



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

Reference Number: CSOS 772/GP/17

In the matter between:

THRESA BETTY RABKA

Applicant

And

LE BONHEUR BODY CORPORATE

First Respondent

J S PROPERTY SERVICES

Second Respondent

ADJUDICATION ORDER

THE PARTIES

- 1 The Applicant is an owner of Unit 8 in the Le Bonheur Sectional Title Scheme situated at Weltevreden Park, Roodepoort, Johannesburg.
- 2 The First Respondent is the Le Bonheur Body Corporate. The Scheme is managed by JS Property Services ("the Managing Agent"), who are cited herein as the Second Respondent.

PROCESS FOLLOWED

- 3 On 3 July 2017 the Applicant lodged her 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 24 August 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 1 September 2017. On 28 August 2017, the Respondent filed its submissions.
- 6 The matter was then set down for Conciliation in terms of Section 47 of the Act for 8 November 2017. The parties could not reach a settlement.
- 7 As a result, on 8 November 2017, 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 8 March 2018 at 12h00 and all parties were duly served with a notice of setdown. All the parties were in attendance and duly represented.

RELIEF SOUGHT

- 9 The Applicant prays for the following relief:

"The best possible way, as I am not getting any joy dealing with this managing agent for the past 10 years and possible longer. I pay the levy and yet I stay in errors as the amount is transferred back into 30 days, I total the current amount his figure 98% is a lot more than the amount I get. I am also charged interest and garden services."

- 10 From the relief sought, it is clear that the Applicant's complaints relate to:

- 10.1 the method of calculation used in the levy invoices;
- 10.2 being charged interest on arrears; and
- 10.3 being charged for a garden service.

APPLICANT'S CASE

- 11 To her Application Form for Dispute Resolution dated 3 July 2017, the Applicant annexes a letter dated 2 June 2017 addressed to B Richardson wherein she states the following:

"I am not satisfied with the answers given to the issues I raised at the meeting on Wednesday. I have requested a second opinion and waiting for their reply. I will get back to you as soon as I have their reply.

(1) Does the law require managing agents to be a registered member of an organization such as EAAB or CIPC or another organization.

(2) Self-serving conduct is considered conflict of interest.

(3) Is the Insurance Policy an All Risk Policy. (wear and tear is not covered by the policy, an old geyser is not covered but a faulty geyser is covered, age of geyser is of no consequence).

I would like copies of invoices/statement relating to maintenance, repairs, claims, meter reading, "garden service", detailed invoice for painting (hours worked, days (illegible), payment per hour as stated by "Law") invoice for the emergency repair/repairs.

I will be requesting a CA to look at my monthly statement, having paid the full account, statement shows, "Thank you for payment" yet this payment is transferred back into the 30, 60, 90 days column, then all added together last column shows total due R3718.81 statement 24 April 2017 Total Due should show a zero balance. The R3718.81 is carried over to the following month and the same process is repeated, in fact this method has been used going back for years. I have also noticed when I calculate the 4 entries for the current month is less than the current amount shown in the current column on my statement. Interest also charged for alleged debt. Has the "garden service" been using garden equipment/tools belong to the complex? A "garden service" normally have their own equipment/tools. These issues will also be taken up with the Community Schemes Ombudsman."

- 12 From the aforesaid letter:

12.1 the Applicant raises further complaints such as:

12.1.1 the professional registration of the managing agent;

- 12.1.2 conflict of interest;
- 12.1.3 the nature of the body corporate's insurance policy; and
- 12.1.4 request proof of expenses incurred by the body corporate in relation to meter readings, painting, repairs, maintenance, etc.
- 12.2 The complaint regarding the method of calculation is better articulated by reference to her statement of account dated 24 April 2017. This statement was not furnished to CSOS.
- 13 During the hearing, the Respondents were requested to provide me with a spreadsheet reconciling all the amounts debited and credited to the Applicant's levy account.
- 14 With the said spreadsheet, the Respondent also submitted monthly statements from 1 October 2012 to 12 March 2018.
- 15 The statement of 24 April 2017 referred to by the Applicant in her letter of 2 June 2017 is actually not there. In its stead, I was provided with a statement dated 30 April 2017.
- 16 The statements provided by the Respondent evidence what the Applicant is complaining about in the letter of 2 June 2017.
- 17 The statement of 30 April 2017 shows that:
- 17.1 on 3 April 2017, the Applicant paid R1 501.94;
- 17.2 this amount of R1 501.94 became due on 31 March 2017, as evidenced by the statement dated 31 March 2017;
- 17.3 effectively, this means that the statement of 31 March 2017 was settled 3 days after it was issued;

