



**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Case Number: CSOS2658/GP/17

IN THE MATTER BETWEEN

GALINA TCHENTSOVA
(Applicant)

and

SANDHURST GATE BODY CORPORATE
(Respondent)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

1. The dispute is in respect of works pertaining to common areas and financial issues.
2. Firstly, the applicant is seeking an order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount of an order for its payment in a different way.

3. Secondly, the applicant is seeking an order requiring the association to have repairs and maintenance carried out.
4. This order is in line with section 39 of the CSOS Act No.9 of 2011 (the CSOS Act).

INTRODUCTION

5. The applicant is Galina Tchentsova (Tchentsova), the registered owner of Unit 9 Sandhurst Gate which is situated at No.17 Riepen Road, Hurlingham Extension 6 and 7, Johannesburg, Gauteng.
6. The respondent is the Sandhurst Gate Body Corporate, represented by Gerhard Johnson (Johnson) from Angor Properties, the managing agents.
7. This is an application for dispute resolution in terms of Section 38 of the CSOS Act. The application was made in the prescribed form and lodged with the Gauteng Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
8. The first and second claims were brought in term of section 39(6)(a) and 39(1)(c) of the CSOS Act which provides that –
9. *“An application made in terms of section 38 must include one or more of the following orders:
(6)(a) an order requiring the association to have repairs and maintenance carried out;
(1)(c) an order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way”*
10. The adjudication hearing took place on 20 July 2018. This application is before me as a result of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to all the parties.

11. On 20 July 2018, the applicant and the respondent entered an appearance in terms of the Notice of Set Down sent to the parties dated 9 July 2018. The applicant represented herself and the respondent was represented by the managing agent's Gerhard Johnson (Johnson).
12. The development comprises of 80 residential units and is a sectional title scheme managed by the Sandhurst Gate Body Corporate, a body corporate as contemplated in Section 2 of the Sectional Title Scheme Management Act No.8 of 2011 and to which it would be convenient to refer as "the body corporate".
13. The body corporate is managed by the Sandhurst Gate Body Corporate and Angor Properties to which it would be convenient to refer as "the managing agent".

APPLICABLE PROVISIONS OF THE ACT

14. The hearing was conducted in terms of section 38 of the CSOS Act No,9 of 2011 which provides that –

"Any person may make an application if such person is a party to or affected materially by a dispute".
15. Section 45(1) 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"
16. Section 47 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’.

17. Section 48 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”.

18. Accordingly, this matter proceeded to conciliation on 20 June 2018 and the dispute could not be resolved. Therefore, the Ombud issued a certificate of Non Resolution dated 21 June 2018, in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of that Act.

SUMMARY OF EVIDENCE

Applicant’s Submissions

The applicant was sworn in and testified as follows –

Maintenance of the Complex

19. The applicant stated that the complex underwent a major refurbishment and painting of the exterior walls on or about late 2013. The applicant stated that the body corporate was assured that the quality of the work done would be guaranteed for a period of ten (10 years).

20. The applicant stated that after two years of the renovation the plaster and paint started to crumble. The applicant stated that she approached the trustees and

requested a copy of the documents associated with the renovations undertaken for the complex but, to date, she has not received any document.

Special Levies

21. The applicant stated that the body corporate raised a special levy for the period 14 May 2017 to 14 October 2017 in the amount of R782.00 (seven hundred and eighty two rand).
22. The applicant further submitted that another special levy to maintain the complex was introduced which commenced 14 October 2017 to date in the amount of R881.00 (eight hundred and eighty one rand).

APPLICANT'S PRAYERS

23. The applicant's prayers were listed as follows:
 - An order directing that the applicant is not liable to pay the special levy due to the defective work done by the respondent.
 - An order directing that the respondent is responsible for the maintenance of the complex and the costs thereof.
 - An order directing that the respondent removes the special levy added onto the applicant's account.

Respondent's Submissions

The respondent, represented by Johnson, was sworn in and testified as follows –

Maintenance of Complex

24. Johnson stated that a special general meeting for the body corporate was held on 4 April 2017 in order to address the urgent need to assess the damp proofing and waterproofing issues at Sandhurst Gate as well as raise a special levy to deal with the urgent matters and repairs. Johnson submitted to the adjudicator a copy of the minutes to the special general meeting held 4 April 2017.

25. Johnson further submitted to the adjudicator a letter written to all the members of the body corporate, dated 10 May 2017 updating the members on the resolutions taken at the meeting of 4 April 2017. The letter reads as follows –

26. *“SANDHURST GATE – MAINTENANCE PRIORITIES FROM SGM.*

At a recent SGM of Sandhurst Gate held on 4th April 2017, extensive discussion took place regarding the Maintenance Programme that is urgently required to be implemented at Sandhurst Gate. (Minutes of this SGM are to follow separately).

There are owners who have waterproofing and damp problems. This is despite the Body Corporate undertaking numerous damp proofing and repair projects in the past 5 years. This has understandably led to much frustration and unhappiness on the part of the owners, including some of whom are serving on the current board of trustees.

This matter has not been taken lightly and the trustees were advised that interim patchwork repairs would not address the underlying problems or contribute to a solution. Until the comprehensive repairs and maintenance are completed, adhoc repairs would only distract our efforts and deplete our funds.

Project Lab was appointed to perform a full building inspection and develop a 10 Year Budget Timeline and Action Plan as per the mandatory requirements of the amended Sectional Title Act. Project Lab’s condition survey report confirmed that the complex’s greatest risk is the failing waterproofing which exists on the main concrete slab roofs.

