IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

(1) REPORTABLE: No.
(2) OF INTEREST TO OTHER JUDGES: No.
(3) REVISED.

[redacted]

SIGNATURE DATE: 3 June 2026

Case No. 2025-059253

In the matter between:

INFINITY IP (PTY) LTD	First Applicant
LYNN ADELLE SUPERINA	Second Applicant
DAYNE GEORGE MULLER	Third Applicant
NASIR SHEIK HABIBULLAH HASSAN	Fourth Applicant

and

THE BODY CORPORATE OF LIVING MOAD	First Respondent
DAVID ANDREW GOLDINER N.O.	Second Respondent
VALERIE BENEDICTA KGAOSOE RUFARO N.O.	Third Respondent
SENZO SYDNEY MNCADI N.O.	Fourth Respondent
LAUDEFIELD (PTY) LTD	Fifth Respondent
GEOFFREY CHOKUREVA N.O.	Sixth Respondent
MAHLAPANE MOTSOENENG N.O.	Seventh Respondent
BABONGLIE BOPHELA N.O.	Eighth Respondent

JUDGMENT

WILSON J:

1 The applicants are the managing agent and three section owners of a sectional title scheme in the Maboneng precinct in Johannesburg's inner city. They seek relief under sections 9 and 16 of the Sectional Titles Schemes Management Act 8 of 2011 ("the Sectional Titles Act"). Under section 9, they seek the appointment of a *curator ad litem* to investigate whether legal proceedings should be instituted on behalf of the first respondent, the Body Corporate, to compel the fifth respondent, Laudefield, to make good on its debts to the Body Corporate, and to desist from operating two nightclubs on the ground floor of the sectionally held property. Under section 16, the applicants seek the appointment of an administrator to run the Body Corporate's affairs while the *curator ad litem* carries out his investigation. The remaining respondents are the trustees of the Body Corporate.

2 The applicants' case is that Laudefield has essentially captured the Body Corporate, in that it corruptly controls the trustees and has induced them to overlook its ongoing indebtedness to the Body Corporate along with its breach of zoning regulations and body corporate rules that would ordinarily forbid the running of a nightclub at the property. The papers disclose that Laudefield's nightclubs have caused significant disturbance to at least some of the applicants' tenants, who have terminated their leases and left the property.

3 For their part, the respondents deny either that Laudefield exercises any improper influence over the Body Corporate, or that Laudefield is indebted to it. Their case on the legality of the two nightclubs at the property is harder to fathom. However, it seems to me that there is a straightforward dispute of fact

on the papers about the nature and extent of Laudefield's indebtedness to the Body Corporate and the legality of its activities on the property. The question is really whether that dispute is material to the relief the applicants seek.

4 The respondents also raise a further defence of *res judicata*. They say that the nature and extent of Laudefield's indebtedness has been finally and definitively determined by a Community Schemes Ombud Service adjudication order dated 8 December 2025. The respondents say that, in his order, the adjudicator held that Laudefield's debt to the Body Corporate had been settled in full.

5 I will deal first with the plea of *res judicata*. I will then turn to whether the papers disclose a case for either form of relief the applicants seek.

Res Judicata

6 It seems to me that the plea of *res judicata*, even at its broadest, cannot be a complete answer to the applicants' case. The applicants seek the appointment of a *curator ad litem* under section 9 of the Sectional Titles Act and an administrator under section 16. The adjudicator was not empowered to consider the applicants' entitlement to this relief. Nor did he purport to do so. His jurisdiction was confined to the questions that he was statutorily empowered to answer under sections 39 (1) (c) and (e) of the Community Schemes Ombud Service Act 9 of 2011. Those questions, in the case before the adjudicator, revolved around whether contributions due by Laudefield were actually paid to the Body Corporate.

7 At paragraph 22 of his decision, the adjudicator found that Laudefield had discharged its obligations under one of two acknowledgements of debt it entered into with the Body Corporate. If the applicants' case was limited to the proposition that Laudefield had failed to discharge that obligation, then they might in principle have been issue estopped from raising that proposition again in these proceedings, the adjudicator's finding being *res judicata* on that question. However, the applicants' case goes much further. It is not just that the acknowledgements of debt had not been satisfied. It is, at least in part, that they should not have been entered into in the first place. The applicants' overall case is both that Laudefield benefits from impermissibly easy payment terms with the Body Corporate and that, even on those terms, it has not discharged its indebtedness. The adjudicator made no finding on that issue.

8 In any event, it seems to me that the adjudicator's finding on the point was so poor that it cannot equitably be held to estop the applicants from going behind it (see, in this respect *Prinsloo NO v Goldex 15 (Pty) Ltd* 2014 (5) SA 297 (SCA), paragraph 26). The adjudication order consisted, in the main, of a lengthy summary of the parties' submissions followed by a two-line assertion that the one of two acknowledgements of debt had been discharged. The decision was devoid of the reasons necessary to link the parties' submissions to the adjudicator's conclusion. In those circumstances, I do not think it would be fair to bind the applicants to the adjudicator's finding on the relevant issue.

