



**ADJUDICATION ORDER IN TERMS OF SECTIONS 53 AND 54 OF THE
COMMUNITY SCHEMES OMBUD SERVICE ACT 9/2011**

Reference Number: CSOS 1275/GP/17

In the matter between:

PATRICK POIFO MATLHOLA

Applicant

And

WHEATLAND BODY CORPORATE

Respondent

ADJUDICATION ORDER

THE PARTIES

- 1 The Applicant is an owner of Unit 13 in the Wheatland Sectional Title Scheme situated at Kyalami Hills, Johannesburg.
- 2 The Respondent is the Wheatland Body Corporate. The Scheme is managed by Jeproplan ("the Managing Agent").

PROCESS FOLLOWED

- 3 On 30 August 2017 the Applicant lodged his Application Form for dispute resolution with the Community Schemes Ombud Service ("CSOS") in terms of Section 38 of the CSOS Act 9 of 2011 ("the Act") in the prescribed manner.
- 4 The relief sought in the Application Form falls within the ambit of relief contemplated in Section 39 of the Act.

- 5 On 23 November 2017 the Applicant's Application Form and supporting documents were forwarded to the Respondent, with a request to the Respondent to make its submissions by 5 December 2017. On 1 December 2017, the Respondent filed its submissions.
- 6 The matter was set down for Conciliation in terms of Section 47 of the Act for 6 February 2018. CSOS received feedback on the implementation of the Settlement Agreement which indicated that certain aspects could not be implemented.
- 7 As a result, on 6 February 2018, the Ombud issued a notice of non-resolution and referred the matter to adjudication in terms of Section 48 of the Act. The said notice was duly issued and served on the Applicant and the Respondent. The fee prescribed in terms of Section 49 read with Regulation 3(2) was duly paid by the Applicant.
- 8 The matter was then duly setdown for adjudication for 22 March 2018 at 14h00 and all parties were duly served with a notice of setdown. The Applicant was in attendance.
- 9 At the commencement of the proceedings at 14h00, the Respondent had not arrived. I requested the staff at CSOS to call the Managing Agent to check if someone was on the way to the hearing.
- 10 The Managing Agent advised that no one was scheduled to appear on behalf of the Respondent from the Trustees and from the Managing Agent.
- 11 Accordingly, the matter proceeded on an unopposed basis.

RELIEF SOUGHT

- 12 The Applicant prays for the following relief:

"I need a ruling as to whether this practice of charging arrear interest is legal.

I need a ruling as to whether this can be implemented without a resolution.

I need the interest amount charged on my account to be reversed and a correct amount to be charged.

All other owners affected by this should also get a credit"

APPLICANT'S CASE

- 13 In his Application Form for Dispute Resolution dated 30 August 2017, the Applicant states the subject matter of these proceedings as follows:

"On my levy statement for September 2017, I have been charged an amount of R85.77 as interest for late payment for the August 2017 levy.

Levies are payable on the 1st of every month however there is a grace period up to the 7th of each month. I made my full levy payment of R3 430.62 on the 8th of August 2017, which technically is 1 day late.

The interest amount I have been charged is for the full month, 30 days. (R3 430.62 X 2,5%).

My contention is that I was 1 day late and I should pay interest for 1 day or at most for 7 days if there is a resolution that late payers don't get the benefit of the 7 days grace period.

...

This is not about the amount involved but about the principle of charging arrear interest and this affects every owner."

"I am also a trustee.

I only became aware of this practice this month as it's the first time I paid late."

- 14 The Applicant submitted his levy statement dated 31 August 2017 which shows that:
- 14.1 the balance outstanding on 8 August 2017 was R3 430.62;
- 14.2 on the same date, the Applicant effected payment of the said amount in full;
- 14.3 again on the same date, an amount of R85.77 was charged to his levy account as "2.5% of R3 430.62 over due on 8 August 2017".

15 The Applicant also submitted a copy of the minutes of a meeting of the Trustees held on 17 January 2017 wherein the Trustees resolved that levy arrears will incur interest at the maximum allowable interest rate and that a resolution regarding the late payment penalties will be proposed at the following Annual General Meeting ("AGM").

16 At the AGM held on 29 November 2017 the trustees sought ratification of *"the conditions in place over the past years"*. One of such conditions was the arrears interest rate. In this regard, the minute records the following:

"The trustees agreed to implement a 2% interest on arrear balances. This is calculated on the outstanding balance as if the balance has been in arrears for 30 days based on the levies being due and payable when it has been called this approach has been chosen."

