

SOUTH AFRICA / JUDGMENT

Infinity IP (Pty) Ltd and Others v Body Corporate Of Living Moad and Others (2025/059253) [2025] ZAGPJHC 508 (26 May 2025) [2025] ZAGPJHC 508

COURT

South Gauteng High Court, Johannesburg

BEFORE

FMM Reid

CASE / FILE NUMBER

2025/059253

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IN

THE HIGH COURT OF SOUTH AFRICA

SOUTH GAUTENG

DIVISION, JOHANNESBURG

CASE NUMBER:

2025-059253

Reportable: Yes / NO

Circulate to Judges: Yes
/ NO

Circulate to Magistrates:

Yes / NO

Circulate to Regional

Megaistrates: Yes / NO

In the matter between:-

INFINITY

IP (PTY) LTD

1st

Applicant

SUPERINA,

LYNNE ADELLE

2nd

Applicant

MULLER,

DAYNE GEORGE

3rd

Applicant

HASSAN,

NASIR SHEIK HABIBULAH

4th

Applicant

and
THE
BODY CORPORATE OF LIVING MOAD
1st
Respondent
GOLDINER
NO, DAVID ANDREW
2nd
Respondent
KGAOSOE
RUFARO NO, VALERIE BENDICTIA 3rd
Respondent
MNCADI
NO, SENZO SYDNEY
4th
Respondent
LAUDEFIELD
(PTY) LTD
5th
Respondent
CHOKUREVA
NO, GEOFFREY
6th
Respondent
MOTSOENENG
NO, MAPHLAPANE
7th
Respondent

JUDGMENT

FMM REID J

Introduction:

- [1] The applicants approach this Court on an urgent basis for interim relief to appoint Charles Beckenstrater as a currator ad litem for the first respondent, with ancillary powers pending the outcome and finalisation of the main application (Part B). Part B entails that Astrodon (Pty) Ltd be appointed as the administrator of the first respondent and ancillary relief.
- [2] The urgent relief that is sought, as summarised in my own words and not repeated verbatim from the notice of motion, are the following:

2.1. That, pending the main application (Part B, as set out above) one Sheldon Terry, the managing director of Astrodon (Pty) Ltd which is the current managing agent of the body corporate, be appointed as the provisional administrator for the 1st respondent (Infinity).

2.2. Pending the outcome of the main application, Charles Beckenstrates, a partner at Moodie and Robertson Attorneys, be appointed as a provisional curator ad litem to investigate and report to the court. His investigation is to focus on whether certain actions taken by the 2nd to 4th respondents (trustees) were improper or conflicted with their duties. These duties include:

2.2.1. Entering into an acknowledgment of debt with the 5th respondent improperly or for personal gain.

2.2.2. Approving renovations to common property against the rules and/or in their own interest.

2.2.3. Allowing the 5th respondent to misuse its units, again possibly in conflict with the body corporate's rules or duties.

2.2.4. Managing the body corporate in ways that unfairly benefit the fifth respondent at the expense of other members.

2.2.5. Appointing the 6th to 8th respondents in violation of the rules.

2.3. The applicants seek that the curator ad litem be granted the authority to access records, inspect the property, and interview past and present trustees or agents, and file a report with the court within 35 days.

2.4. In the meantime, the 5th respondent should be barred from carrying out any construction work unless it is approved by both the body corporate members and the City of Johannesburg.

[3] The above illustrate the extent of discord there is in the operation of the 1st applicant and 1st respondent.

Applicants' case

[4] In paragraph 7 of the founding affidavit the crux of the application is stated as follows:

"7. The trigger point for this application was a putative special general meeting ("SGM") called by the fourth respondent on 14 April

2025. This SGM was called, improperly convened and conducted in a manner so as to benefit the fifth respondent, which is presently in arrears to the body corporate in the amount of R1,145,547.89, to the detriment of the remaining members of the body corporate. Due to this meeting and the respondents persistence in voting in trustees the applicants seek that the present managing agent be appointed as an interim."

[5] The urgency of the application is set out in paragraph 137 which reads as follows:

137. The applicant prays that this application be treated as one of urgency in terms of the Rule 6(12) of the Rules of this Honourable Court for the following reason:

137.1. I have outlined above the significant danger and structural instability present at the property, and the respondents have escalated their conduct to include writing off indebtedness owed by Laudefield in circumstances where the named respondents are all operating under a prima facie conflict of interest.

137.2. Regarding the unlawful building, as a multi-story building, the potential collapse of the wall poses an immediate and severe risk to the safety of all commercial and residential occupants, who could suffer serious injury or even loss of life. This imminent threat underscores the urgent need for intervention.

