



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

Case Number: CSOS00357/GP/19

IN THE MATTER BETWEEN

FAITH JWAAI

(APPLICANT)

and

ANGOR PROPERTY MANAGEMENT

(FIRST RESPONDENT)

SUNSET BODY CORPORATE

(SECOND RESPONDENT)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

This is an application for dispute resolution in terms of the following section of the Community Schemes Ombud Service Act:

- Section 39 (7) in respect of general and other issues;
- Section 39 (1) in respect of financial issues;

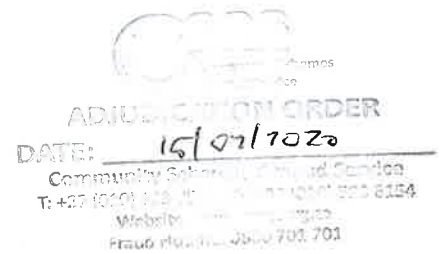
Applicant seeks an order in the following terms:

- (a) Whether it is possible to recover funds from the developer;
- (b) Whether the action taken against the developer thus far is adequate;
- (c) What are the implications for the Applicant as owner in the complex, who is faced with ever increasing levies;

The order is in line with Section 39 (7) and (1) of the CSOS Act No.9 of 2011 (the CSOS Act).

FINDINGS

The Applicant's application is dismissed.



INTRODUCTION

1. The Applicant is the registered owner of Unit 155, Sunset Boulevard, Beverly, Lonehill, Johannesburg, GAUTENG PROVINCE. The Applicant made written submissions.
2. The First Respondent is the managing agent of the Second Respondent. The Managing Agent failed to make written submissions.
3. The Second Respondent is the Sunset Body Corporate a community scheme as defined in the CSOS Act No. 9 of 2011 and to which it would be convenient to refer to as the Body Corporate.
4. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Gauteng Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
5. This application is before me because of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
6. A Conciliation hearing was held on the 23rd of January 2020, which was attended by both parties. The parties entered an appearance in terms of the Notice of Set Down as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011.

APPLICABLE PROVISIONS OF THE ACT

7. Section 45(1) provides that – *“The ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator”*
8. Section 47 provides that – *“on acceptance of an application and after receipt of any submissions from affected persons or responses from the applicant, if the ombud considers*

that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the ombud must refer the matter to conciliation’.

9. Section 48 provides that – *“If conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator”.*

10. Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of the Act.

SUMMARY OF EVIDENCE

Applicant’s Submissions



11. According to the Applicant she is opposed to the manner in which the current managing agent had been dealing with the purported negligence of the developer.

12. The Applicant submitted that she is opposed to the managing agent using scheme funds to attend to structural inefficiencies of the building. Since she believes that the Body Corporate should have engaged the services of an Advocate to launch an application to recover funds from the Developer.

13. According to the Applicant funds that should be used on projects like security are being diverted to attend to structural issues relating to the complex.

14. The Applicant further submitted that the managing agent should have reported the developer to the relevant regulatory authorities, in an effort to recoup some of the funds.

15. According to the Applicant the levies are increased annually to fund the repairs to the building which she believed should have been attended too by the developer.

16. The Applicant submitted that she had approached the NHRBC personally, who advised that legal action should be instituted against the developer notwithstanding the fact that the developer’s mandate has expired.

APPLICANT'S PRAYERS

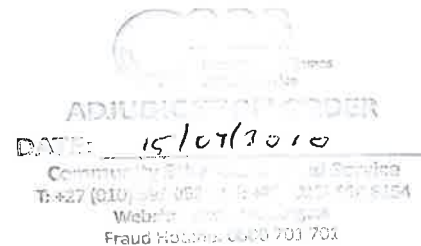
- (a) Whether it is possible to recover funds from the developer;
- (b) Whether the action taken against the developer thus far is adequate;
- (c) What are the implications for the Applicant as owner in the complex, who is faced with ever increasing levies;

Respondent's Submissions

- 17. The Respondent failed to make submissions when requested to provide same to the Adjudicator on or before the 29th of June 2020, the Respondent's version is therefore not before the adjudicator.
- 18. The Respondent for whatever reason failed to make submissions despite the notice calling upon parties to make final submissions.

RESPONDENT'S PRAYERS

None submitted.



EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

- 19. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
- 20. The general rule is that only evidence, which is relevant, should be considered. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is a balance of probabilities. This means that once all the evidence has been tendered, it must be weighted up and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.

DISCUSSION

- 21. I have perused all written submissions and taken into consideration all submissions stated before me at the day of the hearing.

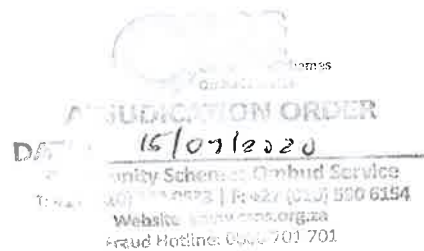
32. The minutes of the Annual General Meeting held on the 12th of December 2018 at clause 16 states, "It was mentioned that no special levy would be raised for this project because there were sufficient funds in the reserve to go ahead".

33. For all the reasons which have been set out above, I can find no justification for the relief sought in respect of prayers (a), (b) and (c). Accordingly, the Applicant's complaint against the Respondents is hereby dismissed.

POWERS AND JURISDICTION OF THE ADJUDICATOR

34. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud 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.

ADJUDICATION ORDER



35. Accordingly, the following order is made;

- (a) The relief sought by the Applicant in respect of prayers (a), (b) and (c) is dismissed.
- (b) The Applicant has failed to comply with the provisions of Section 41 (2) of the CSOS Act 9 of 2011.
- (c) The relief sought by the Applicant falls outside the ambit of Section 39 of the CSOS Act.
- (d) No order is made as to costs.

RIGHT OF APPEAL

36. The parties' attention is drawn to – Section 57(1) of the CSOS Act of 2011 refers – “An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law”

SIGNED at SANDTON on this 17th day of July 2020.



AJ ANDREAS
ADJUDICATOR

ADMINISTRATOR
DATE: 15/07/2020
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