



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

Ref: CSOS-6553/GP/21

IN THE MATTER BETWEEN

FORTRESS DYKE BODY CORPORATE

Applicant

and

MOGOMOTSI VINSON HILGARD LEBOTSE

Respondent

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:
Section 39(1) - in respect of: financial issues.
- Date Adjudication conducted:
20 April 2022.
- Name of the Adjudicator:
Suzanne Coppin.
- Order:
The relief sought is granted.
- Legislative Provisions:
Sections 2 & 3 of the Sectional Titles Schemes Management Act No 8 of 2011.
- Date issued (signed)

05 May 2022.

- Issue or topic
Liability for the payment of levies.

INTRODUCTION

1. The Applicant is the Body Corporate of Fortress Dyke (the Applicant's scheme) a legal person in terms of the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011("ST SMA") which is situated at Elands Rock Nature Estate, Cnr Irving Steyn & Paul Kruger Street, Southcrest, Johannesburg, represented by David Phahlamohlaka, of Debt Management Services. A copy of the Trustees' resolution, authorising David Phahlamohlaka to act on behalf of the Applicant was duly received.
2. The Respondent is Mogamotsi, Vinson Hilgard Lebotse, the registered owner of section 01 Fortress Dyke, Elands Rock Nature Estate, Cnr Irving Steyn & Paul Kruger Street, Southcrest, Johannesburg.
3. A letter under cover of an email was sent to the parties on the 24th of March 2022, confirming that due to the current situation regarding the Covid-19 pandemic, the Community Schemes Ombud Service (the CSOS) is taking the appropriate precautions against the further spread of COVID-19 (Coronavirus) and is adjudicating disputes on documents submitted, without the need to meet parties face to face.
4. The parties were afforded until 29th of March 2022 to make further submissions.
5. The Applicant replied to such request on the 29th of March 2022, attaching a copy of an up to date levy account.
6. The Respondent made no submission, although a response requesting further details of what was required was sent on the 29th of March 2022. A reply thereto with the original details of the dispute was provided to the Respondent on the same day.

7. This is an application for dispute resolution in terms of section 38 of the CSOS Act. The application was made in the prescribed form and lodged with the CSOS by way of email.
8. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of-
- Section 39(1)(e) : **In respect of financial issues**
 “An order for the payment or re-payment of a contribution or any other amount”.
9. This matter is adjudicated in terms of the CSOS Act and Practice Directive on Dispute Resolution, 2019 as amended and more specifically the amended Practice Directive dated 23 June 2020 which provides under paragraph 8.2:-
 “Adjudications will be conducted on the papers filed by the parties and any further written submissions, documents and information as requested by the appointed Adjudicator”. The parties were requested to make written submissions as set out above. The adjudication was conducted on the 20th of April 2022 and an order is now determined.

PRELIMINARY ISSUES

10. No preliminary issues were raised.

RELEVANT STATUTORY PROVISIONS

11. Section 1 of the CSOS Act defines-
- "community scheme" as “any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owner's association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing cooperative and "scheme" has the same meaning.”
- "dispute" as “a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly.”
12. Section 38 of the CSOS Act provides

“Any person may make an application if such person is a party to or affected materially by a dispute.”

13. Section 45(1) provides-

“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.”

14. Section 47 provides-

“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.”

15. Section 48 (1) provides-

“If the conciliation contemplated in section 47 fails, the Ombud must refer the application together with any submissions and responses thereto to an adjudicator.”

16. In terms of Section 50 provides –

“The adjudicator must investigate an application to decide whether it would be appropriate to make an order.”

17. Section 51 provides for the investigative powers of the Adjudicator:

- (1) When considering the application, the adjudicator may-
 - (a) require the applicant, managing agent or relevant person-
 - (i) to give to the adjudicator further information or documentation;
 - (ii) to give information in the form of an affidavit or statement; or
 - (iii) subject to reasonable notice being given of the time and place, to come to the office of the adjudicator for an interview;
 - (b) invite persons, whom the adjudicator considers able to assist in the resolution of issues raised in the application, to make written submissions to the adjudicator within a specified time; and
 - (c) enter and inspect-
 - (i) an association asset, record or other document;
 - (ii) any private area; and
 - (iii) any common area, including a common area subject to an exclusive use arrangement.”

18. The matter was not referred to conciliation as no submissions had been made by the Respondent, and consequently, the Ombud after due consideration of

all the relevant factors, referred the matter directly to adjudication on the 7th of March 2022.

19. The Ombud referred the application together with any submissions and responses thereto to an Adjudicator on the 31st of March 2022.

SUMMARY OF RELEVANT EVIDENCE

Applicant's Submissions

20. The Applicant's representative, Mr Phahlamohlaka, set out that despite written demands, the Respondent has failed and or neglected to pay the monthly levy and ancillary charges due and owing to the body corporate, in full each month. Payments have not been made towards the account for a number of months, resulting in the account being in arrears in the amount of R44 788.59 (forty four thousand seven hundred and eighty eight rand and fifty nine cents) as at the 29th of March 2022.
21. A statement of account of the Respondent's indebtedness to the Applicant was submitted as proof thereof as well as copies of the letters of demand.
22. The charges set out on such statement include – Standard Levy – R888.80 (eight hundred and eighty eight rand and eighty cents), Security Levy – R372.62 (three hundred and seventy two rand and sixty two cents), Maintenance Reserve Levy – R385.45 (three hundred and eighty five rand and forty five cents), Domestic effluent – R545.27 (five hundred and forty five rand and twenty seven cents), CSOS Levy – R25.11 (twenty five rand and eleven cents), electricity and meter reading charges and interest.

