

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2022-041580

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
24 February 2025 _____	
DATE	SIGNATURE

In the matter between:

CASABLANCA BODY CORPORATE

First Applicant

and

ASTRODON (PTY) LTD

First Respondent

ASTRODON PROPERTY MANAGEMENT (PTY) LTD

Second Respondent

ASTRODON GAUTENG (PTY) LTD

Third Respondent

CENTREC TRUST FINANCIAL SERVICES (PTY) LTD

Fourth Respondent

STANDARD BANK SOUTH AFRICA

Fifth Respondent

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines/Court Online and by

release to SAFLII. The date and time for hand- down is deemed to be 10h00 on 24 February 2025.

JUDGMENT

Mudau, J:

[1] The applicant, Casablanca Body Corporate (“Casablanca”) seeks an order declaring the Management Agreement entered between itself and the respondents on 12 January 2017 (“the agreement”) cancelled, effective 3 August 2021, alternatively 12 January 2022, further alternatively 7 February 2022. Furthermore, the applicant seeks the return of control of its bank account, all books of account and all financial records.

The Parties

[2] The applicant is Casablanca body corporate. Casablanca is duly registered and established in terms of The Sectional Titles Act¹ and The Sectional Title Schemes Management Act² in terms of the Laws of the Republic of South Africa.

[3] The First Respondent is Astrodon (Pty) Limited, a company duly registered in accordance with the provisions of the company laws of the Republic of South Africa (as amended), having its registered address at and carrying on business from 15 Vermooten St, Brackenhurst, Alberton.

[4] The Second Respondent is Astrodon Property Management (Pty) Limited, a company duly registered in accordance with the provisions of the company laws of the Republic of South Africa (as amended), having its registered address at and carrying on business from 15 Vermooten St, Brackenhurst, Alberton.

¹ 95 of 1986.

² 8 of 2011.

[5] The Third Respondent is Astrodon Gauteng (Pty) Limited, a company duly registered in accordance with the provisions of the company laws of the Republic of South Africa (as amended), having its registered address at and carrying on business from 15 Vermooten St, Brackenhurst, Alberton.

[6] The Fourth Respondent is Centrec Trust Financial Services (Pty) Limited, a company duly registered in accordance with the provisions of the company laws of the Republic of South Africa (as amended), having its registered address at and carrying on business from 15 Vermooten St, Brackenhurst, Alberton. The opposing first to the fourth respondents, are collectively referred to as Astrodon.

[7] The Fifth Respondent is the Standard Bank Group Limited (Registration No.: 1969/017128/06), a limited liability company duly registered and incorporated in accordance with the company laws of the Republic of South Africa, with its registered office at 9th Floor, Standard Bank Centre, 5 Simmonds Street, Johannesburg, Gauteng Province.

Background Facts

[8] On or about 12 January 2017, and at Alberton, the Casablanca, duly authorised by the trustees and Astrodon, entered into an agreement (“the Management Agreement”). The agreement records that, Astrodon (Pty) Ltd and Astrodon Gauteng (Pty) Ltd, the third and fourth respondents are registered as estate agents with the Estate Agency Affairs Board whereas Centrec Trust Financial Services (Pty) Ltd is registered as a debt collecting company with the relevant authorities. Astrodon is mainly a secretarial company. Where required that services in terms of this Management Agreement be rendered by a registered estate agent, such services will be rendered by Astrodon (Pty) Ltd and / or Astrodon Gauteng (Pty) Ltd.

[9] The Management Agreement commenced with effect from 12 January 2017. At clause 5.1 it is recorded that it would endure for a 1 (one) calendar year (“initial period”), where after it would automatically renew for further periods of 1 (one) calendar year, after the expiry of the contract period and thereafter unlimited

subsequent calendar year periods (“renewal period”), unless written notice of termination is given by either party 3 (three) calendar months before the date of the Management Agreement is set to be renewed automatically. It is specifically recorded that such notice will only be valid if given 3 (three) calendar months prior to the expiry of the initial contract period or the expiry of any renewal period.

[10] Clause 6.1 makes provision that the agreement may be cancelled if the other party breaches any provision or term of the agreement and fails to remedy the breach within fourteen days of written notice requiring it to do so.

[11] According to the applicant, over the intervening period, the relationship between the Body Corporate and the Managing Agent broke down irretrievably. The details of the breakdown of the relationship are not relevant in this application. Consequently, on 21 July 2021, the trustees of Casablanca sent out a notice to owners calling for a special resolution in a Special General Meeting (“SGM”) to change the respondents as the Managing Agent of the applicant. In spite of opposition by the respondents, On 3 August 2021, the SGM went ahead where it was unanimously voted by everyone present that Ambercom Property Management (“Ambercom”) should replace Astrodon as the managing agent of the Body Corporate.

