

SOUTH AFRICA / JUDGMENT

Ashwood Centre Body Corporate v Haldenby Estates (Pty) Ltd (18382/2021) [2025] ZAWCHC 116 (18 March 2025)

[2025] ZAWCHC 116

COURT

Western Cape High Court, Cape Town

BEFORE

Kholong

CASE / FILE NUMBER

18382/2021

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OFFICE OF THE CHIEF
JUSTICE
IN THE HIGH COURT OF
SOUTH AFRICA
(WESTERN CAPE
DIVISION, CAPE TOWN)
Case NO: 18382/2021
REPORTABLE: NO
OF INTEREST TO OTHER
JUDGES: NO

In the MATTER between: ASHWOOD CENTRE BODY
CORPORATE
PLAINTIFF
and
HALDENBY ESTATES (PTY)
LTD
DEFENDANT
Coram: Kholong,
AJ
Date of
hearing: 10 February 2025
Date of Judgement: 18
March 2025

JUDGMENT

KHOLONG AJ

Introduction

In this action, the question the Court is asked to determine is whether the plaintiff, Ashwood Centre Body Corporate has levied

contributions required of defendant, lawfully, thereby entitling plaintiff to the relief it seeks in the amended particulars of claim.

The Plaintiff is Ashwood Centre Body Corporate, a body corporate of a sectional title development made up of both residential and commercial sections.

The defendant, Haldenby Estates (Pty) Ltd, is a member of plaintiff in terms of Section 2(1) of the Sectional Title Schemes Management Act[1] (herein-after “the Act”) by virtue of its ownership of 3 sectional title units within the development.

Background

Plaintiff seeks recovery of arrear levies due by the defendant in the amount of R1104 323.11 for the period December 2018 to October

2021. In the pleadings, defendant had inter alia denied that plaintiff had correctly calculated the defendant’s contributions on levies due. This position was abandoned at the trial and quantification of the amount due accordingly ceased to be an issue of dispute requiring determination.

It was not in dispute between the parties that defendant is a member of the Plaintiff by virtue of ownership of units 2, 6 and 7 within the sectional title development. That defendant has an obligation to pay levies and special contributions to Plaintiff if the levies are raised lawfully and in accordance with the Sectional Title Schemes Management Act.

By agreement, the parties thus limited the evidence led at the trial to the issue of whether or not the plaintiff lawfully raised the levies due by the defendant in terms of the Act. The only issue for determination was therefore whether or not the plaintiff complied with the provisions of Section 3(2) of the Act.

Section 3(2) and (3) of the Act reads as follows:

“Liability for contributions levied under any provisions of subsection (1), save for special contributions contemplated by subsection (4), accrues from the passing of a resolution to that effect by the trustees of the body corporate, and may be recovered by the body corporate by an application to an ombud from the persons who were owners of units at the time when such resolution was passed: Provided that upon the change of ownership of a unit, the successor in title becomes liable for the pro rata payment of such contributions from the date of change of such ownership.

Any special contribution becomes due on the passing of a resolution in this regard by the trustees of the body corporate levying such contribution and may be recovered by the body corporate by an application to an ombud from the persons who were owners of units at the time when such resolution was passed: Provided that upon the change of ownership of a unit, the successor in title becomes liable for the pro rata payment of such contributions from the date of change of such ownership”.

Plaintiff's evidence

Plaintiff led the evidence of Mr. M. Anvary. The evidence is that this witness is a trustee and chairperson of plaintiff. He testified that the levies by the members were considered, decided and voted upon at the Annual General Meetings (AGMs). That Coral International Asset Managers managed the development on behalf of plaintiff and as part of its duties issued monthly levy statements to all members.

Mr. Anvary drew this Court's attention to various minutes of the AGMs in explaining the conduct and recording of proceedings pre, during and post AGMs. Relevant to the issues in dispute, he testified that defendant took transfer of its units in

2017. That defendant prior to taking transfer had attended the 2017 AGM and that Mr. S Burnett of defendant had been elected as a trustee of Plaintiff at that 2017 AGM. That therefore Defendant is aware of its responsibilities to pay levies.