Relief sought by the Applicant:

23. That the Respondent pay to the Applicant the full amount outstanding in respect of levies and ancillary amounts charged (which ancillary charges include the CSOS levies charged monthly) in respect of unit 01 at the Applicant's scheme, being the unit owned by the Respondent, up to and including the 29th of March

2022, which amounts to R44 788.59 (forty four thousand seven hundred and eighty eight rand and fifty nine cents).

Respondent's Submissions

24. None submitted.

Relief sought by the Respondent

25. None.

EVALUATION & FINDING

26. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
27. 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 determined whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
28. Section 2(1) of the Sectional Titles Schemes Management Act 8 of 2011 states as follows:
- “With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there shall be deemed to be established for that scheme a body corporate of which the developer and such person are members, **and any person who thereafter becomes an owner of a unit in that scheme is a member of that body corporate**”.
- (my emphasis)**
29. Section 3(1) of the aforesaid Act further provides as follows:
- “A body corporate must perform the functions entrusted to it by or under this Act or the rules, and such functions include—
- (a) to establish and maintain an administrative fund which is reasonably sufficient to cover the estimated annual operating costs—

- (i) for the repair, maintenance, management and administration of the common property (including reasonable provision for future maintenance and repairs);
- (ii) for the payment of rates and taxes and other local municipality charges for the supply of electricity, gas, water, fuel and sanitary or other services to the building or land;
- (iii) for the payment of any insurance premiums relating to the building or land; and
- (iv) for the discharge of any duty or fulfilment of any other obligation of the body corporate;
- (b) to establish and maintain a reserve fund in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of common property but not less than such amounts as may be prescribed by the Minister; . . .
and
- (c) to require the owners whenever necessary to make contributions to such funds . . .
“

30. Prescribed Management Rule 21(3)(c) of Annexure 1 the aforesaid Act further provides as follows:

“The body corporate may, on the authority of a written trustee resolution –
(c) charge interest on any overdue amount payable by an member to the body corporate; provided that the interest rate may not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005), compounded monthly in arrear”.

31. The Applicant provided a copy of the Trustees’ resolution in terms of PMR 21(3)(c) and accordingly the Applicant may recover interest in respect of the arrears amount.

32. It follows that a unit-owner like the Respondent, in this instance, who defaults on his / her levy payments is effectively being subsidised by the other members of the body corporate who pay their levies and ancillary contributions conscientiously every month.

33. The body corporate cannot perform its functions and duties in the absence of funds from owners.

34. The Respondent has failed to provide any evidence that the amount is not outstanding.

35. As a registered owner of a property within the scheme, the Respondent is a member of the scheme in accordance with Section 2 of the STSM Act and must comply with the obligations of ownership set out in the STSM Act.
36. In accordance with the provisions of Section 3 of the STSM Act set out above, it is mandatory that a member of the scheme, such as the Respondent contribute levies as set out in such section. The Applicant has set out the failure of the Respondent to comply with such obligation, in the amount set out above.
37. I have perused all written submissions and I am satisfied that the Applicant has proved on a balance of probabilities that the Respondent is indebted to the Applicant in the amount as stated.

COSTS

38. No order is made in respect of costs.

ADJUDICATION ORDER

39. In the circumstances, the following order is made
- a. The relief sought by the Applicant for the payment of the arrear levy is upheld.
 - b. The Respondent, Mogomotsi, Vinson, Hilgard Lebotse, is indebted to the Applicant in the amount of R44 788.59 (forty four thousand seven hundred and eighty eight rand and fifty nine cents) in respect of levies and ancillary amounts charged (which ancillary charges include the CSOS levies charged monthly) in respect of unit 01 at the Applicant's scheme, being the unit owned by the Respondent, as of 29 March 2022.
 - c. The Respondent is ordered to pay the aforesaid amount of R44 788.59 (forty four thousand seven hundred and eighty eight rand and fifty nine cents). The Respondent shall pay in 12 (twelve) equal monthly instalments, an amount of R3 732.38 (three thousand, seven hundred and thirty two rand and thirty eight cents) payment to commence on 01 June 2022.

- d. Thereafter, payment of the further 11 (eleven) outstanding instalments of R3 732.38 (three thousand, seven hundred and thirty two rand and thirty eight cents) must be made on the 1st day of each succeeding month.
- e. The above order does not affect the usual regular monthly levies and ancillary payments required to be made by the Respondent.
- f. In the event of the Respondent defaulting on any payment as ordered above, the full amount due to the Applicant shall become immediately due and payable by the Respondent.
- g. There is no order as to costs.

RIGHT OF APPEAL

40. Section 57 of the CSOS Act, provides for the right of appeal-
- (1) 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.
 - (2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.
 - (3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

SIGNED at BOKSBURG on this 5TH DAY OF MAY 2022



**S M COPPIN
ADJUDICATOR**