

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 17078/2021

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

26 MAY 2022

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Date

.....

ML TWALA

In the matter between:

**THE BODY CORPORATE OF BRUSHWOOD
APPLICANT
SECTIONAL TITLE SCHEME**

And

**WHITFIELDS PROPERTY MANAGEMENT
(PTY) LTD**

RESPONDENT

JUDGMENT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be the 26th of May 2022

TWALA J

[1] In this application, the applicant sought an order against the respondent terminating the Management Agreement concluded between the parties during or about 2020 in which the applicant appointed the respondent as its management agent. Furthermore, the applicant sought an order that the respondent be directed to furnish all the financial documentation and other information in its possession relating to the applicant from the inception of the contract to the date of this order.

- [2] It is common cause that the parties concluded a management agreement in 2020. On the 11th of November 2020 the trustees of the applicant passed and duly adopted resolution appointing Venter and Associates Inc as attorneys for the applicant. On the 12th of November 2020 the applicant issued an instruction to the respondent to pay into Venter & Associates' trust account a sum of R50 000 as a deposit for legal fees. The respondent responded by saying that it will pay the said sum of R50 000 to the attorneys only once it has received an invoice. Further correspondence was exchanged between Venter & Associates and the respondent wherein it was explained that a pro-forma invoice could not be produced before the work is done and the resolution of the applicant was attached. However, the respondent refused to make the payment without a pro forma invoice being issued.
- [3] On the 23rd of November 2020 the applicant addressed an e-mail to the respondent stating that the minutes of the Annual General Meeting of the applicant held on the 29th of May 2019 state that the number of the envisaged trustees was not met and the deponent of the applicant and other two trustees were then appointed. Two trustees resigned immediately after the meeting which necessitated the appointment of the deponent and the other two trustees. A meeting of the trustees was held on the 10th of November 2020 when the resolution was taken and two of the trustees signed the resolution to appoint Venter & Associates and to pay them the sum of R50 000 as a deposit for legal fees. The applicant regarded the refusal by the respondent to pay the R50 000 as a breach of the contract and therefore thereby cancelled the contract.
- [4] The first respondent refused to accept the cancellation of the contract – hence the applicant engaged the service of Venter & Associate Inc to address

a letter to the respondent. The letter confirmed the cancellation of the management agreement by the applicant on the 23rd of November 2020 and afforded the respondent an opportunity to save the situation by making the payment of the R50 000 failing which the management agreement will be cancelled. The respondent refused to make payment and demanded that a resolution of the trustees and pro-forma invoice be produced before it would make the payment. Venter & Associates addressed another letter wherein it terminated the management agreement and demanded that the respondent furnish all the financial documents and information it has in its possession.

[5] In response to the applicant's demand, the respondent raised the issue that the trustees of the applicant have not been duly appointed; that they did not quorate when passing the resolution and that the resolution cancelling the management agreement was irregular and therefore not binding. That payment of the R50 000 would only be effected on production of an invoice. This necessitated the launching of these proceedings.

[6] It is apparent that the relationship between applicant and the respondent is that of agency and mandate. It is trite that under common law a mandate is in general terminable at the will of the principal and that it is against public policy to coerce a principal into retaining an individual as an agent when he no longer wishes to have him as such.

[7] In *Liberty Group Ltd v Mall Space Management CC t/a Mall Space Management (644/18) [2019] ZASCA 142 (1 October 2019)* Zondi JA writing for the Court stated the following:

“paragraph 36 It must be emphasised that in the present case we are not dealing with the terms of a contract which is alleged to be contrary to good faith, fairness and equity. We are dealing with a rule

of the common law, namely, that a principal is entitled to revoke a mandate of agency. It would be against public policy to coerce a principal into retaining an individual as his agent, when he no longer wishes to retain him as such. If the termination of the mandate has prejudiced the agent his remedy lies in a claim for damages and not in an order compelling the principal to retain him as his agent in the future.”

- [8] It should be recalled that the respondent was appointed as a management agent of the applicant in terms an agreement concluded between the parties in 2020. The applicant was represented by the current trustees when the agreement was concluded. It can therefore not be open for the respondent to now say these trustees with whom it concluded a management agreement which appointed it as the agent were not properly appointed and therefore do not have the authority to cancel the agreement. According to the provisions of the prescribed management rules an elected or replacement trustee holds office until the end of the next annual general meeting.
- [9] It is my considered view that, the fact that the applicant has not had a proper meeting convened for the purposes of appointing new and or additional trustees since the 2019 annual general meeting, does not deprive the current trustees the authority or precludes them from representing and acting on behalf of the applicant for they were duly appointed in the 2019 annual general meeting when the other two trustees resigned. It is therefore not for the respondent to persist to act as an agent in terms of the mandate when its principal, represented by the trustees who appointed the respondent, no longer wishes to retain it as its agent.

[10] Rule 7 of the Prescribed Management Rules (PMR) prescribed in terms of section 10(2) of the Sectional Titles Schemes Management Act, 8 of 2011 provides as follows:

“Nomination, election and replacement

7. (1)

(5) *if a trustee ceases to hold office –*

(a) *the remaining trustees; or*

(b) *the members in general meeting,*

May appoint a replacement trustee.

(6) *An elected or replacement trustee holds office until the end of the next annual general meeting and is eligible for re-election, if properly nominated.”*

[11] The applicant was entitled to terminate the agreement because the respondent breached the terms of the agreement by refusing to execute its mandate to pay a creditor as instructed and directed by a member of the executive, a trustee, of the applicant. Clause 2.8 of the management agreement provided that payments of accounts shall be made to service providers and other creditors on specific approval by a scheme executive. The applicant was not required to furnish the respondent with any notice for the termination and the resolutions passed by the trustees are valid and of force and effect as they were resolutions of the trustees of the applicant. I hold the view therefore that the trustees of the applicant have the necessary authority to launch these proceedings against the respondent.