9 Accordingly, I reject the plea of *res judicata*.

Relief under the Sectional Titles Act

Section 9

10 Section 9 (3) of the Sectional Titles Act empowers me to appoint a *curator ad litem* and to direct him to conduct an investigation of a body corporate's failure to institute proceedings to claim damages, recover loss or obtain a benefit in respect of a matter mentioned in section 2 (7). Section 2 (7) of the Act lists a series of matters in relation to which a body corporate is capable of suing and being sued in its own name. Under section 9 (2) of the Act, an owner of a section may apply for the appointment of a *curator ad litem* if notice has been given to the body corporate to institute proceedings to claim the damages, recover the loss or obtain the benefit said to be due, and those proceedings are not instituted within one month of the notice being given.

11 Section 9 (3) of the Act gives me the discretion to appoint the *curator ad litem* if the body corporate has not instituted the relevant proceedings itself, despite notice having been given; if there are *prima facie* grounds on which such proceedings may be pursued; and if an investigation into such grounds and into the desirability of the institution of such proceedings is justified. Although section 9 (3) does not expressly say so, I think that I must also be satisfied that the proceedings contemplated are proceedings in connection with the matters set out in section 2 (7). Once I am so satisfied, section 9 (3) envisages that I should make a provisional order appointing a *curator ad litem* and set a return day for the curator to furnish a report setting out whether the relevant proceedings should be instituted.

12 I must obviously be satisfied, on the undisputed facts, that the notice to the body corporate required under section 9 (2) has been given. However, given the provisional nature of the relief sought, it seems to me that the other requirements set out in section 9 (3) need only be met *prima facie*. In other words, a *curator ad litem* must generally be appointed if, on the facts applicants allege, the requirements have been fulfilled, and the respondents have not cast any serious doubt on those facts (see, for example, *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189).

13 In this case, it seems to me, at least *prima facie*, that Laudefield has not paid all that it owes to the Body Corporate, whether under the acknowledgements of debt or otherwise; that Laudefield enjoys suspiciously easy payment terms from the Body Corporate; and that Laudefield has set up two nightclubs on the property which violate the relevant zoning regulations and body corporate rules, and which have caused a nuisance that the Body Corporate has declined to address. These facts are set out in the applicants' founding and supplementary papers. While those facts are in some respects disputed by the respondents, they have not been thrown into serious doubt. It also seems to me that relief concerning any of these controversies is relief connected with a "contract entered into by the body corporate" and with a matter arising out of the exercise its powers or "the performance or non-performance of any of its duties" under the law or its own rules (see sections 2 (7) (a) and (d) of the Act).

14 It is of course for the *curator ad litem* to consider whether and to what extent the Body Corporate may be entitled to relief in connection with these matters,

or any other matter set out in section 2 (7). It is enough, I think, that I be satisfied that asking the *curator ad litem* to investigate the issue would be justified and that there are, *prima facie*, grounds set out in the papers for proceedings to be taken by the Body Corporate against Laudefield for the payment of its debts and to abate the nuisance caused by its two nightclubs.

15 I am so satisfied. The applicants have identified a *curator ad litem*, who is willing to be appointed. The respondents opposed the appointment of a *curator ad litem* in principle, but they did not object to the particular curator the applicants proposed.

16 In these circumstances, a provisional order under section 9 (3) of the Sectional Titles Act should follow.

Section 16

17 The relief under section 16 is more difficult. The appointment of an administrator would essentially divest the Body Corporate and its trustees of all their powers. The appointment of an administrator has, quite rightly, been described as a “drastic power” which should “normally only be exercised when [the members of a body corporate] are not in a position properly to perform the functions assigned to them” or where “the body corporate has not elected trustees or where for some other reason the affairs of the body corporate are not being or not capable of being administered in the fashion that the Act contemplates” (see *Herald Investments Share Block (Proprietary) Limited v Meer* 2010 (6) SA 599 (KZD) at paragraph 46).

18 It follows, I think, that where there is a method, short of the appointment of an administrator, which has a realistic prospect of correcting any maladministration within a body corporate, that method ought to be attempted. It seems to me that favouring one section owner over another to the extent that the body corporate declines to proceed against that owner when it should do so would be clear evidence of maladministration, but it would not on its own justify the appointment of an administrator where relief under section 9 had neither been pursued nor shown to be ineffective. Section 9 is plainly an intermediate course of action that may be pursued to deal with a confined instance of maladministration, especially where a body corporate appears otherwise to be well-managed and administered.

19 I cannot say that it has been shown that the Body Corporate in this case is particularly well-run, but nor has it been shown, on the undisputed facts, that there is "evidence of serious financial or administrative mismanagement of the body corporate", which is what section 16 (1) (2) (a) (i) of the Sectional Titles Act requires. In other words, the papers do not justify the conclusion, at least on the test applicable to applications for final relief (which is what the appointment of an administrator would be), either that the Body Corporate in fact provides Laudefield with unlawful preference and consideration in the exercise of its powers, or that so treating Laudefield is, in itself, evidence of the kind of mismanagement that would justify the appointment of an administrator.