In this regard Mr. Anvary drew this Court's attention to resolutions taken by the trustees to ratify the approval of levies

payable by members. He explained the content of the trustee resolutions taken on 18 October 2016; 21 June 2017; 21 January 2019

and 31 July 2019. He explained that the resolutions were presented and signed after the conclusion of the AGMs and after members had voted on and confirmed the levies to be contributed by members.

He testified that the purpose of the resolutions were to ratify the levies chargeable to members as voted by members at the AGM. That resolutions were signed by either himself or a certain Mr. Omar. He testified that it was their practice from inception of the scheme, as he was a member from the beginning, to attend to resolutions regarding levies in the manner he explained. That no member of plaintiff, including defendant had ever taken issue with the resolutions regarding the levies payable. That defendant had failed to make payment of its monthly contributions. That this

conduct prejudiced plaintiff as that has caused strain on resources and financial sustainability of the scheme.

In argument, Counsel for the Plaintiff contended that the nature of the relationship between the trustees and the Plaintiff is such as to compel trustees to manage the affairs of plaintiff in a manner that is beneficial for all its members in terms of Section 8 of the Act. That Section 3 of the Act allows for the passing of a resolution by trustees authorizing the total amount of levies that plaintiff can charge. He argues that such resolution was passed annually.

Counsel for Plaintiff contends that from the minutes of the AGMs, it is clear that defendant was represented. He participated and contributed to engagements and thus would have been aware of its obligations. That therefore the resolutions passed on raising levies at the AGMs complies with the requirements of section 3(2) of the Act. That the Court must take cognizance of the fact that these resolutions start with the following wording:

“Resolution to Ratify Levies Chargeable to All Members of the Ashwood Centre Body Corporate”

That ordinary meaning of the word ‘ratify’ means to approve and sanction formally. He argues that the purpose of the resolution adopted at the AGM was to ratify the levies as agreed by the members in compliance with the provisions of Section 3(2) of the Act. That the fact that the resolution purports to ratify the adoption of a resolution by members is indicative of compliance with section 3(2) of the Act. That there would be no purpose in the signing of a resolution ratifying a decision already taken by members on levies, if not for compliance with section 3(2) of the Act. He states that the resolutions must be read in the context of how the trustees adopted resolutions for purposes of section 3(2) of the Act.

He avers that whilst defendant now accepts the correctness of the calculations, they still refuse to pay the accrued levies to

plaintiff’s prejudice. That the purpose of the Act could never have been to place formalistic hurdles in the way of recovery of arrear contributions. That the mischief the Act sought to remedy is the unsustainability of a section title development as a result of member’s failure to contribute. That a formalistic approach to Section 3(2) of the Act should be avoided, especially given that the amounts claimed are not disputed. That the resolutions although not perfectly worded, achieve the purpose envisaged by section 3(2) of the Act and should be accepted as lawful resolutions.

Defendant’s Evidence

The defense led the evidence of Mr. S Burnett. This witness testified that he had been a trustee of the Plaintiff. That he was involved with the body corporate between 2017 and 2019. That even before acquiring a property whilst exploring, he was invited to meetings. He testified that he was not presented with a resolution for consideration as trustee related to levies whilst in office after the 2017 AGM and had not seen the resolution testified on by Mr. Anvary. He confirmed that defendant no longer disputed the Plaintiff’s levy calculation and the amount claimed. He conceded that defendant never previously took issue with plaintiff’s

resolutions when it refused to make payment of its contributions and that the dispute had always been about the levy calculations.

Counsel for the defendant argues that if regard is had to the requirements of Regulation 10(1), it is clear that in order to recover a contribution from a member, the body corporate must have determined the amount to be raised as a contribution, and the trustees must have passed a valid resolution to that effect, which has to be signed by two trustees or one trustee and the managing agent.

