



Reference Number: CSOS 5/EC/17

IN THE MATTER BETWEEN:

CAROLLE WRIGHT

(Applicant)

and

TRUSTEES LEMBERG BODY CORPORATE

(Respondent)

ADJUDICATOR'S ORDER

1. This matter was set down for adjudication on Wednesday, 2 August 2017 at 09:00 at the offices of The Housing Development Agency, 5th Floor, Fairview Office Park, 66 Ring Road, Greenacres, Port Elizabeth.
2. The Applicant was present and Ms L Pienaar (managing agent), Mr T Dwyer (trustee), Mrs J Stone-Dwyer (trustee) and Mrs M Hicks (trustee) represented the Respondent.
3. The relevant background to this matter is briefly as follows:

- a. The scheme consists of twelve (12) units.
- b. The owners in four (4) of the units had decided to erect electric fencing on their walls a year earlier.
- c. At the last AGM it came to the vote to put electric fencing on the road facing walls of the remaining eight (8) units.
- d. The Applicant states that the vote for and against the electric fencing was four (4) in favour and four (4) against the installation and the Applicant voted against the installation.
- e. The reason for the Applicant objecting was that over a period of practically twenty (20) years she had cultivated a creeper barrier (hedge) that gave her protection and privacy to her garden.
- f. The Applicant also stated that the wall on the inside of her property was only 1.1 metres high making her very vulnerable and she objected to the electric fencing being placed on a wall that was so low.

- 4. After much correspondence and discussion, the creeper hedge was removed and the electric fencing was installed on the outside of the Applicant's road facing wall.
- 5. The hedge was removed by the Applicant's son, and members of his staff, due to the urgency of the installation of the electric fencing.
- 6. The Applicant submitted that her son was prepared to install stanchions to keep the hedge supported to the wall, but according to her this was not to be allowed.

7. Mr Dwyer, on the other hand, disputed this and referred to a letter of 31 August 2016 that he wrote to the Applicant that reads, *inter alia*, as follows:

"I have been trying to work out why we should need to inspect the inside of your property when the fence will be erected on the outside.

Nothing needs to be done to the inside it will remain as is.

All we are asking for is that the overhangs be trimmed back to the wall so as not to interfere with the first strand as the brackets slant outwards this should be enough."

8. The Applicant submitted that, should only the overhangs have been removed, the whole hedge would have collapsed without the stanchions and this is the reason for removing the whole hedge.
9. However, with the removal of the hedge the Applicant has lost her privacy from people passing along Hawk Road along the outside of her property.
10. The Applicant submitted that she has started to erect fencing to effectively raise the height of the wall as and when she can afford it. The Applicant submitted that it would cost about R3 000.00 to complete the fencing along the whole of the road facing wall.
11. The relief sought by the Applicant in the Application Form is as follows:

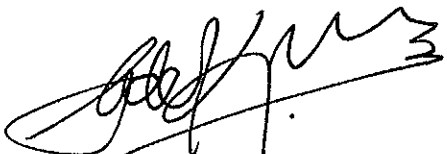
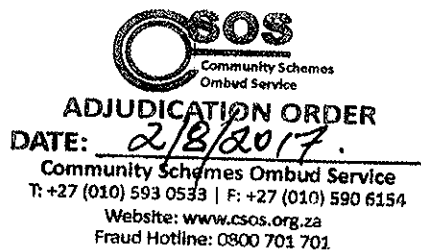
"I feel that as well as fence cost I had to have practically 20 years of garden destroyed at my cost plus I am having to erect fencing as I can afford it, for my safety and that of my dogs and grandkids.

As no checks were done before fence I think they should bear some of the cost.

At 74 years I now live in fear which I have never done before."

12. I have considered the submissions from both sides and, while I have sympathy for the Applicant, I have insufficient grounds to order the Body Corporate or any of the other owners to contribute to the payment of the Applicant's fence.
13. It was submitted and accepted by all present, that other owners had raised their outside walls at their own expense, and that this was permissible.
14. The Applicant's application is hereby dismissed, but without any order as to costs.
15. In terms of section 57 of the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011) a person who is dissatisfied with an adjudicator's order is entitled to appeal to the High Court, but only on a question of law. The appeal must be lodged within 30 days after delivery of the order.

Signed at Port Elizabeth on the 2nd day of August 2017.



ADV GPC DE KOCK
ADJUDICATOR