

# Time nearly up for timeshare industry

Attorney Trudie Broekmann is bringing a challenge against the industry and its 'illegal, void' timeshare contracts

**S**TUCK with a holiday club membership that you were ambushed into signing? Mystified by the booking process? Told you cannot cancel the contract? Paid exorbitant annual levies and never seen any benefit?

Unfair practices in the timeshare industry have been in the spotlight for years, with countless complaints about consumers getting raw deals.

This year, the National Consumer Commission (NCC) finally took steps against the industry, when it said in July it was embarking on public hearings into timeshare.

But while the hearings have seen endless delays, action is only expected well into next year. And until the commission has made its recommendations to the Minister of Trade and Industry, and amendments to the Property Timesharing Control Act (PTCA) have been approved by Parliament, consumers are likely to continue being stuck with contracts, extortionate levies, timeshare for which they cannot book and threats of blacklisting.

Commercial attorney Trudie Broekmann is not waiting for the outcome of those hearings: last week, she announced plans to launch a class action lawsuit early in the new year.

Broekmann is demanding the full return of clients' investments because the contracts are illegal and don't comply with the Consumer Protection Act (CPA) or the PTCA, she says.

The Cape Town attorney says she has already terminated the contracts of 48 of her clients with Quality Vacation Club, African Club Innovations (ACI), Multi Destinations Club, Dream Vacations, Lifestyle Vacation Club and Flexi Club. She says she's studied those contracts and, in each case, they were legally non-compliant and therefore void.

She says more than half of her clients have never been able to book a holiday.

One of her clients paid R500 000 to ACI over five years, without ever being able to secure a booking.

"The systems are structured in such a way that apparently



**GEORGINA CROUTH**

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deliberately prevents you from achieving a booking," Broekmann says. "The contracts are also complicated so that few consumers can comprehend it. "Many people assume they are permanently committed to (in perpetuity) contracts. That is not true, as the contracts are unilaterally broken by the supplier, or are illegal in the first place."

Broekmann is cautiously optimistic about the NCC's inquiry, which she hopes will contain "useful and practical recommendations to alleviate the consumers' many problems" with the industry, but is concerned the process is too sluggish.

"They will recommend that Parliament draft new laws to regulate the industry better. This would be a slow and uncertain process and would provide cold comfort to the consumers who are forking out to the industry every month for services they never receive."

The stories of two of Broekmann's clients are all too familiar.

Joburg attorney Anni Feely and her husband initially paid



Attorney Trudie Broekmann is launching a class action law suit to demand the full return of clients' investments, as she says the timeshare contracts are illegal and don't comply with the Consumer Protection Act.

R48 000 for their timeshare, but only managed to make repeat bookings at a single suitable resort in 17 years.

At the presentation, they were told they had "won" a weekend at a lodge. It was so grungy they stayed one night.

The second place, for which they booked a year in advance and were told it was the "absolute best" in the southern Cape, was similarly disgusting.

"It's theft," she said. "If I think of all the money I spent over 17 years, it makes me sick. Levies started at R2260 in the first year. These escalated to over R10 800 annually."

When Feely attempted to cancel in 2015, she was laughed at and told the contract was in perpetuity. Then they threatened to blacklist her.

"I'm a commercial lawyer (in the mining sector), so I don't know the Consumer Protection Act particularly well. But when I spoke to other lawyers, they scoffed at the supposed 'perpetuity contract'. That's when I started doing research and got hold of Trudie (Broekmann)."

Corné Erasmus, a Joburg businesswoman, was lured to a presentation after being apparently shortlisted to become the winner of a "lucky draw" to own a luxury vehicle in 2005. But the draw turned out to be a marketing session of international holiday resorts that would cost an initial R100 000.

The promise of "inexpensive" international accommodation sounded so good that who could say no? QVC even offered her "permanent" membership. She signed up, but wasn't told about the levies.

Two years later, all the attractive international resorts disappeared from the portfolio and it became impossible to secure bookings for any holidays.

Currently, she pays an annual levy of R144 000 without being able to access any timeshare holidays.

Erasmus is one of 65 of Broekmann's other timeshare clients who haven't had their contracts cancelled yet, and will be part of the class action suit.

A 2011 Grant Thornton study found there were 740 000 timeshare owners in South Africa. The industry is believed to be raking in a healthy R3.5 billion annually.

