



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

Ref No: CSOS7161GP21

In the matter between:

HULL STREEET BODY CORPORATE

APPLICANT

And

MS WEYER & MR GROENWALD

RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:
This is an application for dispute resolution in terms of the following section of the Community Schemes Ombud Service Act:
- *“In respect of behavioural issues 39(2) (b) if satisfied that an animal kept in a private area or on common areas is causing a nuisance or a hazard or is unduly interfering with someone else’s peaceful use and enjoyment of his or her private area or common area, an order requiring the owner or occupier in charge of the animal—
(i) to take specified action to remedy the nuisance, hazard or interference; or
(ii) to remove the animal”*
- Date Adjudication conducted:
19th April 2022

- Name of the Adjudicator:
MA Chicktay.
- Order:
Granted.

INTRODUCTION

1. The Applicant is the **HULL STREEET BODY CORPORATE**, a Body Corporate as set out in Section 2 of the Sectional Titles Schemes Management Act 8 of 2011 (the STSMA), and a community scheme as defined in the Community Schemes Ombud Service Act 9 of 2011 (“the CSOS Act”).
2. The Respondent is **MS WEYER & MR GROENWALD** situated at Unit 20, Hull Street Apartments.
3. A letter under cover of an email was sent to the parties on the 17 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. On the 17 March 2022, the parties were given 5 days to make further submissions by no later than 22 March 2022, 4.30pm.
5. 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 (the CSOS).
6. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of-
 - *“In respect of behavioural issues 39(2) (b) if satisfied that an animal kept in a private area or on common areas is causing a nuisance or a hazard or is unduly interfering with someone*

else's peaceful use and enjoyment of his or her private area or common area, an order requiring the owner or occupier in charge of the animal—

(i) to take specified action to remedy the nuisance, hazard or interference; or

(ii) to remove the animal”

7. 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.

APPLICABLE PROVISIONS OF THE ACT

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. If the dispute has not been resolved through conciliation, the matter may be referred to an adjudicator. 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.

16. The matter was referred to adjudication on the 17 January 2022.

SUMMARY OF EVIDENCE

Applicant's Submissions

17. The Applicant argued that they provided the Respondent with numerous requests to remove the dog as the Complex is not a pet friendly complex. The Respondent gave various excuses for keeping the dog. They initially indicated that they had to keep the dog since they could not have children and then they said it was because of epilepsy and then depression. The Applicant requested that the Respondent provide them with a certificate to show that the dog is trained for epilepsy, which they failed to do.

Relief sought by the Applicant:

18. The Applicant requests that the Respondent provide them with a dog training certificate for epilepsy or that the dog be removed.

Respondent's Submissions

19. On the 17 March 2022, the parties were given 5 days to make further submissions by no later than 22 March 2022, 4.30pm. The Respondent did not reply to the Application despite requests to do so.

Relief sought by the Respondent:

20. None were provided.

EVALUATION AND FINDING

21. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.

22. The general rule is that only evidence that is relevant should be considered. Relevance is determined with reference to the issues in dispute. The requisite standard of proof required, as in all civil matters, is a preponderance of probabilities. This means that once all the evidence has been tendered, it must be weighed up by the Adjudicator in order to determine whether the Applicant has discharged the burden of proving its case on a balance of probabilities. It involves findings of facts based on an assessment of credibility and probabilities.

23. I have perused all written submissions before me.

24. The Applicant is requesting that the Respondent remove the dog.

25. It is trite to state that upon becoming the registered owner of a unit in a sectional title scheme, such owner becomes irrevocably bound by the provisions of the STSMA **and the Rules of the Body Corporate.**

26. Conduct Rule 1, contained in Annexure 9 to the Sectional Titles Act reads as follows:

Animals, reptiles and birds

(1) An owner or occupier of a section shall not, without the consent in writing of the trustees, which approval may not be unreasonably withheld, keep any animal, reptile or bird in a section or on the common property

27. Section 3 .1 of the Applicants conduct rules indicate specifically that owners are not allowed pets without the Applicants permission. The trustees thus have a discretion not to allow pets.

28. The most salient issue for me to consider is whether the Trustees of the Applicant did, in fact, exercise the discretion granted to them in terms of the Rules reasonably and properly?

29. In the case of *Body Corporate of The Laguna Ridge Scheme No 152/1987 v Dorse* 1999(2) SA 512 (D) the Court held that where the Trustees are granted a discretion, they must exercise the discretion properly, *and take each and every circumstance of the case into account in exercising such discretion.*

30. In determining whether the Trustees had, in fact, applied their minds to the case at hand, the Judge pertinently referred to the judgment of Corbett JA in the case of *Johannesburg Stock Exchange and Another v Witwatersrand Nigel Ltd and Another* 1988 (3) SA 132 (A) at 152A-D, where he confirmed that the determination of such failure would include the following:

'Such failure may be shown by proof, inter alia, that the decision was arrived at arbitrarily or capriciously or mala fide or as a result of unwarranted adherence to a fixed principle or in order to further an ulterior or improper purpose; or that the president misconceived the nature of the discretion conferred upon him and took into account irrelevant considerations or ignored relevant ones; or that the decision of the president was so grossly unreasonable as to warrant the inference that he had failed to apply his mind to the matter in the manner aforestated...'

31. In this case the Respondent got a dog without getting the Applicants permission. When refusing permission the Applicants applied their discretion fairly. They were not mala fide nor was the discretion applied arbitrarily. They asked the Respondent for a certificate to show that the dog was certified to assist with epilepsy, which the Respondent had failed to do.

32. The Respondent kept changing its reason as to why it needed a dog without supplying proof when requested to do so. Since the Respondent is bound by the Applicants rules it failed to get permission as required by section 3.1 of the Applicants rules and hence the dog is not permitted to stay in the complex.

POWERS AND JURISDICTION OF THE ADJUDICATOR

33. 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.

COSTS

34. There is no order as to costs.

ADJUDICATION ORDER

35. Accordingly, the following order is made;

35.1 The Respondent must remove its dog by 1st July 2022.

RIGHT OF APPEAL

36. The parties' attention is drawn to – Section 57 of the CSOS Act of 2011 refers-

“(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 SANDTON on 19th April 2022.



Dr. M A Chicktay
ADJUDICATOR