[12] Astrodon, however contended that the Management Agreement is valid until 31 January 2022. Ultimately, on 11 August 2021, Casablanca applied to the Community Schemes Ombud Service for an order in terms of section 39 (5) of the Community Schemes Ombud Services Act³ (“the CSOS Act”).

[13] The adjudicator found that according to the minutes of the meeting of 3 August 2021, the trustees of the applicant were authorised to start the process to cancel the contract of the respondents. The adjudicator also found however that the minutes did not assist to confirm that a special or ordinary resolution was reached. This decision has since been overtaken by events which follow.

³ 9 of 2011.

In limine

[14] Astrodon, allege *in limine* that this court has no jurisdiction to adjudicate the dispute between the applicant and the respondents because of Clause 8 of the Management Agreement, which reads as follows:

“Should any dispute or claim arise between the parties (“the dispute”), the parties shall try to resolve the dispute by negotiation. This entails that either party will invite the other party in writing to a meeting and to attempt to resolve the dispute within seven days from date of the written invitation. If the dispute has not been resolved by such negotiation, the parties shall refer the dispute to arbitration to mitigate the dispute and issue an independent award by the appointed arbitrator to remedy the dispute. The Arbitration Foundation of South Africa shall appoint a suitable qualified arbitrator on request of the parties. Each party shall be liable for half of the costs of such arbitrator. The arbitration shall be conducted in a summary manner and the arbitrator shall be required to give a decision within 14 days of referral of the matter to the arbitrator as well as ruling of costs to be paid by either party”.

[15] Second, that the matter was *res judicata*, in that the CSOS has already ruled on 30 March 2022 that the termination of the 3rd of August 2021 of the first respondent's agreement with the applicant is unlawful and that the applicant must convene a meeting in order to resolve to cancel the said agreement.

[16] Section 6(1) of the Arbitration Act⁴ reads as follows:

“If any party to an arbitration agreement commences any legal proceedings in any court (including any inferior court) against any other party to the agreement in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time after entering appearance but before delivering any pleadings or taking other steps in the proceedings, apply to that court for a stay of such proceedings.”

⁴ 42 of 1965.

[17] As the applicant contended, an arbitration agreement is not an automatic bar to legal proceedings in respect of disputes covered by the agreement. If, however, a party to an arbitration agreement commences any legal proceedings in any court against any other party to the agreement in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may at any time after entering appearance, but before delivering any pleadings or taking any other steps in the proceedings, apply to that Court, in terms of s 6 (1) of the Arbitration Act, for a stay of such proceedings. In the absence of an order for the stay of legal proceedings, such proceedings continue. As Nicholas J puts it within the context of settlement agreement: “By entering into an agreement of settlement which disposed of the application so far as the merits were concerned, it took a further step in the proceedings and thus precluded itself from making an application for a stay ”.⁵

[18] Astradon has, no doubt, misconceived the legal position. The fact that no application had been instituted by the respondents for a stay of proceedings prior to the filing of its answering affidavit is fatal to its point *in limine*. By filing an answering affidavit, it took a further step in the proceedings. Accordingly, Astradon, is precluded itself from making an application for a stay.

[19] As for *res judicata*, it finds no application. It is common cause that, with a view to finalise the dispute, a special general meeting was held on 7 February 2022, and the members of the applicant as per “DL 28” once again unanimously voted to cancel the management meeting with the respondent. According to Casablanca, the respondents have, since about August 2022, been refusing to act upon the instructions of the applicant in so far as it has been for instance refusing to pay municipal accounts and the staff of the applicant to its prejudice. The points *in limine* lack any valid legal basis.

[20] As for the merits, in opposing this application, Astrodon contends, without more, other than asserting a lien over the applicant’s account, that the Managing Agreement is extant. From the papers, Astrodon has failed to establish how much is due and payable to it for services rendered. This cannot be a bar to the relief that the

⁵ See *Conress (Pty) Ltd and Another v Gallic Construction (Pty) Ltd* 1981 (3) SA 73 (W) at 76A-76B.

applicant seeks, as the respondent can avail to itself other competent remedies. It is common cause that, the agreement could be cancelled by the applicant on two months' notice to Astrodon provided the cancellation is supported by a special resolution passed by the owners as per clause 5.3.1, which duly followed on 3 August 2021 as per "DL15". Astrodon however of was of the view that the Management Agreement is valid until 31 January 2022, as per an email marked "DL 17".

