SECTIONAL TITLE SOLUTIONS

Lessons from a recent appeal against a CSOS Adjudication Order

SEP-21

An appeal against a CSOS adjudication order in Kwa-Zulu Natal has seen the Pietermaritzburg High Court set aside the adjudicator's order as it was wrong in law. The case in question is *Royal Palm Body Corporate v Vahlati Investments (Pty) Ltd and Another*[1] (the *Royal Palm* case) and judgment was delivered on 1 June 2021.

The judge made the point that the appeal application against the CSOS adjudicator's order must be served on the CSOS and the adjudicator in question. Another noteworthy confirmation flowing from this court's judgment is in respect of service of court process (documents and notices) on the unit owner of a sectional title scheme in accordance with Prescribed Management Rule (PMR) 4(5) of Annexure 1 of the STSMA Regulations[2]. This rule provides that the service address for any legal process or delivery of any other document to a member is the address of the primary section registered in that member's name. The member is entitled to change that address for purposes of the member's receipt of notices for a general meeting of the body corporate (where a special or unanimous resolution will be taken, for example – subsections 6(3)(c) and 6(4) of the Sectional Titles Schemes Management Act[3]) to another physical address, postal address or fax in South Africa or to an email address, and that change is then effective when the body corporate receives written notice of such a change from the member.

It is arguable, although not dealt with by the court in this judgment, that the notice of change of address, if any is received from a member of the body corporate, is only applicable in respect of notices for general meetings and not for a legal process (summons, for example).

After an exercise in statutory interpretation, the judge in the *Royal Palm* case agreed that the old management rules that were applicable in terms of the Sectional Titles Act[4] (the STA) were repealed by the provisions of the new management rules created by the STSMA Regulations – specifically in this case, relating to a quorum for a general meeting. The issue was that the old PMR 57(1) of Annexure 8 of the STA Regulations[5] provided that no business shall be transacted at the general meeting unless a quorum is present, and then went on to set the quorum at the number of owners holding at least 20% of the votes by representatives recognised by law and entitled to vote. On the other hand, the new PMRs in the STSMA Regulations provide that quorum is one-third of the total votes of members in value, provided that in calculating the value of vote required to constitute a quorum, the value of the votes of the developer must not be considered.

[1] (7214/2020P) [2021] ZAKZPHC 28 (1 June 2021).
[2] The Sectional Titles Schemes Management Regulations, 2016.
[3] Act 8 of 2011.
[4] Act 95 of 1986.
[5] The Sectional Titles Regulations, 1988.

Notwithstanding that the erstwhile developer of Royal Palm was still the owner of several units in the scheme, they were no longer the developer as defined in the STSMA and therefore their votes could be counted at the general meeting. The meeting was therefore quorate and calculated correctly based on the percentage of members present and entitled to vote at the general meeting.[6]

Although the adjudicator had the power to declare certain provisions of the old management rules as invalid and inconsistent with the new PMRs, the adjudicator's decision was still wrong in law on an application of the facts and was therefore set aside.

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[6] *Royal Palm* para 43.