REPORTABLE

THE REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 9728/2019

Before the Hon. Mr Justice Bozalek

Hearing: 31 October 2019
Delivered: 4 February 2020

In the matter between:

BAE ESTATES AND ESCAPES (PTY) LTD ***Applicant***

(Registration number: 2018/208328/07)

and

THE TRUSTEES FOR THE TIME BEING OF
THE LEGACY BODY CORPORATE ***1st Respondent***

PAM GOLDING PROPERTY MANAGEMENT SERVICES (PTY) LTD 2nd Respondent

(Registration number: 2001/008556/07)

JUDGMENT

BOZALEK J

[1] This is an application for the review of the decision of the body corporate of The Legacy Sectional Title Scheme ('the scheme') which is situated in Green Point, Cape Town. The applicant, a private company, carries on business as a real estate agency selling and renting properties within Cape Town and surrounding areas. It is said on its

behalf that it is a highly reputable agency and in particular is well established on the Atlantic Seaboard.

[2] The first respondent are the Trustees for the time being of The Legacy Body Corporate established in terms of sec 2 of the Sectional Title Schemes Management Act, 8 of 2011 ('the STSMA') and they oppose the relief sought. The second respondent is a private company specialising in sectional title administration and the management of homeowners' associations. It is the managing agent of the scheme and played a central role in the events surrounding the impugned decision. No relief is sought against the second respondent however and it abides the decision of the Court.

[3] In broad terms the application concerns the decision taken by the first respondent on or about 21 May 2019 barring the applicant from conducting business in the scheme. The applicant brought an urgent application seeking the setting aside of the decision and costs, to be couched in the form of a rule nisi, on 19 June 2019. The matter was postponed for hearing on 31 October 2019 to allow for the filing of affidavits and heads of argument. No interim relief was granted. Despite the form of the relief sought in the notice of motion I understood the parties to be in agreement that the application was to be treated as one for final relief.

Background

[4] Most of the facts constituting the dispute are common cause. Where any facts are in dispute I will outline these but in my view they are not such as to preclude a decision being made on the merits of the dispute. This appears also to be the view of the parties since neither of them sought a referral to evidence.

[5] The dispute centres around the occupation of Unit 107 in the scheme which at all times was owned but not occupied by a Dr G Vizirgianakis ('the owner') who lives in Johannesburg. In May 2018 the owner instructed the applicant to find a tenant for his unit. The applicant did so and the owner entered into a year long lease agreement with two co-tenants, Messrs Du Preez and Vandiar ('the tenants'). In terms of the lease the owner agreed that the tenants would be permitted to sublet the unit through Air Bnb. The tenants duly took advantage of this dispensation from the lease's commencement date on 1 August 2018. From late September 2018 onwards, however, a steady stream of complaints reached the second respondent concerning the conduct of these Air Bnb occupants.

[6] The main source, albeit by no means the only source of these complaints, was the occupant of the unit below Unit 107, Ms Vernon, who is also a trustee of the body corporate. She complained of Air Bnb occupants dropping ash and cigarettes butts onto her patio and of noise disturbances apparently caused by late night partying and guests being brought onto the premises by Air Bnb occupants. Ms Vernon's attempts to resolve these difficulties directly with various Air Bnb occupants or the tenants were not successful and led her to complain directly to the second respondent. In turn the second respondent directed these complaints to the applicant, apparently in its capacity as the owner's agent. The applicant responded by contacting the tenants, as well as the owner, but the problems grew and began to affect a growing number of owners or tenants at the scheme.

[7] On 6 May 2019 the owner wrote to the second respondent advising that he had *'issued instructions'* for his tenants to vacate the unit by the following day and that no further Air Bnb bookings would be allowed. On 15 May 2019 the applicant's director,

Ms Bianca Arnsmeyer, emailed the second respondent confirming that the tenants' lease had been cancelled but stating that they would now vacate on 20 May 2019. She ascribed the nuisance problems to *'short term Air Bnb rentals'*. She added that these problems were not of the owner's doing. This statement, I might add, was puzzling because the owner had expressly contracted to permit Air Bnb occupants and had been aware of the problems they caused for some time.