- 17.4 yet, in the 30 April 2017 statement, the same amount (which has already been paid) is reflected as being 30 days in arrears.
- 18 This is a recurring trend in the Respondent's statements. It is what the Applicant is complaining about. This naturally affects any interest calculations by the Respondents.
- 19 The complaint about garden service seems to be in relation to whose tools the garden equipment belongs.
- 20 The Respondent provided CSOS with a further letter dated 11 July 2017 addressed to it by the Applicant wherein she states the following:

"You have chosen to ignore the first email sent to you dated June 2017. This email will also be sent to the CSOS. Do you think I fell off the turnip truck yesterday.

At the meeting you denied having any knowledge of R8,000.00 alleged debt for levies due by me, see enclosed documents. Six months later accusation dropped due to Jacobs admitting he had no proof, I then received a clearance certificate for which I paid R700.00. The following month or two printed on my statement was CLIENT REFUSES TO PAY BAD DEBT. I deem this harassment. I bring your attention to the name and address on these documents. I also enclose a copy of this statement. My name has never been "Mrs JB Rabka, Mrs CC Pangra, I never occupied a unit in The Vineyard.

At the meeting you went into a lengthy description of an emergency and Jacobs put in his 2 cents worth, this is done to protect the occupants and their property. However you actually failed to mention the actual emergency (incidentally my question was not "describe an emergency") So what was the emergency? I am requesting proof of this emergency, in the form of a statement / inv for the company who carried out the emergency repairs, (or person/persons) I am also requesting proof of payment made for the emergency repairs.

Correct me if I am wrong, repairs, maintenance or improvements are not covered by Insurance. In some instances an assessor would be required to inspect the damage, if it is found to be a valid claim, there is an excess payable by the owner of the property.

I certainly am not liable to pay for repairs, maintenance, services or improvements for someone else's private property. I am sure you will discuss this matter with Jacobs."

- 21 The issues raised in the letter of 11 July 2017 are not legal issues but requests for details on issues which fall beyond the scope of the relief sought.
- 22 With the Application Form, the Applicant also submitted her levy statement dated 21 June 2017 which shows that:
- 22.1 the balance brought forward as at 1 May 2017 was R3 718.81;
- 22.2 the balance outstanding as at 30 June 2017 was R3 939.64;
- 22.3 the charges between 18 April 2017 and 30 June 2017 were in the amount of R3 415.60;
- 22.4 in the same period, the Applicant paid a total sum of R3,194.77;
- 22.5 although the statement runs from 18 April 2017 to 30 June 2017, the balance brought forward is as at 1 May 2017;
- 22.6 although the statement is dated 21 June 2017, there are charges therein passed on 25 June 2017 and 30 June 2017 on which interest has already been charged;
- 22.7 on the age analysis of the debt, it is indicated that the currently owing amount is R1 815.89 and that the amount which had been outstanding for 30 days is R1 595.80;
- 22.8 these amounts and outstanding dates are not borne out by the items as billed on the statement itself.
- 23 Included in the bundle of statements provided to me by the Respondents is a statement dated 30 June 2017. The said statement is clearly an amendment of the statement provided to us by the Applicant which is dated 21 June 2017.

- 24 This statement differs in material respects from the one provided by the Applicant in that:
- 24.1 entries now commence on 16 May 2017 and no longer on 18 April 2017;
- 24.2 the balance brought forward is now R3 719.55 and no longer R3 18.81;
- 24.3 the amounts debited to the Applicant now amounts to R1 815.89 and no longer R3 416.60;
- 24.4 strangely, the total sum due remains the same.
- 25 It is very clear from the above that the two statements could not have been generated on the same day by the same system. Changes, material changes, have been effected to the Applicant's account.