[21] The applicant contends, correctly, and which I agree with that, in terms of clause 5.1 of the agreement, no resolution is required for the termination of the agreement by effluxion of time, all that it required is notice, which was in any event, not the subject of the ruling of the adjudicator.

[22] In my view, and as the applicant contends, a letter stating that the applicant wished to cancel the contract in August of 2021 was sufficient. However, the basis for the new cause of action is as per "DL37" as in this case, a clear indication that the Management Agreement is not to be renewed beyond January 2022, which is a reasonable notice period. In so writing Casablanca was in essence doing no more than recognizing and giving effect to the legal consequences that would flow from the termination of the agreement. Considering two further cancellations, Astrodon cannot under the circumstances legitimately asserts that the Management Agreement was renewed. The monies held in the Standard Bank account as the applicant points out, are funds which Casablanca requires to pay its staff, and to maintain the common property on an ongoing basis.

[23] It is clear that, as an agent for the applicant, the respondents have not presented facts, entitling it to hold on to the Management Agreement and thus denying the applicants access to its financial records held with the fifth respondent. The agency relationship is governed by the Management Agreement and by nothing else. The consequences of the cancellation of the agency or management agreement by effluxion of time must be accepted. The mandate was granted for a specific period. I am satisfied that the applicant is entitled to the relief it seeks in the notice of motion with costs following the result.

Order

[24] Accordingly, the following order is made:

24.1. The point *in limine* is dismissed.

24.2. The Management Agreement concluded between the parties on or about 12 January 2017 is cancelled effective midnight of 11 January 2022;

24.3. The First Respondent, and/or the Second, and/or the Third and/or the Fourth Respondent/s are directed to sign all documents pertaining to the Applicant's current account held with Standard Bank of South Africa Limited, account number: 0[...], which includes a deed of assignment to assign its rights, title, interest and obligations in and to the current account to the Applicant forthwith within 5 (five) days from date of this order;

24.4. The First Respondent, and/or the Second, and/or the Third and/or the Fourth Respondent/s are ordered to hand over to the Applicant all the books of account, financial records and documents of the Applicant forthwith and within 5 (five) days from date of this order, which documents include, but are not limited to:

24.5 Copies of all the documents referred to Rule 27(3) of the STSMA and the Regulations:

24.1.1. In relation to debtors, the following documents:

24.1.1.1. Detailed Ledger year to date from the start of the financial year; Debtors contact information, listing unit number, unit owner number, unit owner e-mail addresses and unit owner contact details, and

24.1.1.2. Details of any current legal action / payment arrangement in place on arrears.

24.1.2. In relation to financial information the following documents:

24.1.2.1. Trial Balance sheet;

24.1.2.2. General Ledger year to date from start of the financial year;

24.1.2.3. Journal batches year to date from the start of the financial year;

24.1.2.4. Cash book to date from the start of the financial year;

24.1.2.5. Bank statements from. the start of the 2021 financial year;

24.1.2.6. Copy of the last signed audited financial statements;

- 24.1.2.7. Auditor company details and contact person details;
- 24.1.2.8. Details of outstanding insurance claims;
- 24.1.2.9. Invoices (voucher files);
- 24.1.2.10. Unit transfer records;
- 24.1.2.11. Employee contact, leave and UIF records;
- 24.1.2.12. Income tax details and confirmation that all tax payments are up to date;
- 24.1.2.13. Last annual general meeting pack;
- 24.1.2.14. Schedule of participation quotas;
- 24.1.2.15. Insurance policy/ies and full contact details of broker;
- 24.1.2.16. Details of any outstanding issues with developers, municipalities and units;
- 24.1.2.17. Minute books and minute of all meetings;
- 24.1.2.18. Management and conduct rules;
- 24.1.2.19. Sectional title deeds registrations and plans;
- 24.1.2.20. Policies and all forms and documents relating to security procedures;
- 24.1.2.21. Copies of all contracts with service providers;
- 24.1.2.22. Protection of Personal Information Act, No. 4 of 2013.
- 24.6 Costs of suit on scale A.

TP MUDAU
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

Counsel for the Applicant: Adv. L. Pretorius
Instructed by: Gerhold & Van Wyk Attorneys

Counsel for the Respondent: No appearance
Instructed by: Karnavos Attorneys

Date of Hearing: 27 January 2025

Date of Judgment: 24 February 2025