

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISIONAL)

CASE NUMBER: 17161/2008

DATE: 24 OCTOBER 2008

5 In the matter between:

BODY CORPORATE OF THE SANTA

BARBARA SCHEME APPLICANT

and

GVS PROPERTY MANAGE 2nd RESPONDENT

10 MR G J SLABBERT 3rd RESPONDENT

JUDGMENT

ALLIE, J:

15

In this matter I have heard extensive submissions and read the papers, and I have heard submissions on the three primary preliminary points made by the respondents' counsel initially, namely that the matter ought to be dismissed as one in which a proper case for urgency was not made out on the founding papers and as one which did not afford respondents adequate opportunity to deal with the issues in the founding papers.

20 Then on the issue of dispute of fact, it is contended that there were numerous disputes of material fact, which could not be

resolved by an application of this nature and that it was contended on behalf of respondents that the applicants knew, prior to bringing this application, that these material facts were already in dispute.

5

Then on the issue of *locus standi* it was contended on behalf of respondents that a valid special general meeting of the Body Corporate was held on 2 October 2008, in which the trustees were removed, including the deponent to the papers
10 on behalf of applicant, namely Ms Boshoff and that, therefore, Ms Boshoff did not have the necessary authority to bring this application and did not have *locus standi* too. She did not have the authority to represent the Body Corporate in this application.

15

In response to this, of course, on behalf of applicant, it was submitted that the special general meeting called on 2 October 2008 in which she and her co-trustees were purported to be removed as trustees, was invalid for the reason that the
20 meeting did not comply with Rule 53 of the Management Rules of the regulations made in terms of the Sectional Titles Act. More specifically, it has been argued on behalf of the applicants that it did not comply with Rule 53 inasmuch as a letter that at least 25% of the owners of the units, addressed
25 to the trustees requesting that they call a special general

meeting within 14 days, did not reach the applicant. The applicant disputes, therefore, that the meeting of 2 October was validly called.

5 That aspect I mention pertinently, because that is one of the disputes of material fact on these papers, that is, whether in fact the special general meeting of 2 October 2008 was validly called in terms of the management rules and whether in fact the decisions made at that meeting, and more pertinently
10 whether the decision made to remove what I call the old trustees, were in fact valid. And that, I think it is common cause, would impact on the authority of Ms Boshoff to bring this application on behalf of the Body Corporate.

15 Because the validity or the regularity with which the meeting was called, is a material dispute of fact and is, I would accept, a *bona fide* dispute of fact, that is an aspect which would have to be dealt with in terms of the Plascon Evans rule and, therefore, the allegations concerning the validity of that
20 meeting would have to be looked at on the basis of the respondents' papers, together with the applicant's papers to the extent that there is agreement on that aspect. As I have pointed out it is agreed that in fact due notice was sent out to owners that the meeting would be held. There is no difficulty
25 that the meeting was correctly convened, but what seems to be

in dispute is really whether in fact the owners had the authority to call that meeting, because it is in dispute whether in fact the trustees received the notice of the owners requesting them to call that meeting within 14 days.

5

However, on the respondents' version, it is clear that the respondents state that the owners letters requesting the trustees to call such a special general meeting, was in fact posted by the 3rd respondent to all the trustees, and what is then disputed by the applicant on its papers, is the proof of that postage. However, the applicant in its papers say at paragraph 67 of the founding papers, the deponent, Ms Boshoff, in fact had knowledge of the fact that such a special general meeting would be held on 2 October 2008. So whether in fact she actually received the request of the owners in terms of Rule 53, has to be determined with reference to the papers of the respondents, which says that the letters were in fact posted to, *inter alia*, amongst others, Ms Boshoff.

20 So based on the application of the Plascon Evans rule, I would have to accept that version and, therefore, find that Ms Boshoff has not shown that she has the necessary authority to bring this application on behalf of the Body Corporate of the Santa Barbara Scheme and, therefore, on that basis I dismiss
25 the application and order that Ms Boshoff pay the respondents'

costs in this application. However, I am not satisfied that merely by virtue of short notice it was necessary to employ two counsel, and I will not accede to the request of the respondents that that cost should include the costs of two counsel. So the order is merely that Ms Boshoff will pay the costs of the respondents and that cost would include the cost of one counsel in this matter.



ALLIE, J