schemes are required to have both management rules and conduct rules,⁴ this matter does not involve the management rules. They have not been put up, and no reference has been made to them in the papers.

[60] Conduct rules in a communal living scheme serve as a regulatory framework and are designed to ensure harmonious living conditions for all residents in such a scheme. Their primary value lies in balancing individual freedoms with collective responsibilities. They create certainty and predictability amongst the inhabitants of the scheme because they define what forms of behaviour are acceptable, and what forms are not. The conduct rules thus bring order to what could potentially be disorder. The conduct rules must accordingly be reasonable, and they must apply to all members of the scheme equally.⁵ They bind both the body corporate and the owners of the individual sections and any person occupying a section.

[61] The respondents rely, in particular, upon conduct rule 3.1 and assert that, in terms of that rule, previously quoted, the board's approval was required with regard to the final requirements imposed by the Municipality. The wording of conduct rule 3.1 is important. It requires the consent of the board to be given when an improvement is proposed to be made to the external portion of a section or exclusive use area or common property. The use of the words 'external portion' determines the

⁴ Section 10(2) of the Sectional Titles Schemes Management Act 8 of 2011 (the Act).

⁵ Section 10(3) of the Act.

application of that sub-rule. It only applies to the exterior of a unit, exclusive use area, or common property. It therefore does not deal with internal improvements that do not form part of the external portion of a section, exclusive use area, or common property. That this must be so is confirmed by the provisions of conduct rule 3.4.

[62] Conduct rule 3.4, also already quoted, carries the heading 'Internal Improvements' and appears to do exactly what it says: it deals with internal improvements to a section. Its wording is also important. It only requires the approval of the board when the improvement contemplated will require the destruction, or partial destruction, of any internal wall or support column.

[63] It would therefore appear to me that on a proper reading of conduct rule 3, the approval of the board is only required if the improvement contemplated involves the external portion of a section or the destruction, whether total or partial, of an internal wall or support column.

[64] The requirements stipulated by the Municipality must next be considered to determine whether they fall within the ambit of either conduct rule 3.1 or 3.4.

[65] It does not appear to me that the external portion of section 1 is affected at all by what the Municipality requires. It is so that sheet one of Plan X refers to the installation of stackable doors, which must be on the external aspect of section 1. But as is pointed out by the second applicant and the architect who drew, inter alia, Plan X, this is work that had already been performed when approval was first sought from the board when the first plan was submitted to it. The board granted that approval. There can accordingly be no cause for complaint by the board because it then permitted the installation of the stackable doors to occur. Furthermore, it does not appear that any supporting walls or columns are required to be demolished, either totally or in part, consequent upon the Municipality's final requirements. There is a mention of a wall being constructed, but that is not an activity that requires the consent of the board in terms of the conduct rules.

[66] In any event, as part of the applicants' reply to the respondents' answering affidavit, the architect who drew all the plans for the first applicant, Mr Neil Chetty (Mr

Chetty), deposed to an affidavit on behalf of the applicants. The purpose of this affidavit was to clarify what work was still to be done. Mr Chetty suggested that the board may have misunderstood what works were still to be implemented arising out of Plan X's approval by the Municipality. He explained the position as follows:

'6. I can confirm further that the trustees have misunderstood the corrected approved plan dated 10 July 2024 as these plans do not include the carrying out of the building of a full height wall from floor to ceiling in a portion of the common property.

7. The breaking away of an existing and external wall of section 1 in order to install stack doors has already been done shortly after July 2024 and was pursuant to the plans in the original drawings which was approved by the first respondent body corporate and eThekweni Municipality.'

[67] It appears to me, therefore, that on a correct understanding of conduct rule 3, none of the corrections required by the Municipality falls within its ambit. Thus, the consent of the board to proceed with that work was not required, as was contended for by the applicants.