Defendant denied that plaintiff lawfully levied the contributions. In this regard defendant stated that sections 3(2) and 3(3) of the Act have not been complied with. He argues that the documents on pages 463 to 467 of the bundle are not valid resolutions as contemplated by the Act. He contends that said documents don't have the signatures of the two trustees or signature of a trustee and a managing agent as required. That all of them have a single signature. That being so they are not valid resolutions of trustees as required by sections 3(2) and (3).

He argues that the resolution to ratify levies as set out in page 463 for example were never intended to be resolutions of trustees but recordal of resolutions of members in a general meeting. This seen especially against the minutes of trustees as set out on page 462.

The Law

Regulation 10(1) pursuant to the Act provides:

“No document signed on behalf of the body corporate is valid and binding unless it is signed on the authority of a trustee resolution by

- (a) Two trustees or the managing agent, in the case of a clearance certificate issued by the body corporate in terms of section 15B(30(i)(aa) of the Sectional Titles Act; and
- (b) Two trustees or one trustee and the managing agent, in the case of any other document”.

In The Body Corporate of the Sorronto Sectional Title Scheme, Parow v Leozette Koordom[2] the Court held that a resolution is a resolution if signed in the manner dictated in terms of Regulation 10(1)(b). Regulation 10(1)(b) of the Statutory Management Rules reads:

“No document signed on behalf of the body corporate is valid and binding unless it is signed on the authority of a trustee resolution by –

- (a) Two trustees or the managing agent, in the case of a clearance certificate...; and
- (b) Two trustees or one trustee and the managing agent in the case of any other document”.

The document signed by Mr M. Anvary alone[3] is neither signed by Mr. Anvary and another trustee nor Mr. Anvary and the managing agent as required by the Act and the Regulation.

Accordingly, it is not a valid resolution of trustees.

On the face of it the “resolution to ratify levies chargeable to all members of the Ashwood Centre Body Corporate” deals with “meeting of members”. It proceeds to state “members resolve..”. This Court, consequently, finds it difficult to pass these resolutions in spite of the explanation by Mr. Anvary, as resolutions of trustees. It accepts the evidence of Mr. Burnette as trustee at least between 2017 and 2019 that no trustee meeting was called whilst he was in office to ratify the contributions.

This Court accepts that given how the business had been run at least until the point of dispute. Mr Anvery would sign the disputed

documents as set out on page 463 to 467 of the record and that these would serve the dual purpose of covering the AGM and trustees

meeting. But that conduct in and of itself does not meet the requirements of the Act and the Regulations. The Regulations for

example stipulate how meetings of trustees are to be called. The evidence on record on balance favours the defense that no such

meeting of trustees was called as explained by Mr. Burnette.

More importantly, this court considers it fatal to plaintiff’s claim that said resolutions are not in accordance with the

requirements of Regulation 10, rendering them invalid and not binding. This Court concurs with defendant’s contention that

properly calling a simple meeting of trustees could have cured this defect. Non of these disputed documents were signed by two trustees or in the alternative a trustee and a managing agent as required. The requirement of sections 3(2) and (3) have thus not been met rendering the disputed documents invalid resolutions.

Conclusion

In the result, this Court finds that plaintiff has not made out a case for the relief it seeks and the action stands to be dismissed with costs.

Costs

Plaintiff and Defendant requested costs. Costs follow the result.

This Court considers that in present circumstances, Plaintiff must pay costs on a party to party scale.

Order

Accordingly, I make the following order:

IT IS ORDERED THAT:

1. The relief sought by Plaintiff is denied.
2. Plaintiff will pay Defendant costs of this action on a party scale.

S S T KHOLONG

ACTING JUDGE: WESTERN CAPE DIVISION

Appearances:

For the Plaintiff:

Adv. J Bence

Instructed by

BDP Attorneys

For the Defendant:

Adv. A. Brink

Instructed by

Biccari Bollo Mariano Inc

[1] Act No 8 of 2011.

[2] (5439/2021)[2022] ZAWCHC 99; 2022 (6) SA (WCC) (26 May 2022) at para 7.

[3] Record pages 463 to 467.

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