20 Mr. Peter, would appeared for the applicants, argued that to appoint a *curator ad litem* without appointing an administrator, would unduly hamper the curator

in the performance of his functions. I do not think that follows. The curator's role is chiefly one of fact-finding. Because he steps into the shoes of the Body Corporate for the purposes of considering whether proceedings ought to be brought against Laudefield, he is entitled to full access to all the Body Corporate's records, and the trustees of the Body Corporate have a duty of candour when dealing with any of his inquiries. In addition, I intend to supervise the production of the report, and the curator will be at liberty, on notice to the parties, to apply to me in chambers for such relief as he may require to finalise his report.

21 It is of course possible that the Body Corporate, its officers and its agents may seek to obstruct or conceal things from the *curator ad litem*. If that happens, it will not take the curator long to notice, at which point it may be appropriate to appoint an administrator, since the threshold of "serious financial or administrative mismanagement" will likely have been met. But I do not think that threshold has been reached on the facts as they presently stand.

22 Accordingly, the relief seeking the appointment of an administrator will be postponed *sine die*. The applicants will be entitled to revive the application for that relief if and when the facts justify it.

Costs

23 I think much of the opposition to the relief I will now grant was misconceived, bordering on unreasonable. However, on balance, it seems prudent to reserve the costs of the proceedings to date until a clearer picture of the Body Corporate's affairs emerges.

Order

24 For all these reasons –

24.1 Charles Beckenstrater, a partner of Moodie and Robertson Attorneys, is appointed as provisional *curator ad litem* for the first respondent in terms of section 9 (3) of the Sectional Titles Schemes Management Act 8 of 2011 ("the Sectional Titles Act") to conduct an investigation and report back to Wilson J on the following issues –

24.1.1 whether the second to fourth respondents determined and concluded an acknowledgement of debt with the fifth respondent in a manner which is contrary to the rules governing the management of the first respondent; in circumstances where the second to fourth respondents had a material interest in the conclusion of the acknowledgement of debt, and thereby took a decision in conflict with the interests of the first respondent; and/or in a manner which contravenes their fiduciary duties to the first respondent.

24.1.2 whether the second to fourth respondents have permitted the renovation of the common property in a manner which is contrary to the rules governing the management of the first respondent; in circumstances where the second to fourth respondents had a material interest in allowing the construction to take place, and thereby took a decision in

conflict with the interests of the first respondent; and/or in a manner which contravenes their fiduciary duties to the first respondent.

24.1.3 whether the second to fourth respondents have permitted the fifth respondent to utilise the units it owns within the body corporate in a manner which is contrary to the rules governing the management of the first respondent; in circumstances where the second to fourth respondents had a material interest in allowing the fifth respondent to conduct itself as it deemed fit, and thereby took a decision in conflict with the interests of the first respondent; and/or in a manner which contravenes their fiduciary duties to the first respondent.

24.1.4 whether the second to fourth respondents have managed the body corporate in a manner which benefits the fifth respondent to the detriment of the other members of the first respondent; in a manner which is contrary to the rules governing the management of the first respondent; in circumstances where the second to fourth respondents had a material interest in benefiting the fifth respondent, and thereby have managed the affairs of the first respondent in conflict with its interests; and a in manner which contravenes their fiduciary duties to the first respondent.

24.1.5 whether the second to fifth respondents appointed the sixth to eighth respondents in a manner which contravenes the rules governing the first respondent.

24.2 The *curator ad litem* is afforded such powers as are set out in the Sectional Titles Act, and, without limiting those powers, may gain access to all books of account of the first respondent, the minutes of any general meetings convened by its members, and trustees meetings, together with all correspondence exchanged in that regard; gain access on reasonable notice to all units and common areas of the first respondent and to appoint such experts as he or she deems necessary in order to fulfil the terms of this order; to interview all trustees and managing agents past or present appointed by the body corporate in order to investigate the issues set out in paragraph 24.3.1, and the circumstances surrounding them.

24.3 The *curator ad litem* is directed to file his report with Wilson J within two months of the date of this order, or such longer period as Wilson J may allow on receipt of a written request from the curator.

24.4 Pending the outcome of the curator's investigation, the fifth respondent is interdicted and restrained from proceeding with any construction work at the property, save with the written approval of the City of Johannesburg.

24.5 The balance of the relief sought in the applicants' notice of motion is postponed *sine die*.

24.6 The matter will remain with Wilson J, who will receive and consider the report of the *curator ad litem*, and make such further orders as may be necessary to facilitate the production of that report. The *curator ad litem* may apply Wilson J in chambers for such relief, reasonable notice having been given to the parties.

24.7 The question of costs is reserved.

S D J WILSON
Judge of the High Court

This judgment was prepared by Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 3 June 2026.

HEARD ON:	21 May 2026
DECIDED ON:	3 June 2026
For the Applicants:	L Peter Instructed by Vermaak Marshall Wellbeloved Inc
For the Respondents:	R V Mudau Instructed by NF Maleka Attorneys