



**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54
OF THE COMMSECTIONY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Case Number: CSOS 14/WC/16

IN THE MATTER BETWEEN:

KATHERINE ANNE STOFBERG

(Applicant)

and

HUNTERS VALLEY HOME OWNERS ASSOCIATION

(Respondent)

ADJUDICATION ORDER

1. This is an application for dispute resolution in terms of Section 38 of the Community Schemes Ombud Service Act No.9 of 2011 ("the CSOS Act"). The application was made in the prescribed form and lodged with the Western Cape Provincial Ombud Office.

2. The Applicant is Katherine Anne Stofberg, the owner of Unit 24 in the scheme known as Hunters Valley, Ronderberg Road, Rondeberg, Philadelphia, Western Cape.
3. The Respondent is the Hunters Valley Equestrian Centre and Residential Estate Home Owners Association (“the HOA”) and represented by Eben Lassen (trustee and current chairman), Vere Allin (trustee and developer) and Natalie Brauer (trustee).
4. The Developer of the scheme is Equestrian Valley (Pty) Ltd (“the developer”) and also the owner of the farm known as Equestrian Valley (“the farm”).
5. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the CSOS Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the applicant to the CSOS.
6. The adjudication was first set down for a hearing on 8 August 2017 and then postponed and dealt with again on 26 September 2017 and 2 November 2017 at the CSOS offices in Cape Town. I also did an inspection at the property on 1 November 2017.

7. After providing the details and background to this case in the CSOS Application for Dispute Resolution Form, the Applicant sought the following relief:

"I would like a legal stand point on the issues and to make the Developers do the right thing and pay for the new water system.

I would like all the monies reversed that are found to be unsupported with verifiable invoices and for Bryant and Watson to pay back the money that they owe respectively."

8. This matter has a long history that does not need repeating in any detail here. While I can understand the Applicant's frustration, when one lives in a community scheme the majority vote of either the members or the trustees will, in most instances, prevail.
9. In my view, there were essentially three (3) issues remaining for decision. These were whether the developer should be held solely liable for the new water supply, whether any money is due by the farm for electricity usage and whether any money needed to be repaid for past riding levies that were charged over the years for the upkeep of the riding trails on the farm.
10. The issue regarding any repayment of money by Bryant and/or Watson was not really dealt with at the hearing and, in my view, there is no proof that any money paid to them needs to be repaid. The work done by Bryant was accounting work that he did for the HOA and this was done in a professional capacity for which he was entitled to payment for his services.

11. The original water supply from the borehole on the scheme property had a very high iron content that needed heavy filtering and this turned out to be expensive. There is another borehole on the farm with good quality water and a much higher supply of litres per hour.
12. While the Applicant did not agree, the submissions on behalf of the Respondent were that it was agreed at the AGM in 2013 that the water supply to the scheme would be moved to the farm borehole some two (2) km away and that the cost thereof would be shared equally between the developer and the HOA. The cost of the ongoing filtering of the original borehole would have turned out much higher than the cost of moving the supply to the farm borehole.
13. I have no reason to doubt that, as submitted, this decision was approved by the trustees. I am therefore not going to order a repayment of any of this money for the new water supply to the HOA.
14. Allin, in his capacity as representative of the farm, agreed that he was liable to pay for electricity usage. Brauer did the calculations and arrived at a figure of R31 169.40 that was due by the farm for electricity usage up until the end of June 2017. This amount was calculated taking into account an amount of R19 500.00 that was paid previously by Allin for use by the farm. The Applicant was not satisfied that there was sufficient proof of the payment of the amount of R19 500 and if this proof cannot be provided this amount will have to be added to the amount of R31 169.40 mentioned above, resulting in a final amount of R50 669.40.

15. Homeowners in the scheme have riding rights over the farm in perpetuity. In the past each home owner in the scheme was charged a monthly riding levy by the farm for the maintenance and/or improvement of the riding trails on the farm. The Applicant was not satisfied that there was any proof that this money was indeed utilised for the maintenance or improvements to any riding trails and she sought a refund in this regard. According to her the trails were in effect just farm roads.
16. Allin, on the other hand, submitted that he had overseen and/or done maintenance and improvements to the trails, especially the removal of fallen trees.
17. I inspected the farm and it would be very difficult to counter Allin's submissions in this regard and I can see no basis to order a refund of any of the past riding levies. Monthly riding levies are no longer being charged and any work done is invoiced on a per job basis as may be agreed upon between the HOA and the farm.
18. I accordingly make the following order:
 - a. Save for the payment by the farm to the HOA of the amount of R50 669.40 or, upon proof of payment of R19 500.00, the amount of R31 169.40 for the electricity usage, the application is dismissed;
 - b. I make no order as to the costs of the application.

19. In terms of section 57 of the Community Schemes Ombud Service Act (Act 9 of 2011) a person who is dissatisfied with an adjudicator's order is entitled to appeal to the High Court, but only on a question of law. The appeal must be lodged within 30 days after delivery of the order.

Signed at Cape Town on the 29th day of November 2017.



A handwritten signature in black ink, appearing to read 'Adv GPC de Kock', is written over a horizontal line. Below the line, the text 'ADV GPC DE KOCK' and 'ADJUDICATOR' is printed in a bold, sans-serif font.