

SOUTH AFRICA / JUDGMENT

**PGP Body Corp Administration CC v The
Trustees of the body Corporate Club Kerkira
(AR
403/11) [2012] ZAKZPHC 81 (26 October 2012)
[2012] ZAKZPHC 81**

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Patel JP

CASE / FILE NUMBER

AR 403/11

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**IN THE KWAZULU-NATAL HIGH
COURT, PIETERMARITZBURG
REPUBLIC OF SOUTH AFRICA
AR: 403/11**

In the matter between:

PGP BODY CORP
ADMINISTRATION CC
.....Appellant
and
THE TRUSTEES OF THE BODY
CORPORATE CLUB KERKIRARespondent

JUDGMENT

Delivered on: : 26 OCTOBER 2012

PATEL JP

Background

[1] On 12 July 2011 the Supreme Court of Appeal, on petition by PGP Body Corp Administration CC ('the appellant'), granted the appellant leave to appeal. The respondent is cited as The Trustees of the Body Corporate Club Kerkira ('the respondent'). In granting leave the Supreme Court of Appeal ordered that 'the costs order of the court a quo in dismissing the application for leave to appeal is set aside and the costs of the application for leave to appeal in this court and the court a quo are costs in the appeal'.

[2] The brief history of the matter is as follows:

2.1 The appellant was the managing agent of the Body Corporate Club Kerkira. On 22 December 2008, at the Annual General Meeting ('the AGM'), it was decided that all service contracts were to be reviewed. At that meeting, the following members representing the appellant were present, namely, Mr G Smit, the Sectional Title Manager, Ms C Ronne, Portfolio Manager and Mr G Wolmarens, the Junior Portfolio Manager. In their representative capacity they thus had knowledge that the respondent acting through its trustees had been duly authorised by the Body Corporate to review all contracts. Such review would ineluctably also mean the termination of contracts. It is thus clear that the AGM had given a clear mandate to the Trustees to review contracts and if necessary terminate them. On 30 January 2009 the respondent resolved to terminate the appellant's services. On 2 March 2009 the Chairman of the Body Corporate informed the appellant that its services had been terminated. On the same day the appellant was notified of the Body Corporate's new banking details, in order for the Body Corporate monies to be transferred into the new account. On 3 March 2009 the Chairman collected the Body Corporate's books of account and financial records from the appellant's

office, which were handed over without demur; however the appellant, represented by Mrs Porteous, refused to transfer the monies until a trust account had been opened.

2.2 On 9 March 2009 the respondent brought an urgent application against the appellant seeking a transfer of the Body Corporate's monies from the appellant's banking account into the newly opened savings account which had been opened in the name of the respondent. On 16 March 2009, that is the day of the hearing of the urgent application, the appellant undertook to transfer the monies into the respondent's attorney's trust account and the matter was adjourned sine die with costs reserved. The question of costs was heard by Sishi J on 31 August 2009.

2.3 On 26 April 2010 judgment was handed down and Sishi J found that the respondent was compelled to bring the urgent application and that the respondent had been substantially successful since it had obtained the payment of the monies. Furthermore at no stage was the matter set down for argument on the merits. It was for these reasons that costs were granted in favour of the respondent. Leave to appeal was subsequently refused.

Appellant's case

[3] Appellant's submissions can be summed up as follows:

3.1 It refused to transfer the monies because of the concerns it had with regards to the validity of the initial resolution of 30 January 2009, and indicated that the monies would be held in trust until it had seen the minutes of that meeting.

3.2 The meeting which was held on 30 January 2009 was invalid because the appellant was not given notice of it and the respondent failed to comply with Management Rule 49(1) in Annexure 8 of the Sectional Title Regulations (GNR.664 of 8 April 1988). As managing agent, the appellant ought to have been given notice of all trustee's meetings.

3.3 When the appellant requested a copy of the minutes of the meeting in accordance with Management Rule 49(2) the respondent failed to provide same and only complied after the appellant filed notices in terms of Uniform Rule 35(12) and (14) on 13 March 2009.

3.4 The initial resolution, being brought about by a round robin telephonic conversation, was invalid because it failed to comply with Management Rule 24. Hence there could be no valid ratification thereof. Even if it is found that there was ratification, it only took place on 14 March 2009. This meant that ratification only took place after the launch of the urgent application.

3.5 The court a quo, per Sishi J, erred in finding the following:

- (a) that there could be subsequent ratification of the initial resolution even though the initial resolution, which was brought about by the round robin telephonic conversation, was found to be invalid;
- (b) that the handing over of books was an acceptance by the appellant of its termination of contract;
- (c) that reliance could be placed on the minority judgment of Nicholas AJA in *Neugarten & others v Standard Bank of South Africa Ltd* 1989 (1) SA 797 (A); and in ignoring *Baeck & Co SA (Pty) Ltd v Van Zummeren & another* 1982 (2) SA 112 (W); and
- (d) that the respondent was successful, since from the outset the appellant, did not want to have anything to do with the money.

3.6 At the end of the day the appellant chose to adopt a cautious approach in dealing with the monies and therefore it should not be saddled with a costs order made against it.

Meeting, Notice and Minutes of Meeting

- [4] A managing agent is, in terms of the Management Rules 49(1) and (2), entitled to be given reasonable prior notice of meetings of the trustees and from time to time to be furnished with copies of the minutes of meetings of the trustees. With regards to attendance at meetings Management Rule 49(1) provides that a managing agent can only attend the meetings of trustees with their consent. It must be remembered that this round robin meeting was held to terminate the mandate of the appellant. It is improbable that the trustees, even if they had given notice, would have given the appellant permission to attend.

- [5] When the appellant initially requested a copy of the minutes for the meeting of 30 January 2009, the respondent said that the appellant was not entitled to same. At the time of requesting the minutes the appellant was still the managing agent since its mandate was to be terminated as of 28 February 2009. However since the meeting was to discuss the termination of appellant's contract, it would not have made sense for the appellant to have been given the minutes of the meeting.

Validity of resolution

- [6] The functions and powers of a Body Corporate are subject to the provisions of the Sectional Titles Act 95 of 1986 ('the Sectional Titles Act') and the Rules which govern sectional title developments. Various duties are imposed upon trustees by the Management Rules set out in Annexure 8 of the Regulations to the Sectional Titles Act. These powers contained in the Sectional Titles Act, must be read with the powers given to the Trustees by the general members or the general body of the Body Corporate provided these powers are not inconsistent with the Sectional Titles Act.

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