[68] A broader view of events confirms the accuracy of that conclusion. The board had already previously approved the installation of stackable doors and the doors had been installed without any protest from the board. The board also approved the installation of the automatic oil and compressor system and, in doing so, must have appreciated that there would be oil stored in section 1, given the nature of the system that it approved. The second respondent then complained to the Municipality. In doing so, he could only have been acting in his official representative capacity as chairman of the board because he invited the Municipality not just to inspect section 1, but the entire building. Had he been acting personally he would have lacked the authority to do so.

[69] The board therefore appeared to rely on the assessment of the Municipality to determine whether what it had already approved was lawful and in compliance with the Municipality's requirements. What the board had approved was then found to be non-compliant. Changes were required and further plans were again approved by the board. Those plans were subsequently also found to be non-compliant.

[70] Having relied upon the Municipality to determine the lawfulness of what it had already approved, it now does not lie in the mouth of the board to complain that it had not been heard on the work to be carried out. It had required compliance with the Municipality's fire and safety standards. Its complaint to the Municipality was designed to achieve that compliance. It now has that compliance, and it must now allow the proposed works to proceed.

[71] It seems to me from a careful reading of the answering affidavit deposed to by the second respondent that the managing agents of the building themselves did not believe that the board had the power to refuse to allow the improvements required by the Municipality to occur. When correspondence was exchanged over Plan X on 15 August 2025, being the day when Plan X was said to have been sent through to the managing agents but was not, the representative of the managing agent wrote to the second applicant stating:

'The trustees have requested that you kindly provide copies of the approved plans from Council and the Association. Please also note that no work may commence until full disclosure has been made regarding the nature and scope of the proposed works.'

[72] The admonition was not that approval of the board was required, either in terms of the conduct rules or the resolution and had not been given: it was that information was required about what work was to be done. That information was subsequently provided in writing by the first applicant.

[73] The respondents further assert that they could not understand what work was intended to be carried out when they perused Plan X. They say that they:

'... were simply not in a position to ascertain, merely by reference to the amended plans, the precise nature of the renovations which the applicants sought to carry out.'

[74] That explanation appears to me to be a weak one and incapable of being accepted. Firstly, two sets of plans were previously submitted to the board and appear to have been understood by it because they were approved without query. Secondly, Hemsunker, one of the three Maharaj brothers who was involved in the construction of the building, is a trustee of the building and is the fifth respondent in this application. He would, obviously, have more than a passing familiarity with

reading and understanding building plans and, in particular, building plans that related to the very building that he helped to construct. Even if the fifth respondent mysteriously could not understand Plan X, which is entirely unlikely, the board had sufficient time, from 18 August 2025 to 3 September 2025, to obtain clarity from a third party that had the necessary expertise on what was being proposed.

[75] In resisting the relief claimed by the applicants, the respondents also rely on the resolution. It is worth noting that by the time that resolution was taken, on 3 September 2025, the board already had Plan X. It appears to me that the resolution seeks to redefine when board approval is required by owners for improvements to sections and conflicts with the requirements prescribed in the conduct rules. When I say owners, I actually mean the first applicant, for it appears that the resolution relates only to it. But the resolution certainly changes the playing field insofar as the first applicant is concerned, making it more onerous for it to obtain approval than is required by the conduct rules.

[76] There are prescribed procedures that must be followed if conduct rules are to be amended.⁶ In my view, the resolution offends against the conduct rules and cannot be relied upon by the board.

[77] The second applicant holds the view that there is a vendetta against him, fuelled by his two brothers. I am unable to determine the validity of that allegation on the papers, nor need I do so. I comment simply that the change of attitude by the board towards the applicants is remarkable and, on the papers, inexplicable. The possibility of some personal issue motivating the change in attitude cannot, therefore, be excluded.

