



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

Reference Number: CSOS 4807/GP/21

In the matter between: -

HARLEM GRANADA BODY CORPORATE

Applicant

and

M.J HLUNGWANE

Respondent

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:

Section 39(1) in respect of financial issues—

(e) an order for the payment or re-payment of a contribution or any other amount.

- Date referred to adjudication:

31 March 2022.

- Date Adjudication conducted:

08 April 2022.

- Name of the Adjudicator:

Adv. M.A Mavodze.

- Order:

Order is partially granted.

INTRODUCTION

1. The Applicant is Harlem Granada Body Corporate. Harlem Granada Body Corporate is a body corporate as contemplated in Section 2 of the Sectional Title Scheme Management Act No.8 of 2011 and to which it would be convenient to refer as “the body corporate”.
2. The Respondent is M.J Hlungwani, the registered owner of a unit at the Applicant’s scheme, which is situated at, Church Street, Arcadia, Pretoria, Gauteng.
3. 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) by way of e-mail.
4. An application seeking relief in terms of section 39(1)(e) of the CSOS Act in respect of financial issues.
5. A letter under cover of an email was sent to the parties on 10th 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.
6. This matter is adjudicated in terms of the CSOS Act; Practice Directive on Dispute Resolution, 2019 (as amended) and 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 08th 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”.

SUMMARY OF RELEVANT EVIDENCE

Applicant's Submissions

15. The Applicant submitted that,
- 15.1 Despite written demands the Respondent has failed and or neglected to pay the monthly levy due and owing to the Body Corporate.
- 15.2 A statement of account of the Respondent's indebtedness to the Applicant was submitted as proof thereof.

Relief sought by the Applicant

16. The Applicant is seeking the following reliefs,
- 16.1 That the Respondent pays to the Applicant the full amount of R6 760. 19 (Six Thousand Seven Hundred and Sixty Rands and Nineteen Cents) outstanding to it in respect of levies and ancillary amounts charged (which ancillary charges include the CSOS levies charged monthly) in respect of its unit at the Applicant's scheme.
- 16.2 That if the Respondent fails to settle his levies in full, an attachment of the property is allowed.

Respondent's Submissions

17. No submissions were made by the Respondent in respect of the matter despite having requested further submissions from all parties on 10th March 2022.

Relief sought by the Respondent

18. None.

EVALUATION AND FINDINGS

19. I have perused the Applicant's written submissions.
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 weighed up and determined whether the Applicant's version is probable.
21. One of the primary objectives of the Body Corporate is to collect levies, special levies and other charges from members such as are necessary for the preservation, maintenance and upkeep of the scheme.

22. Levies are the lifeblood of a Body Corporate, and each and every member is liable for the monthly levies and or special levies payable to the Body Corporate.
23. The Body Corporate cannot perform its functions and duties in the absence of funds from owners.
24. I am satisfied that the Applicant has proved on a balance of probabilities that the Respondent is indebted to the Applicant in respect of the amount claimed.
25. Section 2(5) of the STSMA provides that-
“The body corporate is, subject to the provisions of this Act, responsible for the enforcement of the rules and for the control, administration and management of the common property for the benefit of all owners”.
26. The STSMA PMR 21(3)(c) provides that –
“The body corporate may, on the authority of a written trustee resolution—charge interest on any overdue amount payable by an member to the body corporate; provided that the interest rate must 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.” The Body Corporate is entitled to charge interest on arrears as per the resolution of 20th October 2020.
27. The STSMA PMR 25(2)(a) provides that –
“If money owing is not paid on the dates specified in the notice referred in sub-rule (1), the body corporate must send a final notice to the member, which notice must state that the member has an obligation to pay the overdue contributions and charges and any applicable interest immediately”.
28. The STSMA PMR 25(5) provides that –
“The body corporate must not debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgment or order by a judge, adjudicator or arbitrator.”
29. In the Body Corporate of the Paddock and Sally Catherine Nicholl, Case Number 29534/18, (unreportable) case of the Gauteng High Court, Johannesburg delivered on the 02nd October 2019, the Honourable Matsemela

AJ at paragraph 50 stated that “ *I am of the view that the conduct rules, the STSMA and the regulations thereto, are to the benefit of all of the occupants and residents of a sectional title, who reside within the close proximity to one another. It is therefore essential that the rules be complied with so as to ensure that the rights of all occupants and residents are respected and so that they can live in harmony with one another. The Respondent cannot and should not be allowed to break these rules*”.

30. In the case under discussion the Respondent’s failure to pay levies negatively impacts service delivery within the Body Corporate and the Applicant has a clear right as well as a duty to ensure that the rules and the regulations thereto as prescribed by the STSMA are complied with.
31. I am satisfied that the Applicant has discharged the requisite onus of proof or the burden of proof on a balance of probabilities.
32. In the alternative, the Applicant is seeking a relief that if the Respondent fails to settle his levies in full, an attachment of the property is allowed. And in this regard, I proceed to explain the sequence of attachment of property.
33. The distinction between movable and immovable property is significant for a variety of reasons. Usually, one's rights to movables are more attenuated than one's rights to immovable (or real property). A movable property can as the name implies easily be moved from one location to another. Immovable is land and everything that is attached to land by natural means.
34. The Respondent’s immovable property falls outside the scope and authority of the CSOS adjudicator.

ADJUDICATION ORDER

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

35.1 The Respondent, M.J Hlungwani, the registered owner of a unit at the Applicant’s scheme, owes the Applicant the amount of R6 760. 19 (Six Thousand Seven Hundred and Sixty Rands and Nineteen Cents) in respect of levies and ancillary amounts charged (which ancillary charges include CSOS levies charged monthly).

- 35.2 The Respondent is ordered to pay the amount of R6 760. 19 (Six Thousand Seven Hundred and Sixty Rands and Nineteen Cents) to the Applicant in 6 (six) equal monthly instalments of R1 126. 70 (One Thousand One Hundred and Twenty-Six Rands and Seventy Cents) with the first payment to commence within 30 days from date of delivery of this order.
- 35.3 Thereafter, payment of the further 5 (five) outstanding instalments of R1 126. 70 (One Thousand One Hundred and Twenty-Six Rands and Seventy Cents) each must be made on the 1st day of each succeeding month.
- 35.4 No interest shall accrue to the outstanding amount within the period of 6 (six) months allowed for the payment as aforesaid.
- 35.5 **The above order does not affect the usual regular monthly levies and ancillary payments required to be made by the Respondent.**
- 35.6 In the event that the Respondent defaults on any 1 (one) payment as ordered above, the full amount due to the Applicant shall become immediately due and payable by the Respondent.

COSTS

36. There is no order as to costs.

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 AT JOHANNESBURG ON 08 APRIL 2022



ADV.M. A MAVODZE
(CSOS ADJUDICATOR)