RESPONDENT'S CASE

- 26 On 28 August 2017, the Respondent responded as follows to the Applicant's letter attached to her Application Form :

"Mrs Rabka clearly states that she has "requested a second opinion and waiting for their reply. I will get back to you as soon as I have their reply."

I am still waiting for Mrs Rabka to advise the findings of the 2nd opinion, hence my not replying to this first letter at that time.

Point 1 – To the best of my knowledge, Mr Jake Jacobs, our managing agent, is a member of the EAAB. May I suggest Mrs Rabka calls Mr Jacobs (082-552-9588) who will be able to verify his credentials to her, alternatively, Mrs Rabka can access the World Wide Web at 3@1 in the Randridge Mall as noted on the APPLICATION FOR DISPUTE RESOLUTION FORM) and access the website of the EAAB (www.eaab.org.za) to get their telephone number. The EAAB will be able to verify Mr Jacob's membership.

Point 2 – I cannot comment on this point as I do not know what she is referring to.

Point 3 – The insurance policy is not on an ALL RISKS basis. I am not aware of any registered short-term insurer that offers a Corporate Plan Insurance policy on an ALL RISKS basis. Yes, wear and tear is excluded.

Mr Masilo, as you very well know, any member of the Body Corporate is entitled to inspect and review any of the financials of the complex. To this end, Mrs Rabka is more than welcome to contact our Managing Agent, Mr Jacobs on 082-552-9588 or via his email address (jhomenet@mweb.co.za) to request the specific document/s that she lists in her letter. Mr Jacobs will also be able to advise Mrs Rabka if there is any stationery cost involved in preparing, compiling and collating the requested documents.

I await the advise from Mrs Rabka in respect of the CA whom she has requested to look at her monthly statements. I cannot offer any opinion on our Managing Agent's accounting methods as I am not familiar with them. Comments from Mrs Rabka's CA would be most welcome.

In response to her last question, yes the Garden Service has their own garden equipment and do not use the equipment belonging to the complex."

- 27 The Respondent, in its submissions to CSOS responded as follows to the Applicant's second letter:

"I did not choose to 'ignore' the first letter. I was waiting for the findings of the 'second opinion' that Mrs Rabka was obtaining.

I have never denied anything. In addition, am I supposed to know that at an AGM held on the 3rd of May 2017, Mrs Rabka is making reference to an accounting issue dating back to February 2007, more than 10 years ago?

Again, Mr Jacobs and I are fully prepared to meet with Mrs Rabka to address her account queries however she is the one who refuses to meet with either of us.

My reference to 'The Vineyard' was an error as I live in a complex called The Vineyard and I got names mixed up. My apologies for this.

The 'emergency' that Mrs Rabka is referring to relates to Section 39(1) of The Act. This matter is noted as a separate item on the AGM Agenda and was discussed and explained in detail to all members present at the AGM on the 3rd of May 2017.

Below is an extract from the minutes of the AGM held on the 3rd of May 2017.

- "9. Restrictions and directions given to trustees in terms of Section 39(1) of the Act:** Trustees may utilize the finances as per the budget with a maximum of R25,000-00, to be used only in the case of an emergency."

The Body Corporate does not employ anyone including 'illegal immigrants'.

No-one has harassed or intimidated Mrs Rabka. This is a ridiculous statement.

The managing agent's son provides a garden service to the complex and carries out maintenance/handyman repairs in the complex. I do not see this as being 'self-serving conduct, conflict of interest, nepotism'.

Each unit has its own electricity meter and is billed for its respective electricity consumption on a month-to-month basis. Common property electricity consumption is split between the 16 units of the complex."

28 On 6 October 2017, the Applicant responded as follows to the Respondent's responses:

"I requested a cell number from Mr Jacobs to obtain his email address. Sent SMS in the morning, reply received late afternoon. I sent Mr Richards request – his email address. I received no reply, I had to send a second SMS. I did cancel the appoint probably 2 days before the appointment (Is there a written Law stating that appointments are to be cancelled with 7 days). I realise this was not acceptable, verbal discussions become denials, because of "he said, she said". Besides I have yet to receive copy invoices/statements/payments, including proof of emergency repairs carried out. I also requested claims made to the Insurance Company. My second opinion being the CSOS, which both Mr Jacobs and Mr Richards received, so, "what is their problem?" Mr Richards states, he has on numerous occasions offered to meeting with me in an effort to resolve all queries or concerns. Mr Richards you have never contacted me, I have never had any contact with you, you have never contacted me, the only effort has been after the AGM. (Shame on you). I have spoken to Mr Jacobs regarding the discrepancies, on my levy statements. He has always denied the difference being my calculation and the amount reflected in the current column, his only defence being, "there is no overcharge".