137.3. The body corporate has been effectively taken over by the second to eighth respondents, who are either directly controlled by or acting as the alter egos of Laudefield. Their actions serve only to benefit Laudefield, to the clear detriment of all other members of the body corporate. This mismanagement exacerbates the existing safety concerns, as it prioritises private gain over the structural integrity of the building and the well-being of its occupants. In addition to this, the respondents' conduct has a direct impact on the applicants who will ultimately be held liable for costs such as municipal service charges arising from the running of" Laudefield's business interests.

137.4. The potential collapse of the structure is not only a danger to occupants but also to neighbouring properties and pedestrians in the vicinity;

137.5. The unlawful actions of the respondents have left the body corporate financially and administratively incapable of addressing these urgent safety concerns. Any delay in intervention would only exacerbate the risk;

137.6. The ongoing unlawful construction breaches building regulations and safety standards, further justifying immediate action to prevent further harm.

137.7. Additionally, the body corporate lacks adequate insurance coverage. Should the property sustain damage as a result of the construction, the damage would not be covered by insurance, leaving the body corporate responsible for the repair costs and any associated public liability;

137.8. In addition to the above, it is evident that the respondents have gained control of the management of the body corporate in pursuit of the fifth respondent's illicit advantage. The applicants have the real fear that the respondents will accelerate this self-enrichment upon receipt of this application which seeks only to properly investigate the conduct of the respondents, the management of the body corporate and put an end to its unlawful conduct. This is proven in the respondents communication --- of 29 April 2025.

137.9. I am advised that the opposed role of this Honourable Court is presently being heard in January 2026, which means that the respondents will remain in ostensible control of the body corporate for more than a year when this matter is heard. By this time, it is likely that the financial mismanagement of the body corporate will only worsen, and that the applicants' will lose their tenants in the body corporate and, potentially, their interest in the building.

137.10. The delay in the hearing of applications of this nature is to the direct advantage of litigants such as the respondents, who will be able to utilise numerous strategies in order to ensure that this matter's ultimate hearing is delayed. Through this delay the applicants and the other members will be mulcted in unlawful decisions taken by the respondents which may have an impact on their credit records, their ability to utilise the property, and ultimately the stability of the building on the property.

The applicants submit that urgent intervention is required in order to put an end to the respondents unlawful conduct, and to establish a rational way forward in this dispute.

137.11. I am advised that an inability to obtain relief is often the cause of the deterioration and dilapidation of buildings in the inner-city, with owners losing interest in vindicating their rights where the barrier to entry imposes a material cost on them. In these circumstances the rule of law is ultimately undermined and those who are happy to abuse process to secure their own advantage are ultimately benefited.”

[6] The applicants’ urgency is thus based on (a) discord between the members of the body corporate, (b) a fear of financial management of the body corporate as it currently is being operated, and (c) buildings being erected without the proper prior approval.

[7] After considering the above, I find that:

7.1. the nature of discord between managing members of a body corporate, does not establish urgency.

7.2. Neither does a fear of financial mismanagement of a body corporate.

7.3. The buildings however, on the applicants version, can be hazardous to members of the public.

[8] The court will now proceed to have regard to the respondents’ version in relation to the unlawful buildings.

Respondents’ case

[9] The respondents state that the planning of the buildings commenced from approximately September 2024. On this ground the respondents state that, in as far as planning of the buildings were to be regarded as urgent, the applicants have created its own urgency. On this score I agree.

[10] More importantly, the respondents state that the building of any structures has not commenced. The respondents attach photographs of the premises on which the buildings are to be erected, which depicts that nothing has been built.

[11] The respondent thus raises the factual question of whether the buildings have been built, and if it has been built (on the applicants' version) how developed it is. In any event, the buildings or intended buildings could not be any hazard to the safety of any member of the public on the respondent's version and on the evidence presented to this Court.

Urgency

[12] The locus classicus for urgent applications is the matter of *Luna Meubel Vervaardigers (EDMS) BPK v Makin and Another (t/a Makin's Furniture Manufacturers)* [1977] 2 All SA 156 (W) in which it is established that the applicants must demonstrate:

12.1. that the matter is urgent;

12.2. that substantial redress cannot be obtained in the ordinary course; and

12.3. that a delay would result in irreparable harm.

[13] The applicants failed in proving the established principles.

[14] In the result, the application is to be struck for want of urgency.

Costs

[15] The general principle is that the successful party is entitled to its costs.

[16] I find no reason why this principle should not be applicable to this application.

[17] The applicants will thus be ordered to pay the respondents costs.

Order:

In the premise I make the following order:

i) The application is struck for want of urgency.

ii) The applicants are to pay the costs of the respondent, individually and collectively, one paying the other to be absolved, on Scale B.

FMM REID

JUDGE OF THE HIGH COURT

GAUTENG SOUTH DIVISION

JOHANNESBURG

DATE OF HEARING: 15 MAY 2025

DATE OF

JUDGMENT:

26 MAY 2025

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Prepared on 9 October 2026 · Esheria