



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

Ref.: CSOS-8447/GP/23

In the matter between:

TRUSTEES OF TWEE RIVIERE VILLAGE 1 BODY CORPORATE APPLICANT

and

THE TRUSTEES OF THE FORUSS MANAGEMENT TRUST RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

- Relief applied for in terms of the CSOS Act:

The Applicant requests the following relief:

1. 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.

Settlement of the outstanding balance due including interest charged on the account – an 8-month payment arrangement will be acceptable.

- Date Adjudication conducted:

8 December 2023

- Name of the Adjudicator:

Karen Bleijs

- Order:
Application upheld.

INTRODUCTION

1. The Applicant is cited as the **"TRUSTEES OF TWEE RIVIERE VILLAGE 1 BODY CORPORATE"** ("the Applicant"), a sectional scheme as contemplated in section 2 of the Sectional Titles Schemes Management Act 8 of 2011 (the STSMA), and a community scheme defined as such in terms of the Community Schemes Ombud Services Act 9 of 2011 ("CSOS Act").
2. The Respondent is **THE TRUSTEES OF THE FORUSS MANAGEMENT TRUST** ("the Respondents"), who is the registered owner of unit number 21 at the Applicant scheme, which is situated at 973 Klippan Road, Montana Gardens Pretoria
3. A letter under cover of an e-mail was sent to the parties requesting them to furnish CSOS with written submissions regarding the application by the **10th of November 2023**.
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 CSOS by way of e-mail.
5. The application seeking relief is in terms of section 39 of the CSOS Act.
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.
7. The matter was referred to me on the 6th of December 2023, and the adjudication was conducted on the 8th of December 2023.

An order is now determined.



PRELIMINARY ISSUES

8. No preliminary issues were raised.

RELEVANT STATUTORY PROVISIONS

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. Section 50 provides-

"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. The Respondent failed to provide a response to the CSOS notice in terms of section 43 of the CSOS Act, and consequently the matter was referred to adjudication in terms of section 48 of the Act.

SUMMARY OF RELEVANT EVIDENCE

Applicant's Submissions

17. The Applicant's representative, duly authorised thereto by Trustees resolution, made the following submissions:

17.1. The Respondent is in arrears in respect of the levy account for the Unit that it owns at the Applicant scheme, which it is aware of.

17.2. The Applicant's managing agent has attempted to negotiate a payment arrangement with the Respondent but to no avail.

Relief sought by the Applicant:

18. The following relief is sought by the Applicant:

18.1. 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.

Settlement of the outstanding balance due as at December 2023, in the amount of R 19221.95 (Nineteen Thousand Two Hundred and Twenty-One Rand and Ninety-Five Cents) including interest charged on the account to date.

Respondent's Submissions

19. Despite having been invited to do so on two occasions, the Respondent did not avail itself of the opportunity to make any submissions in the matter.

Relief sought by the Respondent

20. The Respondent made no submissions, and consequently, failed to request any relief.

EVALUATION & FINDING

21. I have perused the Applicant's written submissions, which included the Applicant's Trustees' resolution to charge interest in terms of Management Rule 21(3)(c) of the STSMA on arrear levies at 24% per annum, as well as the most recent levy statement for the Respondents to the end of November 2023.

22. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the filed witness statements (*If any*) must be considered.
23. The general rule is that only evidence, which is relevant, should be considered.
24. Relevance is determined with reference to the issues in dispute.
25. The standard/ degree or extent of the proof that is required in a civil matter, *as opposed to a criminal matter*, is known in law as a '*preponderance of probabilities*'.
26. 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.
27. It involves findings of facts based on an assessment of credibility and probabilities.
28. It is relevant to note that the Respondent has neither disputed the amount outstanding to the Applicant, nor the manner in which it has been calculated, *consequently I must accept the Applicant's version as being correct.*
29. The responsibility to collect levy arrears rests with the Trustees of the Applicant.
30. In terms of section 2(1) of the Sectional Titles Schemes Management Act 8 of 2011 (or the STSMA, as referred in paragraph 1 of the order):

*"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)



31. 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 . . . “*

32. It follows that unit-owners who default on their levy payments, or who do not pay their levy payment in full and up to date every month, are effectively being subsidised by 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 unit owners.