I am not paying my statement dated 21/09/2017 until Mr Jacobs can explain the following: there are three amounts listed after payment of R1715.56. These amount being, R324.15, 1245.00 and R1.00, my calculation R1570.18, the amount in current R2021.46, difference being R442.28. I enclose my statement.

I have on numerous occasions in the past contacted the EAAB and CIPC - neither had Mr Jacobs listed as a member.

Mr Mkhathini correct me if I am wrong, once a complaint has been sent to the Ombudsman, the parties concerned can no longer contact each other.

My complaint was handed in, in June 2017.

I do not understand why Mr Richards posted his response, he lives 5 minutes down the road, besides our postal service is very unreliable. Mr Richards seem to defend Mr Jacobs rather than provide the information I requested. (I do have SMS's received)

Pity I did not record the AGM May 2017, as this would be proof of "he said, she said".

I did not say "I was intimidated or harassed", either my statement was, I will not be intimidated or harassed. There is a difference.

Regards

Mrs TB Rabka

*PS. What is the name of "the garden service"?
What type of vehicle is used by "the garden service"?
I never saw any vehicle off load their own equipment or tools.
What is the name of the Company doing the meter reading?"*

FINDINGS

- 29 As stated above, the Respondent was requested to provide me with a reconciliation of the Applicant's account in a spreadsheet format as it became clear during the hearing that the statements as presented to the Applicant were confusing.
- 30 What was not expected is the receipt of a set of completely amended statements from the Respondents.
- 31 Such amendments cast serious doubts on the accounting methods used by the Scheme and the credibility of the results produced.
- 32 There is no doubt that the Applicant has serious concerns and that such concerns should be addressed.
- 33 Statements up to the one dated 31 August 2015 show that the Applicant's account was kept up to date, bar some late payments.
- 34 Problems seem to have started in September 2015. The Applicant did not make any payments in the period from 6 August 2015 to 3 November 2015.

35 On 3 November 2015, the Applicant owed a total sum of R3 665.99, as indicated on the 30 November 2015 statement. On 4 November 2015, the Applicant only paid a sum of R1 818.64, leaving the account at R3 248.09 in arrears.

36 Thereafter, the Applicant's account remained in arrears from 4 November 2015 to the date of hearing.

37 The statements indicate that in the period 1 December 2015 to 12 March 2018, the Applicant:

37.1 had a negative opening balance of R3 248.09;

37.2 was charged a total sum of R45 276.20 for water, electricity, levies and DSM levy;

37.3 paid a total sum of R46 713.40, including credits passed to her account.

38 Thus the total outstanding is R1 810.89.

39 The Applicant should have been aware that she skipped payments in the following months:

39.1 May 2016;

39.2 September 2016;

39.3 October 2017; and

39.4 November 2017.

I THEREFORE ORDER AS FOLLOWS:

1 The Second Respondent must calculate all the interest charged to the Applicant from 1 October 2012 and to provide that figure to the Trustees of the Body Corporate;

2 The Body Corporate must credit the levy account of the Applicant with the said interest amount;

3 The Body Corporate must write a letter to the SAICA and request the SAICA to appoint who will do a reconciliation of the Applicant's levy account;

- 4 Once the accountant has been appointed, the Applicant is to hand over, directly to the accountant, all her levy statements and proof of payment to date;
- 5 The result of the accountant's calculations shall be binding on the Body Corporate and the Applicant;
- 6 The Body Corporate shall pay all the costs associated with the reconciliation of the Applicant's levy account;
- 7 The Trustees are ordered to deliver a copy of this order to each unit in the scheme ahead of the next AGM to assist in the deliberations on who to appoint as a Managing Agent in the next financial year;
- 8 Each party is to bear its own costs in relation to these adjudication proceedings;
- 9 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
01 August 2018