The Vacation Ownership Association of Southern Africa declined to comment, but Peter Snyman, director of Flexi Holiday Club – one of the clubs earmarked in the pending lawsuit – has accused Broekmann of making "several broad, unsubstantiated and untrue allegations that do not apply to Flexi Holiday Club, and which are damaging to the tens of thousands of our members who continue to enjoy thousands of holidays on an annual basis".

He says industry players have been working closely with the NCC's inquiry to expose the

"unscrupulous practices and entities purporting to be part of the industry when they are not, as well as implementing new legislative reforms. Engaging in a class action lawsuit at this stage is likely to undermine the outstanding progress made by the NCC public inquiry".

"Considering that Trudie Broekmann only assisted 49 consumers over an unspecified time, the question arises as to how many complaints there are in fact against each individual timeshare supplier. To put this matter into context, the number of complaints received by the NCC public inquiry and lodged with the Consumer Goods and Services Ombud, totals 440, which constitutes 0.1% of all timeshare weeks owned."

Snyman further claims Flexi Holiday Club is not aware of any class action lawsuit against itself or the industry as a whole, despite seeing Broekmann's statement.

"Flexi Holiday Club has no record of any cancellations facilitated by Trudie Broekmann Attorneys. Flexi Holiday Club has had a cancellation policy in place for the past six years and all cancellations are effected in terms of this policy, and not because of any interventions by Trudie Broekmann."

The battle between Broekmann, a seasoned CPA expert, and members of the timeshare industry is likely to be of immense interest to consumers,

## Landlady violated tenants' rights after eviction notice

MY LANDLADY wrote an eviction letter on October 7.

The last day of occupancy was October 31. My complaint is that we were not given ample time by the landlord to move out. The apartment is not maintained by her.

There were no inspections done prior to us moving in. The walls are extremely dirty and she has even forced us to pay R250 to fix a toilet water leak, arising from the previous tenant. Of late, she walks in and out of the flat as she pleases, without notifying us first.

Our privacy is highly invaded. We cannot even feel

free in our "home", thinking she might walk in at any minute.

According to the lease, we are entitled to be given two months' notice.

The current eviction was issued without a court order. Therefore, we would like to demand our deposit back in order to secure another apartment, as we have had no time to budget for the costs of moving.

On November 14, the landlady changed the locks, preventing us from entering.

I went to the locksmith and requested that the locks be changed so that I could gain entry.

Now I have received a letter from their lawyers stating that we owe them money as of November 15. **Daphne Mketso**

*Georgie: The landlord is violating your rights as a tenant, and writing an eviction letter is not a legal order. Locks are not allowed to be changed and the property needs to be maintained by the landlord. She's not allowed to simply walk in and infringe on your rights to privacy.*

*The Rental Housing Tribunal can be contacted about the matter. Only a court can issue an eviction order.*

## Levy demand after estate wound up

MY MOM had a timeshare. She passed away last August.

Unfortunately, due to problems with the death certificate, I was only appointed as executor in January this year.

Upon my appointment, I immediately notified the timeshare company of her death, and requested they dispose of the unit.

They responded at the time, but then I heard nothing further from them until August this year.

My mom's estate was less than R100 000 and she had no will.

According to my knowledge, everything legally required by me was conducted and I had even advertised her death in the local paper where the timeshare is located (despite there being no legal requirement to do so).

The estate was then

wound up and the Master of the Court was notified thereof.

Now, five months after this, the timeshare company approached me regarding outstanding levies and the unit – despite the fact that they knew this at the time of my mom's death.

I requested that they take the timeshare over and sell it themselves as no dependant wanted the asset, and I can't legally force it onto any dependant.

Initially they accepted and said they would sell it – but now they are reneging and demanding payment and that the asset be sold by us, since they do not handle any sales.

To my knowledge of the agreement, they have every right to sell the unit themselves in lieu of any debt owing, yet they are refusing to take the unit.

What are our rights, as

I am not an expert in this field?

Can they demand payment from the estate when it has been wound up, and despite them being informed, they never put in a claim?

Second, can they refuse to take the asset back, as none of the dependants wish to take over the asset as they have no use for it.

The agreement was in my mom's name.

**Tony Lund**

*Commercial attorney Trudie Broekmann says: "In terms of our Law of Succession, a debt is not transferred to the heirs of a deceased person (only an asset is, and then only if the heir agrees to take it). Consequently, no payment is due to the timeshare company, and they have no claim against the estate or the heirs."*

the legal fraternity and the NCC, which should be delighted by the possibility of a legal precedent being set if she succeeds.

