

REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)

CASE NO: 23432/2012

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

8 MARCH 2013

FHD VAN OOSTEN

In the matter between

AARON MACMILLAN GERT

JOHANNA LEKALAKALA

MILTON DIALE

MOLLET NCUBE

ELIZABETH BETHER LEDULA

BENJAMIN AIDELTJE

SNANGELA GLADWIN HLATSHANENI

BUSISWE ANNAH NKOSI

and

THE BODY CORPORATE OF ALBANY COURT

FIRST APPLICANT

SECOND APPLICANT

THIRD APPLICANT

FOURTH APPLICANT

FIFTH APPLICANT

SIXTH APPLICANT

SEVENTH APPLICANT

EIGHTH APPLICANT

RESPONDENT

Sectional Titles Act 95 of 1986 - application for the appointment of an administrator in terms of s 46(4) of the Act - High Court in terms of s 16 of the Act also has jurisdiction to adjudicate the application - mismanagement of the respondent common cause - administration of the affairs of the respondent in chaos - application granted.

J U D G M E N T

VAN OOSTEN J:

[1] This is an application for the appointment of an administrator to the respondent, the Body Corporate of Albany Court, in terms of s 46(4) of the Sectional Titles Act 95 of 1986 (the Act). The application is opposed by the respondent. In this regard the answering affidavit has been deposed to by Mbulelo Badi, who claims to be the appointed chairperson of the trustees of the respondent. No documents in support of Mr Badi's alleged capacity are referred to or annexed to the papers, and I accordingly, when the matter was called, requested counsel for the respondent to furnish such documentary proof at the hearing of the matter. At the commencement of the hearing of the matter counsel for the respondent handed up a single page document styled "Board Resolution of Albany Court to Retain an Attorney Duly Passed on 30 July 2012". In terms thereof the respondent's attorneys of record are appointed as the respondent's "general counsel" upon terms set forth in a special power of attorney annexed thereto. The special power of attorney, however, is not annexed to the document. It further authorises the trustees of the respondent, in general terms, to act on behalf of the respondent. Glaringly absent are the minutes of the meeting of trustees confirming the election of Badi as chairperson of the trustees. The absence of the minutes, in my view, serves as just one example of the maladministration of the respondent, to which I shall revert. I will, however, assume, in favour of the respondent, that Mr Badi was duly authorised as alleged by him.

[2] Two points *in limine* were raised by counsel for the respondent. First, that the second to eighth applicants are not the registered owners of units in Albany Court and that they therefore do not have the necessary *locus standi* to bring this application. It is common cause that the first applicant is the registered owner of unit no 48 Albany Court, which is confirmed by the relevant deed of transfer, a copy of which is annexed to the papers. The first applicant therefore having the necessary *locus standi*, as counsel rightly conceded, effectively disposes of the first point *in limine*. The second point raised was that this court was not seized with jurisdiction to hear this matter.

Counsel referred to s 16 of the Act providing for an application, such as the present, that may be brought in the Magistrate's Court. That being so, counsel submitted, binds the applicants to the Magistrate's Court. The contention is short-lived: the wording of the section is not peremptive but endows the Magistrate's Court with jurisdiction to appoint an administrator, without thereby ousting the jurisdiction of the High Court. Both points *in limine* were accordingly dismissed. Having heard argument I granted an order in terms of a draft order handed to me by counsel for the applicants, the terms of which are set out at the end of this judgment. I indicated to the parties that my reasons for granting the order would be delivered at a later stage. What follows, are those reasons.

[3] It is not in dispute that the affairs of the respondent are in total disorder: as much became clear in argument. The disputes rather concern the persons who are responsible for the unsatisfactory state of affairs. Mr Badi on behalf of the respondent blames the applicants not only for a recalcitrant attitude and for forming a so-called "splinter group", but also in hampering the finances in failing to pay levies in substantial amounts. The applicants deny this. The applicants on the other hand refer to several aspects that clearly show mismanagement and an absence of proper control of the affairs of the respondent. It is common cause that the affairs of the respondent until the present trustees were allegedly appointed in 2010, were in total disarray and dysfunction. I am satisfied that there has not been any significant improvement since then and that the respondent is in dire need of control and management by an independent third person, to be appointed as the administrator. In this regard, and without having regard to who is to blame, the factors I shall now deal with are relevant.

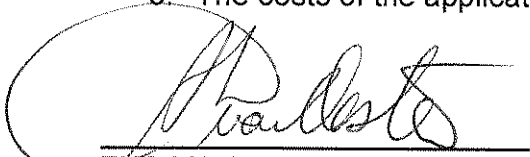
[4] The statutory required annual general meetings of the respondent have since 2010 neither been called nor held. The financial statements and records of the respondent are not at hand. In this regard Mr Badi states that the financial documents are with the auditors and that an audit report was being prepared that would be presented to members of the respondent. This, if accepted as correct, was the position on 29 October 2012, which is the date the answering affidavit was deposed to. It is now more than 4 months later and nothing has been put forward to show whether any progress has been made. What is particularly disturbing is the absence of any information as to who the auditors are, what documents they have been placed in possession of and

when those documents were handed to them. The respondent operates two separate banking accounts: this is an undesirable state of affairs. Allegations concerning arrears are made and disputed which clearly shows an absence of a proper bookkeeping. There is no evidence that any steps have been taken to recover arrears. The respondent is in arrears with payments to the City Council in respect of rates and other charges: the applicants state that amount to be R251 202.89. Mr Badi admits the fact of arrears but disputes the amount, without stating what the correct amount is. He maintains that an arrangement to pay has been made and that monthly payments have been made: this is difficult to accept as he has failed to furnish any further particulars in support of the allegations. Factions and splinter groups exist between the owners and infighting occurs, evidently resulting from an absence of proper management and control. Finally, the building is in dire need of maintenance and repairs.

[5] For all the above reasons I am satisfied that a proper case has been made out for the appointment of an administrator on the terms provided for in the draft order.

[6] In the result I make the following order (in terms of the draft order marked "X"):

1. Jan van den Bos (the administrator) is appointed as administrator to the respondent in terms of section 46(4) of the Sectional Titles Act 95 of 1986, as amended ("the Act").
2. The term of appointment of the administrator shall be for a period of 24 months from the date of this order.
3. The administrator shall perform his functions and have all the powers of the respondent as provided for in terms of sections 37 and 38 of the Act.
4. The remuneration of the administrator, so appointed, is fixed at the amount of R4 000-00 per month for the time that he is engaged in his duties in terms of this order.
5. The costs of the application shall be paid by the respondent.



FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANTS

ADV B GRADIDGE

APPLICANTS' ATTORNEY

AM ELLIS

COUNSEL FOR RESPONDENT

ADV BT NGQWANGELE

RESPONDENT'S ATTORNEYS

PP MILAZI ATTORNEYS

DATE OF HEARING

7 MARCH 2013

DATE OF JUDGMENT

8 MARCH 2013