



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

Ref: CSOS 6332/GP/21

IN THE MATTER BETWEEN

HARDEKOOL BODY CORPORATE

APPLICANT

and

ELIZABETH SOFTLEY

RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:
Section 39(1)(e) In respect of financial issues— (e) an order for the payment or re-payment of a contribution or any other amount.
- Date Adjudication conducted:
4 APRIL 2022
- Name of the Adjudicator:
ANDRE ANDREAS
- Order:
The relief sought in terms of section 39(1) of the CSOS Act is upheld.

The Respondent is held to be indebted to the Applicant in the amount of R9496.55 in respect of arrear levies.

The Respondent is ordered to pay R1500.00 monthly from the end of June 2022, until the outstanding levies is settled in full.

No order as to costs.

INTRODUCTION

1. The Applicant is the **HARDEKOOL BODY CORPORATE**, a community scheme as defined in the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act), and to which it would be convenient to refer to as the “Body Corporate”.
2. The Respondent is **ELIZABETH SOFTLEY** the registered owner of unit number 36, 6866 Willem Cruywagen Avenue, Theresapark, Gauteng Province.
3. A letter requesting final submissions was sent to the parties on the 7th of March 2022, confirming that due to the current situation regarding the Covid-19 pandemic, 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. This is an application for dispute resolution in terms of section 38 of the Community Schemes Ombud Service Act 9 of 2011 (“the CSOS Act”). The application was made in the prescribed form and lodged with the Community Schemes Ombud Service (CSOS) by way of email.
5. 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.**
6. 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. The adjudication was conducted on the 4th of April 2022 and an order is now determined.

PRELIMINARY ISSUES

7. No preliminary issues were raised.

RELEVANT STATUTORY PROVISIONS

8. 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”.

9. 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”.

10. 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”.

11. 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”.

12. 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”.

13. In terms of Section 50-

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

14. 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”.

15. Accordingly, a certificate of non-resolution was issued in terms of Section 48(1) of the CSOS Act. The Ombud referred the application together with any submissions and responses thereto to an adjudicator on the 21st of February 2022.

SUMMARY OF RELEVANT EVIDENCE

Applicant's Submissions

16. The Applicant submitted that the Respondent is indebted to the Applicant in the amount of R9496.55 in respect of arrear levies.

17. The Respondent's monthly levy statement is in the amount of R1553,15, which excludes other ancillary charges.

18. A statement of account relating to the Respondent's indebtedness to the Applicant was submitted as proof thereof.

19. According to the Respondent's statement of account, the last payment made in respect of arrear levies was on the 5th of October 2021, in the amount of R1553.16.

20. The Applicant submitted that they would be amendable to a payment plan in which the Respondent commits to paying his monthly levy, as well as R1500.00 per month towards his arrears.

Relief sought by the Applicant:

21. Applicant requests an order that the adjudicator finds that the Respondent is indebted to the Applicant in the amount of R9496.55.

Respondents' Submissions

22. The Respondent failed to make submissions when requested to provide same to the Compliance Investigator on or before the 11th of March 2022.

23. The Respondent for whatever reason failed to make submissions despite the notice calling upon parties to make final submissions.

Relief sought by the Respondents.

24. None submitted.

EVALUATION & FINDING

25. I have perused the parties' written submissions.

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 weighed 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 of the of the Sectional Titles Scheme Management Act 8 of 2011 states as follows: *“with effect from any date upon which a person other than a developer becomes an owner of a unit in a scheme, there shall be deemed to have been 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.”*
29. In law therefore every owner in a sectional title scheme, such as the Respondent, is a member of the body corporate.
30. Readers are referred to the North Gauteng High Court matter of the **Body Corporate of Central Park v Mosa**, where Judge Kathree-Setiloane held that the wording of section 3(2) of *the STSMA* eliminates any ambiguity in its meaning as it specifies that “liability ...accrues from the passing of a resolution to that effect by the trustees and may be recovered”. Properly construed this means that liability for normal levies/contributions accrues from date of the passing of a resolution to that effect by the trustees and can be recovered by the body corporate. In other words, the body corporate’s right to claim payment of contributions/normal levies vests on passing of a resolution by the trustees and becomes due and payable in each consecutive month thereafter”.
31. Section 3 of the Act provides as follows:
- 3(1) A body corporate must perform the functions by or entrusted to it 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 and annual operating costs, (i) For the repair, maintenance of the common property, (ii) For the payment of rates and taxes and other local municipality charges for the supply of gas, water..., (iii) For the payment of any insurance premium., (iii) For the discharge of any duty or the fulfilment of any other obligation of the body corporate, (b) To establish and maintain a reserve fund, (c) To require the owners wherever necessary, to make such contributions to such funds...”.*
32. In such matters it is common to order the Respondent to settle the outstanding levies within a matter of weeks, so as not to prejudice the Applicant. However, the extraordinary circumstances in which our country finds itself as a result of the Covid-19 pandemic justify a different approach.

33. Without condoning the Respondent's non-payment as has been submitted by the Applicant, these circumstances persuade me that it is in the interests of justice and fairness to grant the Respondent additional time to settle the arrear levies.

34. It is the Adjudicator's finding that the Respondent is indebted to the Applicant in the amount of R9496.55, in respect of arrear levies.

COSTS

35. There is no order as to costs.

ADJUDICATION ORDER

36. In the circumstances, the following order is made:

(a) The Respondent is held to be indebted to the Applicant in the amount of R9496.55 in respect of arrear levies.

(b) The Respondent is ordered to pay R1500.00 monthly from the end of June 2022, until the outstanding levies is settled in full.

(c) No interest shall accrue to the outstanding amount within this period allowed for the payment.

(d) The above amount excludes the Respondent's monthly levy.

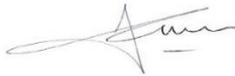
(e) Should the Respondent fail to pay any instalment due to the Applicant on the due date, the full outstanding balance of R9496.55 shall immediately become due and payable, and the Respondent must also pay the Applicant the applicable interest on the full outstanding balance of R9496.55 calculated from the date that the full outstanding balance becomes due and payable to date of payment.

RIGHT OF APPEAL

37. 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.

DATED ON THIS 20TH DAY OF APRIL 2022.



AJ ANDREAS
ADJUDICATOR