National Consumer Commissioner Ebrahim Mohamed comments: "The commission welcomes any action in relation to the Consumer Protection Act on behalf of consumers that serves to enhance or develop

consumer protection.

"(The) industry has been cancelling most of the contracts through the Consumer Goods and Services Ombudsman, where most industry players have subscribed to the mediation process. While we note that this goes a long way in providing relief to consumers who have been stuck in these contracts, our view is

still that there is a need for a lasting solution in dealing with the challenges consumers face when interacting with the timeshare industry."

Consumers wanting to join the class action suit have been invited to contact Trudie Broekmann Attorneys at [trudie@broekmann.co.za](mailto:trudie@broekmann.co.za), [admin@broekmann.co.za](mailto:admin@broekmann.co.za), or call 021 422 0269.

## Whistle-blower slams police for failing to offer protection

ZIMASA MATIWANE

THE police's crime intelligence unit warned two whistle-blowers, who exposed alleged corruption apparently linked to the death of former ANC Youth League secretary-general Sindiso Magaga, that a hitman was after them.

Thabiso Zulu and Less Stuta have been vocal about allegations of corruption and mismanagement of public funds in the multimillion-rand upgrades to the uMzimkhulu Memorial Hall.

Both have given testimony to the public protector investigation probing the matter while Zulu also testified at the Moerane commission investigating political killings in the province.

"On Thursday we were notified by national crime intelligence that a hitman from the notorious Glebelands Hostel had been sent to kill us. We were told not to move and stay where we are," Zulu said. Police

had not responded at the time of going to print.

But the death threats are not new, Stuta said. "There are days when I am followed by unregistered cars. Two weeks ago someone tried to cut my fence and gain entry to my home," he said.

Zulu lambasted the state for failing to protect them, saying if he or Stuta were to be killed, their blood would be on the state's hands.

"Why are we being encouraged to expose corruption if we are going to suffer?" Zulu asked.

Both men said they did not regret blowing the lid on the alleged corruption.

Meanwhile, KwaZulu-Natal violence monitor Mary de Haas sent a letter to the Moerane Commission last week describing the "grave danger" the two men were in and asking the commission to intervene.



**MARY DE HAAS**

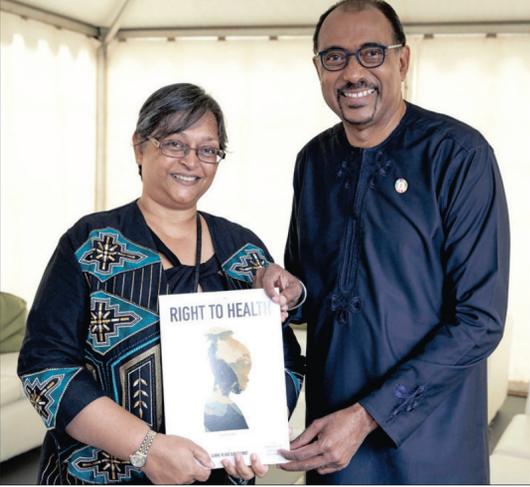
"These threats go beyond the commission. People are threatened for speaking out. It's an onslaught on democracy. "It means they will fear to speak out about corruption in the government in case they get killed," she said.

She said she was hopeful that the commission would push for the state security agency and the police to take necessary action. Solo Mledle, secretary of the Moerane Commission, said Zulu was offered a place in the witness protection programme but he had declined.

"He wanted a security assessment and we approached the police to conduct it on the day he appeared at the commission.

"When we received De Haas's letter, we reminded the authorities (of the need to protect him) and asked for an update on the security assessment," he said.

## Professor honoured



Professor Quarraisha Abdool Karim, associate scientific director of the Centre for the Aids Programme of Research in South Africa, is congratulated by Dr Michele Sidibe, executive director, UNAids, on her appointment as UNAids Special Ambassador for Adolescents and HIV in Cape Town today. In her new role, Abdool Karim, among the world's leading Aids researchers, will focus on adolescents and HIV, while also championing the involvement of young women in science.

## 'Crucial to correct wrongs to save ANC'

BONGANI HANS

DEPUTY President and ANC presidential candidate Cyril Ramaphosa says next month's conference is essential to correct the wrongs that have destroyed the party and the country.

Ramaphosa was speaking at a cadres' forum at KwaGqikazi TVET College in Nongoma, northern KwaZulu-Natal, yesterday.