[8] On 20 May 2019 the owner was advised by the second respondent, acting on behalf of the first respondent, that he was no longer permitted to carry out short term letting of his unit and further that the Trustees had resolved to restrict the applicant from operating within the scheme. The email quoted the relevant portion of conduct Rule 37 which reads as follows:

> *'Letting and occupancy of sections*
>
> *37. An owner may let or part with occupation of his section provided:*
>
> *……*
>
> *37.3 that in order to retain the nature of the Scheme, short term holiday letting shall be permitted provided that such short term holiday letting is managed through a letting agency which is considered to be reputable for such purpose in the sole discretion of the Trustees. The Trustees shall in their sole discretion have the right to restrict any short term letting;'*

[9] The email concluded:

> *'In the light of the above and the recent correspondence to you advising of the Trustees' instructions to no longer allow you to carry out short term letting at Unit 107, we urge you to find a reputable letting agency to manage long term rentals of your unit.'*

[10] At virtually the same time the applicant received an email from the second respondent advising that the Trustees had resolved to restrict the applicant from operating within the scheme. It read in part:

> *'In terms of Rule 37.3 of the Body Corporate rules short term holiday letting is permitted provided that it is managed to through a letting agency which is considered to be reputable in the sole discretion of the Trustees … Due to recent incidents at Unit 107, the Trustees have resolved to restrict (the applicant) from operating within The Legacy with immediate effect'.*

[11] The applicant immediately objected to the decision and advised the second respondent it had nothing to do with the short term letting of Unit 107, this being the responsibility of the tenant/s who had been permitted to do so by the owner. The applicant threatened legal action if the resolution was not revoked. On the following day, 22 May 2019, the applicant's attorney wrote at length to the respondents along the same lines demanding an immediate retraction of the resolution and an apology, failing which legal action would be commenced. Amongst other points made on the applicant's behalf were that the owner's mandate to the applicant was simply to obtain a tenant and that it had played no part in the conclusion of any short term Air Bnb rentals, this being an issue between the owner and the tenant/s, that it regarded the suggestion that it was not a reputable agency in a serious light, that it currently held a mandate from the owner to lease or sell the unit and thus that it did not accept the restriction imposed by the Trustees' resolution.

[12] A week later a meeting was held between the applicant's principals, its attorney and certain of the Trustees when it was again conveyed on behalf of the applicant that it had played no part in sub-letting the apartment i.e. to the Air Bnb occupants and therefore

that the Trustees' resolution had been unjustified. No solution to the dispute was found, however, and when a final deadline of 3 June 2019 for the retraction of the resolution was not met legal proceedings were commenced shortly afterwards.

The respective parties' cases

[13] The applicant's case is that the Trustees resolution restricting it from conducting business in the scheme:

13.1 was unlawful and passed in error in that conduct rule 37.3 had no application since the applicant was not engaged in any short term holiday letting;

13.2 was procedurally unfair in that it was passed without any prior investigation into the applicant's role and without any prior notice to the applicant;

13.3 was taken arbitrarily and without the Trustees applying their mind;

13.4 was taken with an ulterior motive, namely, to simply prevent the applicant from carrying on business within the scheme.

[14] The applicant contends also that the resolution or decision amounted to administrative action in terms of PAJA (The Promotion of Administrative Justice Act, 3 of 2000) but that in any event if PAJA was not applicable, it was entitled to review the resolution in terms of the common law read with sec 3 of the Constitution.

[15] On behalf of the first respondent it was contended that the disputed resolution did not constitute administrative action in that it had not exercised a public power nor performed a public function and furthermore that, properly interpreted, the decision did not adversely affect the applicant's rights nor have a direct, external legal effect.

[16] Two primary issues arise, the first being whether the resolution is reviewable either as being administrative action in terms of PAJA or a decision or action which is

reviewable at common law. The second issue, which only arises if the first issue is answered in favour of the applicant, is whether the decision falls to be reviewed and set aside on its merits or for procedural reasons.

[17] As regards the first issue, in order for a decision by a person other than a state organ to qualify as administrative action for the purposes of PAJA it must, in terms of the definition clause, constitute the exercising of a public power or the performance of a public function in terms of an empowering provision. When regard is had to existing case law it is not entirely clear whether, in the ordinary course of events, decisions taken by a body corporate amount to administrative action in terms of PAJA. *In Body Corporate of the Laguna Ridge Scheme No 152/1978 v Dorse* 1992 (2) SA 512 D, which was decided prior to the promulgation of PAJA, McCall J assumed, in the absence of contentions to the contrary from the parties, that the decision of a body corporate affecting a member was potentially reviewable at common law.