RESPONDENT'S CASE

17 On 1 December 2017, Dan Le Roux of Jeproplan advised CSOS that:

"The resolution was passed at the first trustee meeting we held in January 2017. The resolution was that interest would be charged as if 30 days in arrears."

18 This version is contrary to what is recorded in the minutes of the said meeting of the Trustees.

19 On 17 August 2017, Jeproplan wrote an email to the Applicant stating that:

"the interest is charged at 2,5% from the 8th of the month as if the account has been in arrears for a month."

20 On 18 August 2017 Jeproplan advised the Applicant that *"there is no apportionment of the interest based on days"*.

21 Again later on 18 August 2017, Jeproplan advised the Applicant that:

"... this has been done as per the minutes of the Trustee meeting held on 17 January 2017"; and

"To have to calculate how many days for each Unit that is late creates unnecessary work, we already give 8 days grace."

22 On 22 August 2017 Jepropman advised the trustees as follows:

"We have again spoken to our legal advisor – it is lawful to charge interest both on a monthly or a daily basis.

Furthermore, in terms of the Sectional Title Schemes Management Act, levies are due and payable at the beginning of each financial year (when this is called for by the trustees during the AGM – the approval of the budget). However, payment terms are effectively agreed with each owner to be paid on a monthly basis (This is a resolution passed by the trustees at the first trustees meeting after the AGM where this needs to be determined and then communicated to the owners). Levies that are paid late on a monthly basis were in fact due and payable at the beginning of the year hence the argument for the monthly interest charge."

23 On 22 August 2017, the Trustees agreed that interest will be charged for the full month and that all owners will be informed at the AGM.

FINDINGS

24 Management Rule 21(3)¹ states that:

"the body corporate may, on the authority of a written trustee resolution -

...

(c) 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 No. 34 of 2005, compounded monthly in arrears."

25 By virtue of the foregoing, it is legal for bodies corporate to charge interest on arrear levies.

26 Also, as the aforesaid Management Rule stipulates, interest is charged on the authority of a written trustee resolution.

¹ Of the Management Rules in Annexure 1 to the Sectional Title Schemes Management Act 8 of 2011

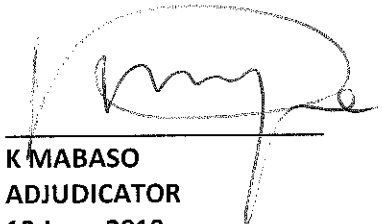
- 27 In terms of the aforesaid Management Rule, interest is payable per annum and is compounded monthly in arrears.
- 28 Such interest is collectable on the portion of levies which falls in arrears, taking into account the method of payment adopted by the Scheme.
- 29 If levies are declared at the beginning of the year, they become due on such declaration. They, however, only become payable monthly over a period of 12 (twelve) months.
- 30 It is only when a monthly instalment is missed that such levies fall into arrears and therefore attract interest.
- 31 In the current Scheme, levies only fall into arrears after the 7th (seventh) day of every month.
- 32 It therefore stands to reason that at the end of the 8th (eighth) day, the levies would be 1 day in arrears. As the arrears are calculable per annum and compounded monthly in arrears, it follows that only interest of 1 day should be due and payable on levies that are 8 (eight) days overdue.
- 33 As interest is calculated on a daily basis and not on an hourly basis, no interest is payable by the Applicant as he effected payment during the day on the 8th day.
- 34 I therefore find that no interest should have been charged to the Applicant.
- 35 The resolution taken at the AGM of 29 November 2017 is contrary to the provisions of the aforesaid Management Rule and is therefore set aside. That it will "*create unnecessary work to calculate how many days*" each Unit is in arrears by is no excuse for acting against the law.

I THEREFORE ORDER AS FOLLOWS:

- 1 The interest amount charged to the Applicant in the sum of R85.77 must be refunded to him by the Body Corporate with interest at the rate of 2,5% per annum compounded monthly from 8 August 2017 to date of payment;

- 2 The Applicant must be refunded the fees he paid to CSOS in pursuance of this dispute plus interest thereon as stated in 1 above from the date he paid such fees to the date of payment;
- 3 The resolution on interest passed at the AGM of 29 November 2017 is set aside;
- 4 the Scheme shall recover interest in compliance with Management Rule 27(3);
- 5 This order shall take effect immediately on the date on which it is served on the parties by CSOS electronically.

KINDLY TAKE NOTE that any party who is dissatisfied with this order has a right to lodge an Appeal on a question of law with the High Court within 30 (thirty) days after the date of delivery of this order.



K MABASO
ADJUDICATOR
12 June 2018