



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

Ref No: CSOS2587GP23

In the matter between:

DIRECTORS OF ALBERTSDAL LEOPARDS REST HOA APPLICANT

AND

NP SIMELANE RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:

"Section 39(1)(e): In respect of financial issues:

In terms of section 39(1)(e)

(1) In respect of financial issues—

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

That the Respondent pay to the Applicant amounts outstanding to it in respect of levies and ancillary amounts lawfully charged (which ancillary charges include the CSOS levies charged monthly).

- Date Adjudication conducted:

24 July 2023

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

INTRODUCTION

1. The Applicant is the **DIRECTORS OF ALBERTSDAL LEOPARDS REST HOA** a Home Owners Association situated at Wolly Bugger Street, Alberton, Johannesburg, Gauteng.
2. The Respondent is **NP SIMELANE**, the registered owner situated at Unit 5636 Leopards Rest HOA, Wolly Bugger Street, Alberton, Johannesburg, Gauteng.
3. A letter under cover of an email was sent to the parties on the 10 July 2023, 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 10 July 2023 parties were given an opportunity to make further submissions by no later than 14 July 2023, 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-

*"Section 39(1)(e): In respect of financial issues:
In terms of section 39(1)(e)*

(1) *In respect of financial issues—*

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

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.

PRELIMINARY ISSUES

8. No preliminary issues were raised / (legal representation, points in limine).

APPLICABLE PROVISIONS OF THE ACT

9. 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”.*

10. 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”.

11. 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”.

12. 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”.

13. 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”.

14. In terms of Section 50-

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

15. 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”.

16. 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.

17. The matter was referred for adjudication on the 15 June 2023.

SUMMARY OF EVIDENCE

Applicant's Submissions

18. The Applicant submitted that the Respondent is indebted to the Applicant in the amount of R 1 746, 58 (One Thousand Seven Hundred and Forty Six Rand and Fifty Eight Cents) outstanding to it in respect of levies.

19. The Applicant, CSi Property Management are the appointed managing agents of Leopards rest HOA of a management agreement with the Home owners association and are responsible for the collection of overdue levies.

20. The Home owners association requires owners to pay their monthly contributions in order to effectively manage the estate.

21. The failure of some owners to contribute to the monthly expenses of the estate has had serious financial implications on the effective management of the estate.

22. The Respondent in this application is one of the owners who have defaulted on their levy payments.

23. The Applicant emailed a statement of account as proof of the Respondent's indebtedness to the Applicant.

24. The Applicant's prayers are as set out in the executive summary above.

Relief sought by the Applicant:

25. That the Respondent should be ordered to pay the Applicant the amount of R 1 746, 58 (One Thousand Seven Hundred and Forty Six Rand and Fifty Eight Cents).

26. That a payment order be made to pay the full outstanding as well as future monthly contributions.

Respondent's Submissions

27. On 10 July 2023 parties were given an opportunity to make further submissions by no later than 14 July 2023, 4.30pm. The Respondent did not respond to the Application.
28. Nevertheless, the Respondent's levy remains in arrears and the debt due to the Applicant by the Respondent is increasing monthly.

Relief sought by the Respondent

29. None was made.

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

30. In this particular case the Applicant is claiming unpaid levies and interest.
31. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witness/es must be considered.
32. 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.
33. In the Supreme Court of Appeal decision of *Mount Edgecombe Country Club Estate Management Association Two (RF) NPC v Singh and Others* (32/2018) [2019] ZASCA 30 (28 MARCH 2019) add para (19), the court held that -

"When the respondents chose to purchase property within the estate and became members of the Association, they agreed to be bound by its rules. The relationship between the Association and the respondents is thus contractual in nature. The conduct rules, and the restrictions

imposed by them, are private ones, entered into voluntarily when an owner elects to buy property within the estate”.

34. In *Abraham & another v Mount Edgecombe Country Club Estate Management Association Two* (RF) (NPC) JOL 32322 (KZD) Olsen J stated at para [23] that -

“the power of directors to grant permission is in the contractual scheme and has no other origin or foundation. The restrictions imposed by the rules are private ones, entered into voluntarily when electing to buy in the estate administered by the respondent, rather than elsewhere, presumably motivated inter alia by the particular attractions which the estate offers by reason of the controls imposed on it by contract”.

35. In terms of section 1.5 of the Applicants MOI the Applicant can charge owners levies and any owner in default will be liable for levies and interest charged. Since the Respondent has not paid levies they are in violation of the Applicants Rules and are liable for the outstanding levies. Since the Respondent is an owner within the Home Owners Association the Respondent is contractually bound by the Applicants rules.

36. 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.

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

38. The Home Owners Association cannot perform its functions and duties in the absence of funds from owners.

39. I have perused all written submissions before me.

40. 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.

POWERS AND JURISDICTION OF THE ADJUDICATOR

41. 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

42. There is no order as to costs.

ADJUDICATION ORDER

43. Accordingly, the following order is made;

- (a) The Respondent is indebted to the Applicant in the amount of R 1 746, 58 (One Thousand Seven Hundred and Forty Six Rand and Fifty Eight Cents) in respect of arrear levies.
- (b) The Respondent is ordered to pay R500 (Five Hundred Rands on 1 September 2023 and on the first of each month thereafter 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 Respondents monthly levy, which still needs to be paid monthly.
- (e) Should the Respondent fail to pay any instalment due to the Applicant on the due date, the full outstanding balance shall immediately become due and payable and the Respondent must also pay the Applicant the applicable interest on the full outstanding balance calculated from the date that the full outstanding balance becomes due and payable to date of payment.

RIGHT OF APPEAL

44. 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 24 July 2023



Dr. M A Chicktay
ADJUDICATOR