



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

Ref: CSOS 9697/GP/23

IN THE MATTER BETWEEN

**EXECUTIVE COMMITTEE OF MIDSTREAM HILL HOMEOWNERS'
ASSOCIATION** **Applicant**

and

MR(S). C LINGENFELDER **Respondent**

ADJUDICATION ORDER

EXECUTIVE INTRODUCTION

- Relief applied for in terms of the CSOS Act: Section 39(1)(e) - in respect of financial issues.
- Date Adjudication conducted: 16 March 2024.
- Name of the Adjudicator: Adv. AS du Toit.
- Order: Granted.
- Costs: No order is made as to costs.

INTRODUCTION

1. The applicant is cited as the executive committee of Midstream Hill Homeowners' Association ("MHHOA"), herein represented by Jo-Anne Joubert, as per trustee resolution dated 8 November 2023. This residential community scheme was established in terms of the Companies act 71 of 2008 and governed by a Memorandum of Incorporation ("MOI") and House Rules. The scheme is situated at Old Kent Drive, Midstream Estates, Pretoria, Gauteng.
2. The respondent is cited as Mr(s). C Lingenfelder, the co-owners of Erf 1123 in the scheme, situated at 40 Beatty Crescent. Respondent became a member of the MHHOA in terms of their MOI by virtue of registration of ownership in the scheme.¹
3. MHHOA qualifies as a community scheme, which is described as a scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings in terms of the Community Schemes Ombud Service Act No. 9 of 2011 ("CSOS Act")². An association means any structure that is responsible for the administration of a community scheme in terms of the CSOS Act, whereas an association is also included in the definition of a person in terms of the said Act.
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 dated 15 November 2023.

¹ Clause 10 of the MOI.

² In terms of section 1 (Definitions) of the Act of the term 'community scheme'.

5. The application seeking relief in terms of section 39 of the CSOS Act, is in respect of sub section 1(e): In respect of financial issues – an order for the payment of a contribution or any other amount.
6. Jurisdiction is confirmed in terms of the relief sought in terms of section 39 of the CSOS Act.
7. This matter is adjudicated in terms of the CSOS Act and Practice Directive on Dispute Resolution of 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 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 16 March 2024 resulting in the drafting of this order.

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 that;

“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 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. In case the dispute has not been resolved through conciliation, the matter may be referred to an adjudicator. The Ombud has a discretion to refer the dispute resolution process directly to adjudication in terms of section 47 of the CSOS Act

and further clarification in terms of clause 21 of the Practice Directive on Dispute Resolution of 2019, as amended. Accordingly, a certificate of Non-Resolution was issued in terms of section 48(1) of the CSOS Act on 30 November 2023, read with clause 21.5.7 of the Practice Directive on Dispute Resolution. This application together with any submissions and responses thereto was consequently referred to an adjudicator by the Ombud.

SUMMARY OF RELEVANT EVIDENCE

Parties' Submissions

16. MHHOA is registered as a residential scheme. Applicant avers that respondent is a member of the scheme by virtue of their ownership of property (Erf 1123) in the scheme and therefore liable to make regular monthly levy contributions towards the administration of the scheme, as determined by the MHHOA MOI, read with the associations authority to charge levies for expenses incurred by the association.³ Applicant's records however reflect that respondent is currently in arrears in respect of their levy contributions relating to their property in the amount of R12 650.43 (twelve thousand, six hundred and fifty rand and 43 cent), inclusive of interest calculated at 2% per month.
17. The respondent has failed /neglected to respond to the initial section 43 notice (issued by CSOS Offices' on 22 November 2023) requesting respondent to respond to applicant's averments by 29 November 2023, as well as subsequent opportunity provided.

Relief sought by the Applicant:

18. An order for the payment of the arrear levies owing in the amount of R12 650.43 (twelve thousand, six hundred and fifty rand and 43 cent), inclusive of interest.

³ In terms of clauses 10.2, 10.3, 10.4, 10.5 & 10.10 of the MOI.

EVALUATION & FINDING

19. In evaluating the evidence and information submitted, the relevance of all evidence and principles of due process of law is considered with as little as possible formality that is consistent with a proper consideration of the application is applied. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is based on a balance of probabilities.
20. MHHOA is governed by a MOI and Rules. The membership of the association is compulsory, as well as the payment of levies⁴, whereas any breach (inclusive of the failure to make levy contribution payments) are also governed in terms of the MOI. The Supreme Court of Appeal confirmed the contractual relationship between an association and its members in the *Mount Edgecombe Country Club Estate Management Association*⁵ matter where it is stated that “*the Constitution and rules create a contractual relationship between the association and its members.*”
21. It is evident from the evidence and submissions received that due process was followed in that respondent was informed of their overdue contributions and charges as well as interest accrued on the outstanding amounts.
22. It is well known that the non-payment of a levy can seriously de-stabilise a scheme. Levies are the lifeblood of shared living schemes. The costs of attending to the maintenance, repair and upkeep (insurance, security etc.) are shared between members and the failure to pay could negatively affect the collective interests and investment of all owners in the scheme. It is therefore essential that members make regular levy payments that are due.
23. The Respondent has failed to submit his version of events or any reason(s) for

⁴ Causes 10 & 11 of the MOI.

⁵ II (RF) NPC v Singh and Others [2019] ZASCA 30 (28 March 2019); 2019 (4) SA 471 (SCA).

failure to make regular contributions to the MHHOA in this regard. The evidence submitted by applicant is regarded as sufficient in all material aspects to justify an order granted in terms of section 39(1)(e) of the CSOS Act in the circumstances.

COSTS

24. Parties are generally expected to cover their own costs in respect of the resolution of disputes determined in terms of section 54 of the CSOS Act, whereas cost orders are more readily issued in terms of section 53 orders providing for the dismissal of applications considered to be frivolous, vexatious, misconceived or without substance (sub section 1(a)) or 1(b) - where applicant fails to comply with a requirement in terms of section 51. This scenario is however not applicable here. The circumstances in this matter do not justify a cost order – the parties therefore bear their own costs in the matter.

ADJUDICATION ORDER

25. Accordingly, the following order is made;

25.1 Applicant's order is granted for the payment of arrear levy contributions by respondent in the amount of R12 650.43 (twelve thousand, six hundred and fifty rand and 43 cent), to be paid on/before 30 April 2024.

25.2 No order is made as to costs.

RIGHT OF APPEAL

26. 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 CAPE TOWN ON 16 MARCH 2024.

Andries du Toit

Adv. AS du Toit
ADJUDICATOR