[78] I conclude that the applicants are accordingly entitled to the relief claimed in paragraphs 1.1 and 1.2 of the notice of motion. In coming to this conclusion, I must mention that the applicants incorrectly regard the first applicant's exclusive use area

⁶ The conduct rules of a body corporate may be amended by passing a special resolution (comprising 75% in value and number of votes) at a general meeting or via a round-robin, following at least 30 days' written notice to members (s 10, read with ss 1 and 6 of the Act). The updated rules must be reasonable, must not conflict with the Act, and require approval of the Community Schemes Ombud Service to be legally enforceable (s 10 of the Act).

as not forming part of the common property of the building. In that they are incorrect.⁷

The assault interdict

[79] There are material disputes of fact related to the allegation that an armed employee of the seventh respondent allegedly threatened to perpetrate an assault on the multitude of people in attendance at the building on 15 September 2025. How that would possibly occur is difficult to imagine. The proposition appears to me to be unlikely, but motion proceedings are not the proper place to consider probabilities.⁸

[80] As already mentioned, the case initially made out by the applicants was that the lone security guard who denied the construction workers access to the building had been armed. This was factually not correct, and it was later alleged that the eighth respondent, who came to the building on that day, had a firearm. That materially changes the applicants' version of events.

[81] Mr *Naidu*, who appeared for the applicants, conceded that there may be difficulties for the applicants in establishing this relief on what had been pleaded and did not strenuously insist upon it being granted. That, in my view, was a sensible position to take, for I am not of the view that the grounds for an interdict preventing an assault have been established, and I decline to grant any relief in that regard.

Conclusion

[82] I am satisfied that the applicants are entitled to the relief claimed by them pertaining to the work to be performed on section 1 at the building.

[83] The relief sought in the notice of motion was in the form of a rule nisi with interim relief. The issues in the matter have been fully and comprehensively argued and debated, and everything that could be said has been said. The requirements for a final interdict are a clear right, an injury actually committed or reasonably

⁷ The definition of 'exclusive use area' in the Act 'means a part or parts of the common property for the exclusive use by the owner or owners of one or more sections'.

⁸ *National Director of Public Prosecutions v Zuma* [2009] 2 All SA 243 (SCA) para 26.

apprehended and the absence of any other satisfactory remedy.⁹ I am satisfied that these requirements have been met and I accordingly intend granting a final order.

Costs

[84] Having not found definite proof of a conspiracy against the applicants, I am not persuaded that a costs order against the first to sixth respondents in their personal capacities is warranted. That they were wrong in the view that they adhered to does not, in my view, merit a personal costs order against them.

[85] In coming to my decision, I have declined to grant any relief against the seventh and eighth respondents. The applicants submitted in their founding affidavit that the seventh respondent acted unlawfully in that it was not properly registered with the governing body of the security industry. This seems to me to have nothing to do with the true issues in the matter but having been served with the application papers in which those allegations appeared, the seventh and eighth respondents were entitled to dispute the applicants' allegations. Their costs must accordingly be paid by the applicants.

Order

[86] I therefore grant the following order:

1. The first to eighth respondents and any other persons, juristic or natural, acting upon their instructions, are interdicted and restrained from preventing the first and second applicants and their employees, agents, and contractors from performing renovation work on the first applicant's property, namely section 1, comprised of unit numbers 4[...], 4[...] and 4[...], of the Body Corporate of '4[...] on M[...]', situated at 4[...] M[...] Drive, Umhlanga Rocks, Durban (the first applicant's property) and which is fully identified and described in the approved building plan marked 'X' attached to the applicants' founding affidavit (Plan X).
2. The first to eighth respondents and any other persons, juristic or natural, acting upon their instructions, are directed to afford the first and second applicants

⁹ *V & A Waterfront Properties (Pty) Ltd and Another v Helicopter & Marine Services (Pty) Ltd and Others* [2005] ZASCA 87; 2006 (1) SA 252 (SCA); *Van Deventer v Ivory Sun Trading 77 (Pty) Ltd* [2014] ZASCA 169; 2015 (3) SA 532 (SCA) para 26;

and their employees, contractors and agents, access to the first applicant's property to conduct the renovation work in accordance with Plan X.

3. Insofar as costs are concerned:

- (a) The first respondent shall pay the applicants' costs, which may be taxed on scale C; and
- (b) The applicants shall pay the seventh and eighth respondents' costs jointly and severally, the one paying the other to be absolved.

MOSSOP J

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