[18] In *North Global Properties (Pty) Ltd v Body Corporate of Sunrise Beach Scheme and Others* [2013] JOL 30400 (KZD), Pillay J held as follows [at para 9]:

> *'[9] Trustees' decisions must be objectively reasonable; when they are not, they are reviewable under the common law read consistently with, in my respectful opinion, the STA, Promotion of Administrative Justice Act 3 of 2000 ("PAJA") and section 33 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"). As a statutory body performing not only commercial and regulatory functions but also administrative functions, it is implied from the STA that trustees must comply with the constitutional principle of just administrative action. As a juristic person taking administrative action, a body corporate is also an administrator as defined in the PAJA. What is just is determined in the context of the STA and PAJA.'*

[19] By contrast, in *Khyber Rock Estate East Homeowners Association v (Unit) 09 of Erf 823 Woodmead Ext 13*, Spilg AJ held, in relation to a homeowners' association incorporated in terms of sec 21 of the Companies Act, 61 of 1973, that the decisions of trustees serving on such a body did not fall within the purview of PAJA, presumably because he considered that such bodies did not exercise a public power or perform a public function. He found, however, that such decisions were susceptible to common law review as being those of a voluntary association. The learned judge stated as follows:

> *'[34] The Promotion of Administrative Justice Act No. 3 of 2000 in its terms applies to administrative action on the part of an organ of state or a juristic person exercising a public power or performing a public function. Accordingly, trustees of homeowners associations do not fall within the purview of PAJA. Nonetheless, Section 39(2) of the Constitution requires a Court, when developing the common law, to promote the spirit, purport and objects of the Bill of Rights. PAJA is an expression of the provisions of Section 33 of the Constitution and is considered to be a codification of the grounds of review of public administrative bodies...*
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> *In Pharmaceutical Manufacturers Association of SA & Others: In re: Ex Parte application of President of the RSA & Others 2000 (2) SALR 674 (CC) at para 45, the Court referred to administrative law and the Court's power of review as an incident of the separation of powers built on constitutional principles. The Court however stated that: "Even if the common-law constitutional principles continue to have application in matters not expressly dealt with by the Constitution (and that need not be decided in this case) the Constitution is the supreme law and the common law, insofar as it has any application, must be developed consistently with it, and subject to constitutional control". In Bato Star at para 22, the Constitutional Court again commented that the "... extent to which the common law remains relevant to administrative review will*

actually be developed on a case-by-case basis as the Courts interpret and apply the provisions of PAJA and the Constitution".

[36] Accordingly and as I understand it, a Court will only interfere with the decision of the trustees of a homeowners' association where that body has failed to comply with the natural justice requirements of legality, procedural fairness and reasonableness; the latter, in the sense of a rational connection existing between the facts presented and the considerations that were applied in reaching the conclusion.

[20] In the present matter two elements of the definition of administrative action in PAJA call for closer attention. Firstly, there is the requirement that the action have a public character i.e. *'when exercising a public power or performing a public function in terms of an empowering provision'*, and secondly, that it have *'a direct external legal effect'*.

A public power or function

[21] The first respondent relied on the decision in *Chirwa v Transnet Ltd and Others* 2008 (4) SA 367 (CC) (para 186), where the Constitutional Court set out factors to be considered in determining whether a public power has been exercised or a public function performed. These include the relationship of coercion or power that the actor has in its capacity as a public institution, the impact of the decision on the public, the source of the power and whether there is a need for the decision to be exercised in the public interest.

[22] As discussed by Cora Hoexter in Administrative Law in South Africa, 2nd edition, Juta, our courts, particularly since the advent of the new Constitution, have wrestled with the question of whether private entities are capable of exercising public powers or performing public functions. The question of whether a non-state organ is exercising a public power or performing a public function is also best determined on a case by case

basis. In considering this issue in the present instance relevant factors include the fact that this and other body corporates are established pursuant to and derive their powers from statute, namely, the STSMA. The STSMA provides that body corporates are responsible for the enforcement of the rules and for the control, administration and management of the common property for the benefit of all the owners in a given scheme. Overall the STSMA provides for the establishment of body corporates to manage and regulate sections and common property in sectional titles schemes and, for that purpose, to apply rules applicable to such schemes.

[23] These management or conduct rules take effect from the date of establishment of the body corporate and bind it, the owners of the sections and any persons occupying a section. Sectional titles schemes encompass a substantial and, I would hazard, an evergrowing component of the housing market and thus affect a significant section of the public. Many of the rules, such as the rule utilised in the present matter, are coercive or have a disciplinary character.

