



**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54  
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT, 2011**

Case Number: CSOS 1226/GP/17

IN THE MATTER BETWEEN

**GREENSLEEVES BODY CORPORATE**  
**(Applicant)**

and

**STEPHANIE MANGRAY**  
**(Respondent)**

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**ADJUDICATION ORDER**

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***EXECUTIVE SUMMARY***

*In this dispute the applicant seeks an order in respect of financial issues for payment of arrear levies and other charges in accordance with the provisions of section 39 (1) (e) of the Community Schemes Ombud Service Act, 2011, which empowers an applicant to seek an order for the payment or re-payment of a contribution or any other amount.*

*The respondent failed to attend the adjudication hearing despite having been given notice to do so. The adjudication therefore proceeded in the respondent's absence. The applicant produced evidence, which was uncontroverted, to support its claim that the respondent is currently indebted to it in the amount of R20 794.67 in respect of arrear levies and other charges.*

*An adjudication order was therefore made ordering the respondent to pay the applicant the amount of R20 794.67 by not later than 1 October 2018 together with interest thereon calculated at the rate of 2% per month from 1 October 2018 to the date of payment and costs on the Magistrate's Court scale calculated from 1 October 2018.*

## **INTRODUCTION**

### **Details of the parties and representation**

1. The applicant is Greensleeves Body Corporate (the applicant), a sectional title scheme established in terms of section 2 (1) of the Sectional Titles Schemes Management Act, 2011.
2. The applicant was represented at the adjudication by Sherran-Nee Birk (Birk), who is an employee of the applicant's duly authorised managing agent, Eagle Blue Management Agents (Pty) Ltd.
3. The respondent is Stephanie Mangray (the respondent), an adult female, who is the registered owner of Unit 10 in the sectional title complex known as Greensleeves, which is situated at 437 Corlett Drive Extension, Lyndhurst, Johannesburg, Gauteng.
4. The respondent did not attend the adjudication and was not represented at the adjudication.

### **Details of Hearing**

5. The adjudication was held on 16 July 2018 in the absence of the respondent under the auspices of the Community Schemes Ombud Service (the CSOS) at its Johannesburg office.

## **RELEVANT STATUTORY PROVISIONS AND BACKGROUND TO THE ADJUDICATION**

### **Statutory provisions**

6. Section 38 of the Community Schemes Ombud Service Act, 2011 (the Act) deals with applications. More specifically, section 38 (1) provides that-

*"Any person may make an application if such person is a party to or affected materially by a dispute".*

7. Section 45 of the Act deals with the amendment or withdrawal of applications. More specifically, section 45 (1) deals with an ombud's discretionary powers concerning amendments to applications and provides that-

*"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".*

8. Section 47 of the Act deals with conciliations. It provides that-

*"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".*

9. Section 48 of the Act deals with the referral of a dispute to adjudication. More specifically, section 48 (1) provides that-

*"If conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator".*

### **Background to the adjudication**

10. The applicant made an application for dispute resolution against the respondent in terms of section 38 (1) of the Act. The Application for Dispute Resolution Form records, amongst other things, that the respondent "is continuously in arrears with her levies and fails to ensure that the account is settled in full on a monthly basis".
11. The dispute proceeded to conciliation on 20 February 2018 in terms of section 47 of the Act. At the conciliation the parties concluded a settlement agreement in terms of which the respondent was to pay R7 000.00 by 15 March 2018 and R5 500.00 every month thereafter before the seventh day of each month commencing on 7 April 2018.
12. The respondent failed to adhere to the settlement agreement. On 30 May 2018 the office of the Gauteng Provincial Ombud (the ombud) therefore issued a certificate of non-resolution and referral to adjudication in terms of section 48 (4) of the Act.

13. The ombud also gave the applicant and the respondent timeous notice that the adjudication had been set down for hearing at 14:00 on 16 July 2018.

#### **APPLICATION TYPE**

14. This is an application made in terms of section 38 (1) of the Act for payment of a contribution or any other amount in terms of section 39 (1) (e) of the Act.

