

ADMINISTRATOR'S FUNCTION DEFINED

There are restrictions on scope of role

Daily News Tuesday March 17 2009

IN THE previous articles we looked at the appointment of an administrator and the powers he or she is given by the Sectional Titles Act (STA).

There are owners who believe that such an appointment is in violation of their constitutional rights and in the case of Albany Court¹ before the Witwatersrand Local Division of the High Court, the owners sought an order from the court to declare the appointment unconstitutional in addition to having the entire judgment cancelled or rescinded.

In November 2006 Nedbank was granted an order in the High court against the body corporate of Albany Court.

Craig Forsythe was appointed administrator for the body corporate for a period of 24 months.

In April 2007 several owners of Albany Court brought an application to set aside this judgment on the grounds that it was null and void at the outset, alternatively voidable, further alternatively unenforceable.

When Nedbank made the application for the court to appoint an administrator, the

owners resolved at a special meeting convened by the trustees to file with the court their notice of intention to oppose Nedbank's application.

The owners later discovered that the trustees had withdrawn the opposition and had settled the matter by agreeing to the appointment of an administrator.

After examining the facts and relating these to the Sectional Titles Act (STA), Acting Judge André Gautschi did not grant the order to rescind or withdraw the judgment given in favour of Nedbank.

André Gautschi AJ stated: "Accordingly, despite the fact that the members of the body corporate in the special general meeting may have given instructions to the trustees to oppose the application, if those instructions were not carried out, but the trustees later withdrew such opposition, or settled the matter, or even capitulated as it appears, that would not, invalidate the court order but would be binding on the body corporate vis-à-vis Nedbank.

"The members of the body corporate may claim that such trustees breached their fiduciary duty, and may hold them liable for having done so, but the court order granted in consequence would remain valid."

"There is accordingly in my view no merit in the point taken by the applicants. The chosen representatives of the body corporate dealt with the application before Goldblatt J, withdrew the body corporate's opposition on the basis of some settlement, and the order was therefore not incorrectly sought or granted."

¹ *Body Corporate of Albany Court v Nedbank* 2008 JDR 0392 (W)

The owners also contended that the STA violated their constitutional right in that the appointments of an administrator arbitrarily deprived them of their property and denied them access to housing.

Deprived

The court found that the owners were not denied access to their units nor were they deprived of their rights of access to adequate housing.

The judge stated that the owners as the registered owners of their units were in possession of their dwellings.

“There is no threat of eviction or dispossession which arises with the granting of powers to the administrator. Their access to adequate housing is not threatened thereby.”

Andrè Gautschi AJ further explained that by acquiring the powerful right of ownership in a sectional titles scheme, the STA restricted certain rights.

The majority may decide to restrict the right to have pets or to make certain building alterations.

The body corporate is given powers that make it necessary for all owners to co-operate in their interdependent relationship in a scheme.

The STA does impose restrictions on ownership rights but these cannot be held to be unconstitutional.

An administrator therefore replaces the powers of the body corporate for the duration of his appointment “in respect of those powers and duties of the body corporate which the court assigns to him.”

He cannot do as he pleases and cannot interfere with the rights of the owners

because he is appointed by the court that restricts his powers.

He is also accountable for what he does and “[a]lthough there is no provision for a reporting back to the court, the administrator will undoubtedly be liable to account for his actions during the period of tenure, and remains answerable to the court.”

Dr Sayed Iqbal Mohamed is the chairperson, Organisation of Civic Rights Website: www.ocr.org.za For tenant’s rights’ advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451