[24] Although the subjection of owners and occupiers in a sectional title scheme to conduct or management rules, as well as the decisions flowing from their application, can be seen as contractual in nature, these arrangements flow from the statutory authority granted to homeowners' association by the relevant legislation. Furthermore, apart perhaps from those original owners of units who participate directly in the formulation or approval of the management or conduct rules, the vast majority of owners and occupiers of sections in such schemes have no choice but to accept this regime if they wish to reside in a sectional title scheme.

[25] A point taken by the first respondent was that the impugned resolution only binds owners and occupiers and not third parties such as the applicant and in this regard it relied on the recent judgment of the Supreme Court of Appeal in *Mt Edgecombe CC Estate Management Association v Singh and Others* 2019 (4) SA 471. The argument that the resolution only affects or binds owners and occupiers in the scheme is however belied in the present instance by its terms which in effect proclaim that the applicant is not a reputable letting agency for the purpose/s of short term holiday letting and which, at the least, restricts owners from using it for such purpose/s. It takes little imagination to appreciate the harmful effect on the applicant of the resolution and its publication to owners in the scheme. The *Mt Edgecombe* decision is not on point and thus offers no support for the applicant's case. Although the ratio of that case supports the view that as between home owners and a homeowners' association conduct rules have a contractual basis, in the present matter the impugned resolution impacts directly on a party outside that relationship thus bringing very different considerations into play.

[26] Thus, in the present instance the impugned decision or resolution was not limited in its effect to owners or occupiers of the scheme. It had a direct and significant impact upon the applicant, a party external to any contractually based arrangements administered by the body corporate acting through the Trustees.

Direct external legal effect

[27] To constitute administrative action in terms of PAJA a decision taken must also adversely affect the rights of a person and have a direct external legal effect. In the present instance, whereas previously the applicant could engage in short term holiday letting on behalf of its client, the owner, and potentially also on behalf of all the owners in the scheme, such right was removed by the body corporate's resolution. Furthermore,

the applicant's reputation was harmed, it lost the owner as a client and its potential client base was reduced.

No need for any review?

[28] Another argument made on behalf of the first respondent was that inasmuch as the applicant averred that conduct rule 37.3 was not applicable, since it had not been engaged in short term holiday letting, there was accordingly no need for any administrative law challenge by the applicant to the decision. If the applicant was of the view that the decision was a nullity it was entitled to continue its business without recourse to the courts.

[29] The applicant certainly did not contend that the decision was a nullity. Given the harm done to the applicant's reputation by the resolution which purported to bar it completely from operating within the scheme the applicant was, in my view, fully entitled to challenge the first respondent's decision/ resolution. It matters not, in my view, that the applicant's case is that it was not in fact handling short term holiday rentals on behalf of the owner. That commercial activity now been closed to the applicant both in relation to its existing client and other potential clients who own units within the scheme. What is more, the applicant has now been publicly branded by the Trustees as not being reputable for the purposes of short term letting at the scheme. The impugned resolution thus has clear implications and consequences for the professional reputation of the applicant and those of its directors and their right to practice their occupation. In my view then it does not assist the first respondent to contend that, at worst, the resolution was a nullity vis-à-vis the applicant and should simply have been ignored by it.

[30] It was also argued on behalf of the first respondent that even assuming that the impugned decision was unlawful vis-à-vis the applicant, the latter had other remedies at its disposal such as an action for defamation or for unlawful interference in its contractual relationship with its client, the owner. In my view the possible existence of such remedies does not necessarily imply that the remedy of administrative review is not available to a party which is subject to a decision it would otherwise be entitled to review.

[31] In summary, not only does the body corporate derive its power to formulate conduct rules and to apply them from a statutory source, namely, the STSMA, the exercise of those powers can affect a substantial number of people in important matters concerning the conditions under which they occupy the property concerned. In the exercise of those powers a body corporate can be seen as exercising a public power or performing a public function namely regulating and administering the conditions under which persons who share common property in a sectional title scheme must live. In the present case furthermore, the exercise of its power or performance of its function impacted upon a party not directly subject to the conduct rules.

[32] The first respondent's impugned decision impacted adversely upon a third party which had an existing commercial relationship with one of the unit owners. Having regard to these and other relevant factors as a whole I consider that the impugned decision, at least vis-à-vis the applicant, does constitute administrative action as defined in PAJA and is therefore reviewable at its instance.

Reviewable at common law?

