



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

Case Number: CSOS 42/WC/17

IN THE MATTER BETWEEN

**KNIGHTSBRIDGE MANSIONS BODY CORPORATE
(Applicant)**

and

**LANISCENE(PTY)LTD
(Respondent)**

ADJUDICATION ORDER

PARTIES

1. The applicant is Knightsbridge Mansions Body Corporate, a duly registered and incorporated body corporate in terms of the Sectional Titles Act No 95 of 1986 and in terms of the Laws of the Republic of South Africa, of 235 Beach Road, Sea Point, Western Cape. Mr Philip Lourandos representing Knightsbridge Mansions in his capacity as Chairperson of the Trustees and Ms Fiona Dimio as Portfolio Manager of IHFM (PTY) Ltd. Both parties attended the hearing in their personal capacity.
2. The respondent is Laniscene (PTY) Ltd, a company duly registered and incorporated with limited liability according to the Company Laws of the Republic of South Africa with chosen *domicillium citandi et executandi* at no. 3 Knightsbridge Mansions, 235 Beach Road Sea Point, Western Cape. Mr Peter Michaletos, in his capacity as director of respondent, also attended the hearing in his personal capacity.

3. Knightsbridge Body Corporate 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 format 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 for adjudication on 7 November 2017, where after the matter continued on 23 January 2018 and was finalised on 27 February 2018. 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. Knightsbridge Body Corporate was established in terms of the then applicable legislation and is governed by a constitution.

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 failed to make his levy contributions since April 2015 in respect of unit/section 3, whereas respondent wilfully withheld his contributions due to a lack of maintenance on the part of the body corporate.

APPLICANT’S VERSION

12. This application was initially lodged by Mr Edward West, the former chairperson of the trustees, who subsequently resigned before the start of the adjudication process and is further also not an owner in the complex anymore. The chairman’s position has subsequently since been occupied by Mr Philip Lourandos.
13. Respondent (Mr Peter Michaletos owner of unit 3) has failed to make levy contributions since April 2015 to date, amounting to R78001,18 in February 2017, interest and costs not included.
14. Applicant conceded that there has been water ingress from apartment 103 (above apartment 3), although the water ingress in this regard is an owner-

to-owner issue and does not concern the body corporate in terms of the Sectional Titles Act, the trustees nevertheless decided to get involved. The trustees attempted to resolve the issue from August 2014 to November 2016 via its managing agent by communicating with the owner of unit number 103 on various occasions, their plumber, workmen and person appointed by Mr Michaletos to oversee the repairs.

15. The trustees have made every attempt to resolve the issues without success. Applicant also issued summons against respondent in June 2016 (in the Magistrates' Court of Cape Town under case number 6323/16) for payment of the sum of R36 873,03 plus interest. This matter was defended where after an Application for Summary Judgement followed in July 2016. No further legal processes followed and the matter was registered with CSOS Offices'.
16. Applicant conceded that the outstanding levy contributions from respondent are settled and the necessary repairs / maintenance work was conducted last week and is therefore not in dispute any more. Respondent was further also elected as Trustee of the Body Corporate.

APPLICANT'S PRAYERS

17. Applicant's initial prayers as per Application for Dispute Resolution Form;

- 17.1 An order for the payment of all outstanding levy contributions owed in respect of unit 3 Knightsbridge Mansions plus interest.

RESPONDENT'S VERSION

18. Mr Michaletos contests that he owes the levy contributions with respect to his unit (3) in the circumstances, due to the on-going water ingress into his unit and maintenance outstanding from the body corporate. He has however been paying levy contributions into his lawyer's trust account in this regard.
19. Respondent has entered an "Appearance to Defend" in answer to applicant's summons (under case no. 6323/16 as stated above) as well as

"Bond of Security in terms of Rule 14(3)(a)" filed on behalf of respondent herein.

20. Respondent also contests (via his attorney Mr Mark Efstratiou) that the issue in dispute here in relation to the adjudication process is *lis pendens* in the civil court.
21. Respondent confirmed that all outstanding levy contributions are settled and that the necessary repairs / maintenance work was conducted last week and is therefore not contested any more.

EVALUATION OF EVIDENCE SUBMITTED

22. Having considered the submissions, concessions and admissions made herein from both parties in an attempt to settle the matter – I am convinced that all issues in dispute have been resolved amicably.
23. The following issues in particular raised have been resolved;
 - 23.1 The arrear levy contributions from respondent has been settled to applicant's satisfaction.
 - 23.2 The necessary repair work was completed to both parties satisfaction.
24. Section 37 of the Sectional Titles Act 95 of 1986, as amended, provides that expressly that respondent as member of the body corporate is obliged to pay levies, raised by the body corporate on a monthly basis together with all other charges as determined by the Trustees of the applicant in accordance with his participation quota of the section and in respect of which each owner has been notified in writing.
25. 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)).
26. Members are further liable for body corporate legal fees incurred for arrear collections and enforcement of rule compliance, but these fees must be

reasonable and must either be taxed by the lawyer or agreed to by the member (as per PMR 25(4)).

27. It is however evident that this matter has been prolonged unnecessarily in the circumstances and could have been resolved some time ago.

ADJUDICATION ORDER

28. 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;

28.1 Applicant's relief sought in this instance is refused and his claim is accordingly dismissed in the circumstances.

28.2 No order is made as to costs herein.

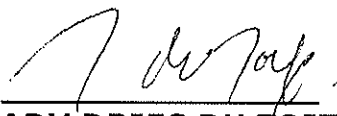
RIGHT TO APPEAL

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: 1 March 2018
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ADV DRIES DU TOIT
ADJUDICATOR
01 March 2018