In the above regard I quote from the 2022 decision of **Zikalala v Body Corporate of Selma Court and Another**¹

¹ (AR255/2020) [2021] ZAKZPHC 81; 2022 (2) SA 305 (KNP) (23 September 2021)



“ [20] Management rule 25 expressly grants to the body corporate the power to impose levies and contributions from owners. Where an owner fails in the obligation to pay such amounts, the body corporate is empowered to take action to recover such amounts, including interest and costs.”

34. As regards the charging of interest by the Applicant:

In the matter of **Body Corporate of Nautica v Mispah CC²**, the learned judge stated the following:

“Interest charges on arrear amounts are by no stretch of imagination meant to be penalties against the defaulter. They are there to mitigate the inevitable depreciation or decline in value of the currency, which is ordinarily occasioned by inflation. The interest charged on those arrear amounts is thus, intended to protect the equity of the original debt amount. In the case of *Davehill (Pty) LTD Community Development Board* **1988 (1) SA 290**, on page 297 G-H, the Court succinctly states:

“The liability to pay interest arises from considerations of equity, and was designed to compensate a person . . . for his loss and fruits of his property . . . up until the time the compensation was made . . .”

[81] Our courts have stated in the past that interest and compound interests are the lifeblood of finance in modern times.”

35. Later on in the same judgment, after referring to the Sectional Titles Act of 1986 (which preceded the coming into operation of the STSMA in 2016), the Judge states:

“[92] Similarly, Rule 21 (3) (c), contained of Annexure 1 to the Regulations to Sectional Management Act, reads as follows:

“The body corporate may, on the authority of a written trustee resolution charge interest on any overdue amount payable by a 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 arrears.”

36. It follows that unit-owners who default on their levy payments, or who do not pay their levy payment in full and up to date every month, are effectively being

² (16990/2010) [2021] ZAWCHC 259; [2022] 1 All SA 399 (WCC) (7 December 2021)

subsidised by other members of the body corporate who pay their levies and ancillary contributions conscientiously every month.

37. The body corporate cannot perform its functions and duties in the absence of funds from unit owners.
38. The purpose of this order is to bring closure to the case brought by the Applicant to the CSOS, whilst considering the rights, as well as the duties of the Respondents.
39. 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 claimed including interest.

COSTS

40. There is no order as to costs.

ADJUDICATION ORDER

- 41 In the circumstances, the following order is made:

I find for the Applicant.

- 41.1. Consequently,

The Respondent, **THE TRUSTEES OF THE FORUSS MANAGEMENT TRUST** the registered owner of unit 21 at the Applicant scheme, owes to the Applicant the amount of R 19221.95 (Nineteen Thousand Two Hundred and Twenty-One Rand and Ninety-Five Cents) INCLUDING INTEREST in respect of levies and ancillary amounts to the end of December 2023.



42.1. The aforesaid amount of 19221.95 (Nineteen Thousand Two Hundred and Twenty-One Rand and Ninety-Five Cents) shall be paid over a period of 8 (eight) months, in 8 (eight) equal consecutive monthly payments of R 2402.74 (Two Thousand Four Hundred and Two Rand and Seventy-Four Cents), with the first payment commencing on **the 2nd of January 2024.**

42.2. In addition to the above the Respondents shall pay the usual regular monthly levies and ancillary payments as shown on the levy statement issued by the Applicant/its Managing Agents.

42.3. In the event of the Respondents defaulting **on any 1(one) payment** as ordered above, the full amount due by the Respondents shall become immediately due and payable, with interest, to the Applicant.

RIGHT OF APPEAL

43. 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 CENTURION ON THE 8TH OF DECEMBER 2023.



KAREN BLEIJS
ADJUDICATOR