[33] If I am incorrect in finding that the resolution taken by the first respondent falls squarely within the boundaries of PAJA, the question arises whether it is reviewable at

common law. Prior to 1994 our Courts regularly reviewed the exercise of coercive powers or the actions of private tribunals not exercising public powers, particularly in the context of disciplinary proceedings. *See Turner Jockey Club of South Africa* 1974 (3) 633 (A) and *Theron v Ring Van Wellington van die NG Sending Kerk in Suid Afrika* 1976 (2) SA 1 (A) and *Klein v Dainfern College* 2006 (3) SA 73 (T).

[34] In the present matter the applicant relies in the alternative on its right to lawful, reasonable and procedurally fair administrative action in terms of sec 33(1) of the Constitution as well as its freedom to trade in terms of sec 22 of the Constitution. Assuming for present purposes that the applicant cannot rely on the provisions of PAJA because the power exercised by the first respondent lacks a public character (or for lack of compliance with some other element of PAJA's definition of administrative action), I can see no reason why, in protecting the applicant's constitutional rights, the Court should not subject the first respondent's resolution to review against the standards of lawfulness, reasonableness and procedural fairness. Doing so would fall squarely within the inherent and constitutionally sanctioned power of the Court to develop the common law in accordance with the values of the Constitution and the rights which it enshrines, taking into account the interests of justice.

The merits

[35] Turning to the substance of the first respondent's decision/resolution and the process which led to its being taken, three features stand out. In the first place the resolution appears not to have been preceded by any basic investigation of the underlying facts by the first or second respondent and nor was the applicant, or the owner for that matter, afforded any prior opportunity to make representations regarding the proposed decision. A second feature is that, certainly as initially conveyed to all parties and

applied, the decision went well beyond the provisions of conduct rule 37.3. Thirdly, when regard is had to the facts which are common cause there appears to have been no basis upon which the problems arising from the presence of Air Bnb occupants in the unit could be ascribed to the applicant.

The applicant's responsibilities and the need for a prior investigation

[36] As far as the applicant's responsibility for the problems emanating from unit 107 are concerned, regard must be had in the first place to the terms of the lease between the owner and the tenants. Not only did it provide that the tenants (lessees) were permitted to sublet the premises via Air Bnb, it made no provision for any role by the applicant in such arrangements. In fact the lease stipulates that the applicant's sole responsibility to the owner/lessor was to procure a suitable lessee. Referring to the rights and obligations as between the lessor and the lessee, clause 10.4 further provides: *'It shall not be the function of BAE* (the applicant) *to monitor or enforce their respective rights and obligations under this Lease Agreement, between themselves'*.

[37] Notwithstanding these provisions it is clear that the applicant did play a role in attempting to alleviate the problems which arose from the presence of short term Air Bnb occupants of the unit. It received and responded to emails from the second respondent regarding the increasing complaints and communicated in this regard with the owner and other interested parties. In its founding affidavit the applicant's director explained these actions as being done purely as an act of good faith and added that the unit was managed by a Mr Adam Clayton who was employed by the owner. There is nothing in the opposing affidavits which casts any serious doubt on these averments.

[38] The first respondent set out in some detail email correspondence relating to the problems emanating from unit 107. Initially the second respondent referred problems to Mr Clayton. He had no connection to the applicant but, initially at least, appeared to take responsibility for management of the unit in the absence of the owner. At some stage he began to involve the applicant in the dispute and its representatives began trying to assist in resolving the problem. At no stage did they advise that this fell outside of their mandated responsibilities but nor did they explicitly accept responsibility for management of the problems. At a later stage the second respondent began to communicate with the owner about the problems caused by occupants of his unit. The owner claimed ignorance of Air Bnb occupants using his unit and implied that the responsibility for this lay with his tenants.

[39] In this somewhat confusing situation one can easily see how the respondents might have mistakenly assumed that the applicant played a direct role in placing Air Bnb occupants in the unit: the applicant assisted in trying to resolve the problems and the owner affected ignorance of the problems and failed to disclose that he had permitted his tenants to let the unit to Air Bnb occupants; the owner's de facto agent, Clayton, passed the problem onto the applicant which did not make its position and responsibilities clear to the respondents prior to the resolution. However, the fact remains that nothing was ever produced by the first respondent to indicate that the applicant bore responsibility, direct or indirect, for placing Air Bnb occupants in the unit or for not regulating the tenants' conduct in doing so. That responsibility lay at the door of the owner who appears to have been disingenuous in not accepting such responsibility.