There was an urgent need to rescue state-owned enterprises from corrupt private business owners and government leaders, he said.

While 70% of the country's economy was in the hands of private business, 30% of it was run by government, and was

being wasted through corruption. He singled out Eskom and Transnet as being central to wasting or abusing state funds.

"Day and night the state money disappears without a trace. There are thieves such as those who are friends with certain business people and certain families, such as the Gupta family, who have invaded most of these companies and the money is disappearing, and we don't know where it is going."

"Some of that money is taken without an invoice or a receipt. R500 million disappears without an explanation. Those who are corrupt must be arrested, and the money must be claimed back," he said.

Irregularities in state-owned enterprises had dealt a heavy

blow to the country's economy.

"If things were done properly, these state companies would have supported government in supplying electricity, building clinics or providing children with bursaries."

Ramaphosa expressed concern that some delegates, tasked by their branches to vote for him, might succumb to bribery and vote for other presidential candidates.

He urged delegates to vote for people who could take the ANC forward.

"When you get to the conference you should do what you have been sent to do. You have been given a mandate by your branches. Instead of accepting money, go to the conference and execute the branch's mandate."

## Regions, provinces fail to make deadline

LOYISO SIDIMBA

SOME of the ANC regions and provinces yesterday failed to meet a deadline to convene branch meetings to nominate President Jacob Zuma's successor.

Meetings not reaching a quorum and disruptions have been blamed for the failure to meet yesterday's deadline to complete branch general meetings (BGMs) ahead of next month's elective congress.

Thabo Meeko, the party's Free State spokesperson, said the province, which is due to hold its provincial and Gariep regional conferences, has extended BGMs to Wednesday.

He said the meetings were disrupted due to differences in interpreting guidelines issued by ANC secretary-general Gwede Mantashe.

Meeko said by last Monday 76% of branches in the Free State had sat for BGMs, and he was hopeful the process would be completed.

The ANC Free State is expected to support ANC presidential hopeful Nkosazana Dlamini Zuma.

Last week, Mantashe announced that the ANC national executive committee had extended the deadline for BGMs to this past weekend.

He said by last Monday 70% of the branches had completed their BGMs.

ANC KwaZulu-Natal provincial secretary Super Zuma was hopeful that the party would complete its BGMs by yesterday.

He said the meetings were sitting on a daily basis. "We are hoping to have a full delegation at the conference," Zuma said. KZN, the ANC's largest prov-



**ZIZI KODWA**

ince in terms of membership, is backing Dlamini Zuma to replace President Jacob Zuma.

ANC Mpumalanga spokesperson Sasekani Manzini said the party was very confident that the province would complete its BGMs by yesterday.

ANC spokesperson Zizi Kodwa said BGMs sat yesterday, and was also confident that all outstanding meetings would complete the process.

Next month's national elective conference is expected to have 5240 voting delegates, 90% of whom will be elected at properly quorate BGMs.

Only audited members are allowed to vote in the nominations process or to be elected as delegates to conference.

The party says this is to ensure that no one tampers with the quorum of BGMs and the allocated branch delegation.

Dlamini Zuma will go head to head with Deputy President Cyril Ramaphosa in the race to be ANC president.

ANC treasurer-general Zweli Mkhize, cabinet ministers Lindiwe Sisulu and Jeff Radebe and former Mpumalanga premier Mathews Phosa are also in the running for the ruling party's top position.

## 'We need a leader who talks less' – Duarte

FORMER AU Commission chairwoman Dr Nkosazana Dlamini Zuma must become the next president of the ANC – because she doesn't talk too much, ANC deputy secretary-general Jessie Duarte said at the weekend.

"The time has come for a leader who does not talk too much. We need a leader who will not talk too much. That leader is Dr Nkosazana Dlamini Zuma," Duarte told a crowd of

about 5 000 during the ANC Women's League (ANCWL) rally at the Solomon Mahlangu Stadium in KwaMhlanga, Mpumalanga, on Saturday.

Dlamini Zuma and Deputy President Cyril Ramaphosa are the front runners in a race to become the next ANC president at next month's elective conference.

The rally was part of the launch of the ANCWL's programme called Lotjha Makhel-

wane (an Ndebele phrase meaning "hello neighbour").

ANCWL president and Social Development Minister Bathabile Dlamini, said the programme was aimed at helping poor people to get the relevant documents to register for social grants.

The ANCWL would make sure Dlamini Zuma was victorious at the conference, she said.

"Now is the time for a woman president." –ANA