[12] Rule 10(2) of the PMR provides the following with regard to the validity of the actions on behalf of the body corporate:

“Validity of actions

10 (1).....

(2) A resolution adopted or other act performed by the trustees remains valid and effective notwithstanding the later discovery of some defect in the appointment of a trustee or the disqualification of a trustee”.

[13] In any event, even if I am wrong in accepting that the current trustees were duly appointed in the annual general meeting in 2019 when the other two trustees resigned, their actions remain valid and effective in terms of the prescripts of rule 10 (2) of the PMR. If there is any defect in the appointment of the trustees it does not mean that their actions become unlawful but remain valid and effective unless it may be demonstrated that those actions were unfair, unreasonable and not in the best interest of the applicant. It does not afford the respondent the latitude to force itself onto the applicant as its agent when it has breached the terms of the agreement and the applicant has terminated the agreement for that reason.

[14] It is my respectful view therefore that the applicant has lawfully terminated the management agreement due to the breach committed by the respondent. Furthermore, the applicant was not obliged to give any notice of the termination of the agreement. The inescapable conclusion is therefore that the applicant is entitled to the relief that it seeks in terms of the notice of motion.

[15] In the circumstances, I make the following order:

1. The management agreement concluded between the applicant and respondent during or about 2020 is declared cancelled;
2. The respondent shall furnish the applicant, within (5) five days from the service of this order with the following:

- 2.1. full financial reporting of the applicant for the entire period of the respondent's tenure as the management agent;
- 2.2 bank stamped financial statements for the entire period of the respondent's tenure as the management agent;
- 2.3 all budget approvals for the entire period of the respondent's tenure as the management agent;
- 2.4 audited financials for the entire period of the respondent's tenure as the management agent;
- 2.5 management accounts for the entire period of the respondent's tenure as the management agent;
- 2.6 full disclosure of all registered owners, including contact details for the entire period of the respondent's tenure as the management agent;
- 2.7 full disclosure of all rental occupants, including contact details for the entire period of the respondent's tenure as the management agent;
- 2.8 all minutes of annual general and special meetings held by the trustees for the entire period of the respondent's tenure as the management agent and minute books thereto;
- 2.9 all general and special resolutions passed by the trustees for the entire period of the respondent's tenure as the management agent;
- 2.10 most up to date Sectional Scheme Plans (should any alterations have been made to the unit up to the end of December 2020);

- 2.11 records, resolutions and registered parking bay/car port/garage layout plans within the scheme and the respective notorial deeds allocated to units within the applicant;
- 2.12 all service provider agreements signed during the entire period of the respondent's tenure as the management agent;
- 2.13 all payroll information for the employee(s) (including SARS profile, all UIF and PAYE/EMP submissions) for the entire period of the respondent's tenure as the management agent;
- 2.14 the maintenance, repair and placement plan/s prepare for the entire period of the respondent's tenure as the management agent;
- 2.15 all insurance replacement valuations for the scheme from 19 December 2006 to 9 December 2020;
- 2.16 all insurance documents for the scheme from 19 December 2006 to 9 December 2020;
- 2.17 a copy of the registered management and conduct rules and compliance certificate received from CSOS from 19 December 2006 to 9 December 2020;
- 2.18 the governance documents and records of the applicant as contemplated and stipulated in prescribed management rule 27;
- 2.19 the applicant's 10-year maintenance plan from 19 December 2006 to end of 9 December 2020;
- 2.20 the applicant's customer age analysis as at 19 December 2006 to end of 9 December 2020;
- 2.21 the applicant's detailed customer ledger accounts from 19 December 2006 to end of 9 December 2020;

- 2.22 the applicant's CSOS Registration submissions documents from 19 December 2006 to end of 9 December 2020;
 - 2.23 the applicant's SARS Income Tax details for the scheme from 19 December 2006 to the end of December 2020 (which includes the tax number, appointed SARS representative and SARS online provide logon details);
 - 2.24 budgets from 19 December 2006 to end of 9 December 2020;
 - 2.25 security company information and documentation pertaining to the applicant;
 - 2.26 garden service information and documentation pertaining to the applicant;
 - 2.27 meter reading information pertaining to the scheme;
 - 2.28 SG Plans;
 - 2.29 City of Johannesburg/Eskom accounts pertaining to the scheme;
 - 2.30 intercom system login and cell phone number;
 - 2.31 copy of the current levy roll of the scheme;
 - 2.32 all balance sheets 19 December 2006 to end of 9 December 2020;
 - 2.33 detailed supplier ledgers for 19 December 2006 to end of 9 December 2020; and
 - 2.34 invoices rendered and received and statutory documents.
3. The sheriff is authorised and directed to attach and remove the documents listed in paragraph 2 supra and furnish same to the applicant in the event that the respondent fails to hand over possession of the said documents as ordered;

4. The respondent is to pay the costs of this application on the scale as between attorney and client.

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JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing: 16th of May 2022

Date of Judgment: 26th May 2022

For the Applicant: Advocate WG Pretorius

Instructed by: Venter & Associate Inc
Tel: 087 945 0300
louis@venterinc.co.za

For the Respondent: Advocate V Vergano

Instructed by: Karnavos Attorneys
Tel: 082 813 4715
stephen@skattorneys.biz