[40] It would appear that when the complaints reached a crescendo around 20 May 2019, (and compounded perhaps by the applicant's continuing involvement and the fact

that the owner resided in Johannesburg) a careless assumption was made by the second respondent and the Trustees that the applicant was instrumental in the selection, placement or management of Air Bnb occupants in unit 107. This assumption was unwarranted. More importantly, had the proposed resolution been put to the applicant before it was taken, its directors would in all probability have set the record straight and the Trustees might very well have been dissuaded from issuing the restriction ultimately imposed upon the applicant.

[41] As mentioned, the applicant's case on the merits is that it played no part in the short term letting of the unit 107 beyond attempting to assist, as an act of good faith, in resolving the issue of the many complaints arising from the occupation of the unit either by the then tenants or by Air Bnb occupants. If this is accepted, as I consider it must be, the first respondent's decision to restrict its activities in terms of conduct rule 37.3 was, to paraphrase review grounds in sec 6 of PAJA, not rationally connected to the purpose for which it was taken or the information before the Body Corporate, was unreasonable, unlawful or was taken because irrelevant considerations were taken into account or vice versa. The applicant's case that the decision taken was procedurally unfair in that it was not heard prior to the decision being taken, is likewise established.

The scope of the Trustees resolution

[42] As far as the scope of the restriction embodied in the resolution is concerned, there are clear indications that the Trustees acted arbitrarily or exceeded their powers by purporting to ban the applicant from any dealings with the sale, leasing or management of property within the scheme. Conduct rule 37.3 limited the body corporate's powers to restricting a letting agency in the field of short term holiday letting in circumstances where it considered such an agency was not *'reputable for such purpose'*.

[43] In its initial emails to the owner and the applicant written on behalf of the first respondent, the second respondent, although referring to rule 37.3, advised that its principal had resolved to restrict the applicant *'from operating within the Legacy'*. In keeping with this broad proscription, the owner was urged in the same notification to '*find a reputable letting agency to manage'* the long term rental of his unit. When the Chairman of the Body Corporate responded to the letter of demand from the applicant's attorney he referred to the applicant being barred from operating at the scheme with no qualification that this restriction was limited to short term holiday letting. Similarly, all the internal correspondence between the Trustees prior to the resolution being taken refers to the restriction on the applicant as being unqualified in its scope.

[44] In its opposing affidavit the first respondent asserted that the resolution extended only as far as short term holiday letting and that the applicant had deliberately misconstrued the scope of the resolution in making its case. However, this appears to have been a late change of tack on the first respondent's part since when the Chairman of the Body Corporate formally responded to the letter of demand from the applicant's attorney, he unequivocally stated that it had been resolved that the applicant *'may not operate at the Legacy'*.

[45] Just as telling is the body corporate's internal documentation prior to the decision being taken. First respondent's deponent and Trustee asked *'Is there a scope to potentially prohibit BAE Estates* (the applicant) *from operating within the Legacy?'*. Another Trustee responded *'Agreed. Ban them!'* to an email from the second respondent citing conduct rule 37.3 which referred to banning the applicant from operating within the Legacy but again with no qualification that this would apply only to short term holiday letting.

[46] In my view the conclusion is inescapable that the first respondent acted beyond its powers or arbitrarily in purporting to ban the applicant entirely from all or any dealings with property or owners in the scheme. On this ground alone the applicant was entitled to launch proceedings to have the decision taken by the first respondent trimmed to one which was within its powers as stipulated in conduct rule 37.3.

Conclusion

[47] In the circumstances I am satisfied that the applicant has succeeded in establishing that the decision which it challenges amounts to administrative action and in establishing at least three of the review grounds upon which it relies, both substantive and procedural and which are set out in paragraph 13.1 – 13.3. These grounds are amongst those listed in sec 6 of PAJA (sections 6(2)(a)(i), (c), (e)(vi) and (h)) or are substantially similar to other listed grounds (sections 6(2)(e)(iii)). In the circumstances it is unnecessary to consider whether the remaining ground relied upon by the applicant, namely, that the first respondent acted with an ulterior motive, has been established.

[48] In the circumstances the application must succeed and the following order is made:

1. The resolution passed by the first respondent, which was published to the applicant on 21 May 2019 and which prohibits the applicant from conducting business in the sectional title scheme known as the Legacy, situated at 145 Main Road, Green Point, Cape Town, Western Cape is reviewed and set aside;
2. The first respondent is ordered to pay the costs of the application.

BOZALEK J

For the Appellant	:	Adv K Felix
As Instructed		C&A Friedlander Inc
For the 1st Respondent	:	Adv F Landman
As Instructed	:	Marlon Shevelew & Associates Inc