#### **POWERS AND JURISDICTION OF THE ADJUDICATOR**

15. I am empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Act. I am specifically empowered by section 54 (3) of the Act to make an order that may contain such ancillary and ensuing provisions as I consider necessary or appropriate. The Act enables residents of community schemes as well as sectional title schemes and home owners' associations to lodge disputes with the CSOS, which is a statutory dispute resolution service, instead of having their disputes determined by a private arbitrator or the courts. The purpose of this order is to bring finality to the dispute that the applicant lodged with the CSOS against the respondent.

#### **SUMMARY OF EVIDENCE**

##### **Applicant**

16. Birk stated that the respondent has a long history of not paying the monthly levies and other amounts due to the applicant. According to Birk, the respondent had paid R7 000.00 on 24 March 2018, R5 500.00 on 24 March 2018, R4 000.00 on 25 April 2018 and a further R1 500.00 on 8 June 2018 in terms of the settlement agreement the parties had concluded at conciliation. The respondent had subsequently failed to pay the applicant any further amounts and was currently indebted to the applicant in the amount of R20 794.67 for arrear body corporate levies, CSOS levies, utility charges, interest and arrear fees.
17. Birk also produced a Customer Detailed Ledger dated 16 July 2018 to support the applicant's claim that the respondent was indebted to the applicant in the amount of R20 794.67.

## **APPLICANT'S PRAYER**

18. Birk requests an order that the respondent pay the applicant the outstanding amount of R20 794.67 together with interest thereon of 2% per month.

## **EVALUATION OF THE EVIDENCE**

### **The general rule**

19. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
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. It involves findings of fact based on assessing the credibility of witnesses and the probabilities.

### **Analysis**

21. I have considered all the evidence placed before me. The respondent is the author of her own demise. The respondent was a party to the settlement agreement that was concluded at conciliation on 20 February 2018. However, she failed to attend the adjudication hearing and I therefore only have the applicant's version before me. Birk came across as a good witness. I have no reason to doubt her version of events, which shows that despite having made some payments the respondent ultimately failed to consistently pay the required monthly amount of R5 500.00 and is currently indebted to the applicant in the amount of R20 794.67.  
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22. Consequently, I am satisfied that the respondent has breached the settlement agreement and it is therefore just and equitable to cancel the settlement agreement and order the respondent to pay the applicant the amount of R20 794.67.

## ADJUDICATION ORDER

23. Accordingly, I make the following order-

23.1. The settlement agreement concluded at conciliation on 20 February 2018 is hereby cancelled;

23.2. The respondent must pay the applicant-

23.2.1. The amount of R20 794.67 by not later than 1 October 2018;

23.2.2. Interest on the amount of R3 273.97 calculated at the rate of 2% per month calculated from 1 October 2018 to the date of payment; and

23.3. Costs on the Magistrate's Court scale calculated from 1 October 2018.

## ENFORCEMENT OF ORDERS

24. The parties' attention is drawn to Section 56 of the Act, which deals with the enforcement of orders. More specifically-

24.1. Section 56 (1) provides that-

*"If an adjudicator's order is for the payment of an amount of money or any other relief which is within the jurisdiction of a magistrate's court, the order must be enforced as if it were a judgement of such Court and a clerk of such a Court must, on lodgement of a copy of the order, register it as an order in such Court."*

and

24.2. Section 56 (2) provides that-

*"If an adjudicator's order is for the payment of an amount of money or any other relief which is beyond the jurisdiction of the magistrate's court, the order may be enforced as if it were judgement of the High Court, and a registrar of such a Court must, on lodgement of a copy of the order, register it as an order in such Court."*

## RIGHT OF APPEAL

25. The parties' attention is also drawn to section 57(1) of the Act, which deals with the right of appeal. It provides that-

*"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."*

DATED AT JOHANNESBURG ON 21 SEPTEMBER 2018



**TREVOR BAILEY**

**ADJUDICATOR**

GreensleevesBC.Mangray.1226.17