Based on Project Lab’s survey report and budget plan the Special General Meeting was called in order to decide on a plan of action.

Summary of the plan of action resulting from the SGM is as follows:

- 1. Institute an immediate Building Maintenance Levy raise R925 659.65 (split by P.Q’s as per size of your unit) over the next financial year 2017 – 2018 to address the items which are deemed to be requiring urgent attention or replacement in Year*

One. This has already been implemented and the increased contribution will be reflected on our next levy statement.

2. Determine actual cost to implement maintenance projects identified as a priority for Year One. i.e. roof waterproofing, damp proofing and subsoil drainage. In this regard, a thorough tender process including specifying, measuring and tender adjudication will be undertaken in consultation with Project Lab.

3. Once the service provider has been appointed, the project will be rolled out one block at a time, as funds permit, until all the blocks have been treated and waterproofed.

4. The trustees under the guidance of the appointed specialist waterproofing and damp proofing companies will determine the order of priority for implementation.

5. The trustees will provide regular updates on the course of action going forward.

The trustees ask for your co-operation and patience during this project. It is not an ideal situation that we find ourselves in, and we are all impacted in one way or another. Let us stand together as we execute this plan to ensure that your investment maintains its ongoing value into the future”.

27. Johnson stated that as per the report from Project Lab the body corporate agreed on the introduction of the special levy per P.Q commencing 14 May 2017 to 14 October 2017 and the applicant’s special levy was R782.00. Johnson stated that when the levy was increased in October 2017 the special levy was also increased hence the applicant’s special levy increased to R881.00

28. Johnson stated that the trustees have introduced a newsletter in order to improve communication with the body corporate. Johnson submitted the first issue of the Sandhurst Gate Newsletter for April 2018. The trustees stated in the newsletter that it is intended to be a regular took of publication and use it to keep the owners and residents informed and involved.

29. Johnson stated that the owners were kept abreast with the maintenance developments taking place in the complex and this included projects that have been completed as well as projects that are in the pipeline.

30. Johnson further brought to the attention of the adjudicator the update on the special levy whereby it was mentioned in the Newsletter that the trustees appreciate that the special levy continues to be paid by the owners.
31. Johnson stated that he will request the documents regarding the renovations and painting which took place at the complex in 2013, from the Mr Armand Lombard, the Portfolio Specialist from Angor, and forward these to the applicant.

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

32. In evaluating the oral submissions, evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
33. 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 weighted up as a whole and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
34. I have listened to all submissions and read all written submissions and evidence presented by way of emails and documents.
35. The applicant submitted that there were renovations and painting that were undertaken at the complex in 2013, prior to the amendment of the Sectional Titles Management Act No.8 of 2011. With the promulgation of the STSMA Regulations all community schemes must comply with the STSMA. This includes the establishment of a reserve fund and the preparation of a written maintenance, repair and replacement plan for the common property.
36. Section 3(1)(b)(e) and (f) of the STSMA provides that –

“A body corporate must perform the functions entrusted to

it by or under this Act or the rules, and such functions include:

(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;

(e) to determine the amounts to be raised for the purposes of paragraphs (a) (b) and (c);

(f) to raise the amounts so determined by levying contributions on the owners in proportion to the quotas of their respective sections”.

37. Section 3(3) and (4) of the STMA further provides that –

“Any special contribution becomes due on the passing of a resolution in this regard by the trustees of the body corporate levying such contribution.....”

(4) “special contribution”, for the purposes of this section means any contribution levied under subsection (1) other than contributions which arise from the approval of the estimate of income and expenditure at an annual general meeting of the body corporate.....”

38. The Prescribed Management Rule (PMR) 22(1)(a) of the Regulations made under the STSMA provides that –

“A body corporate or trustees must prepare a written maintenance, repair and replacement plan for the common property, setting out the major capital items expected to require maintenance, repair and replacement within the next 10 years”.

39. The PMR 24 (2) made under the Regulations provide that –

“The reserve fund maintained in terms of section 3(1)(b) of the Act must be used for the implementation of the maintenance, repair and replacement plan of the body corporate referred in rule 22.

40. I have perused all the documentation submitted to me by the respondent, and I am persuaded that the respondent has complied with the STSMA and the Regulations. Furthermore, members of the body corporate have complied with the resolution and are paying their special levy.

41. Accordingly, the applicant is liable for the special levy as per resolution taken at the SGM held 4 April 2017.

42. Therefore, PMR25(2)(a) of the Regulations require that –

“If money owing is not paid on the dates specified in the notice referred in sub-rule (1), the body corporate must send a final notice to the member, which notice must state that the member has an obligation to pay the overdue contributions and charges and any applicable interest immediately”.....

POWERS AND JURISDICTION OF THE ADJUDICATOR

43. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the applicant to the CSOS.

ADJUDICATION ORDER

Accordingly, the following order is made –

44. Section 53 (1)(a) of the CSOS Act No.9 of 2011 provides that –

“The adjudicator may make an order dismissing the application if, after investigation the adjudicator considers that the application is frivolous, vexatious, misconceived or without substance.

45. This application is dismissed.

46. No order as to costs.

RIGHT OF APPEAL

The parties’ attention is drawn to –

47. Section 57(1) of the CSOS Act of 2011 refers –

“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”

DOMBOLO MAKGOMO MASILELA
ADJUDICATOR