



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

Case Number: CSOS 533/WC/17

IN THE MATTER BETWEEN

**EASTWOOD HOME OWNERS ASSOCIATION
(Applicant)**

and

**PIA GEACH
(Respondent)**

ADJUDICATION ORDER

PARTIES

1. The applicant is Eastwood Home Owners' Association, (registered in terms of the relevant legislation), situated in Eastwood Close, Sunningdale, Edgemean, Cape Town. Mr. Jeffrey Spencer, chairperson and representative of the scheme attended the hearing.
2. The respondent is Ms Pia Geach, owner of no. 6 Eastwood Close, who was absent at the adjudication hearing.
3. Eastwood Home Owners' Association is a "community scheme" as contemplated in the CSOS Act of 2011. The definition of "community scheme" means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings.

INTRODUCTION

4. This is an application for dispute resolution in terms of Section 38 of the Community Schemes Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Western Cape Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
5. This adjudication hearing was set down on 17 April 2018 for purposes of adjudication and finalised on said date. Respondent failed to appear without good cause shown, where after the matter proceeded in her absence. This application is before me as a result of a referral sent by the Western Cape Provincial Ombud in terms of section 48 of the Act, which 'Notice of Referral' was communicated to both parties.
6. Eastwood Home Owners' Association, developed by Garden Cities Incorporated Association not for Gain no 1928/000607/08, and established in terms of the applicable legislation, is governed by a constitution and consists of approximately thirty three (33) units/sections.

APPLICABLE PROVISIONS OF THE ACT

7. The application was submitted 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".
8. Section 39 provides that –
"An application made in terms of section 38 must include one or more of the following orders – in this instance:
 - (1) *In respect of financial issues – (e) an order for the payment or re-payment of a contribution or any other amount."*
 - (7) *In respect of general and other issues – (b) any other order proposed by the chief ombud."*

9. Section 47 provides that –

"On acceptance of an application and after receipt of any submissions from the affected persons or responses from the applicant, if the ombud considers that there is a reasonable prospect of negotiated settlement of the disputes set out in the application, the ombud must refer the matter to conciliation".

10. 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."

SUMMARY OF DISPUTE

11. Applicant alleges that respondent's levy account is in arrears with respect to unit 6 since 2015 to date and respondent has failed to make payment, despite numerous requests in this regard.

APPLICANT'S VERSION

12. Mr Spencer states that Eastwood was established in 2003 with its Constitution and Conduct Rules and consists of thirty three (33) units.

13. Respondent, Ms Pia Geach who is the owner of no 6, has failed to make payments in respect of her levy contributions and is in arrears since 2015 to date. The following is a short breakdown of the contributions outstanding and owing to the association;

13.1 2015 – R550 (where a partial payment was only made),

13.2 2016 – R1500,

13.3 2017 – R1620,

13.4 2018 – R1860.

14. The total levy contribution to date therefore amounts to R5530 excluding interest calculated. Levies are further due and payable in advance calculated on an annual basis.

15. Applicant has made various attempts to resolve the issue, i.e. letters of demand regarding the outstanding levies (dated 11 July 2016, 18 May 2016, 14 February 2017 and 13 January 2017 respectively were submitted as evidence in support herein) handed over either personally, via e-mail or put under her front door. Respondent is further the only person with outstanding levies in the complex and has not been staying at no 6 for the past three to four months.
16. Ms Geach's response to the outstanding levies has however always been that she either will make payment or that she is unemployed.
17. Attempts were also made to meet with respondent to discuss this issue and to give her an opportunity to make arrangements for payment, but she apparently failed to make any attempt and basically just "ignored" them, according to Mr Spencer. No legal steps have been instituted to recover the outstanding levies due to the costs involved.

APPLICANT'S PRAYERS

18. Applicant's prayer as per Application for Dispute Resolution Form is the following;

- 18.1 An order for the payment of all outstanding levies owed in respect of unit 6 with interest.

RESPONDENT'S VERSION

19. Ms Geach has failed to appear for the adjudication hearing, notwithstanding the "Notice of Set Down" that was issued and e-mailed to her in this regard. Further attempts were made to reach her on the day of the hearing (17 April 2018), where after it was decided to proceed with the hearing in her absence due to no good cause shown for her failure to attend.

EVALUATION OF EVIDENCE SUBMITTED

20. In the absence of respondents version to the contrary, applicant's version is the only one to be evaluated herein. Applicant's version and submission seems credible and is therefore accepted in the circumstances. No proof was however produced that the agreed interest rate of 10% was duly tabled, accepted and approved, whereby Mr Spencer conceded to withdraw their application in respect of the outstanding interest payable.
21. The body corporate (or Home Owners' Association) may not debit a member's account without the member's consent or the authority of an order by a judge, adjudicator or arbitrator (as determined in Prescribed Management Rule 25(5)).
22. The body corporate may on authority of written trustee resolutions charge interest on any overdue amount payable by a member to the body corporate, including any overdue contribution, up to the maximum amount under the National Credit Act No 34 of 2005, compounded monthly in arrear (PMR 21(3)). No proof that the applicable interest on the overdue contributions was authorised could be provided, consequently the prayer for interest to be added is rejected.

ADJUDICATION ORDER

23. In the circumstances, the following order is made in terms of Section 54(1)(a), read with Section 39 of the Community Schemes Ombud Service Act No.9 of 2011;
 - 23.1 Applicant's relief sought in this instance in respect of the payment of all outstanding levy contributions in the amount of R 5530 is granted. The relief to add interest is refused.
 - 23.2 No order is made as to costs herein.

RIGHT TO APPEAL

Section 57 of the CSOS Act of 2011, also determines that;

- (1) 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.
- (2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.
- (3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.


ADJUDICATION ORDER
DATE: 24 April 2018
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ADV DRIES DU TOIT
ADJUDICATOR
23 April 2018