



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

Case Number: CSOS 86/WC/17

IN THE MATTER BETWEEN

**LE CHASSEUR BODY CORPORATE  
(Applicant)**

and

**MALETSATSI BELEGGINGS(EDMS)BPK  
(Respondent)**

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**ADJUDICATION ORDER**

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**PARTIES**

1. The applicant is Le Chasseur Body Corporate (registered in terms of the Sectional Titles Act 95 of 1986 with sectional title scheme number SS198/1991) at Stellenryk Street, Stellenryk, Bellville, Western Cape. Mr Phillipus Johannes van der Merwe, the managing agent of OSRO CC Property Managing Agents, also representing Le Chasseur Body Corporate herein attended the hearing in his personal capacity.
2. The respondent is Maletsatsi Beleggings (EDMS)Bpk, a company registered in terms of the Companies Act and represented by Mr Eras Venter, also attending the hearing in his personal capacity.
3. Le Chasseur 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 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 20 February 2018 for purposes of adjudication and finalised on said date. 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. Le Chasseur Body Corporate was established in terms of the then applicable legislation, is governed by a constitution and consists of approximately seventy two (72) 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 72, whereas respondent alleges that his levies concerning units 72 and 21 have been incorrectly allocated to the different accounts, whereupon interest and legal costs were subsequently incorrectly charged. The replacement costs of his front door was also incorrectly debited to his levies account, according to respondent.

### **APPLICANT'S VERSION**

12. Applicant states that this matter has been prolonged for some time and that respondent regularly makes late payments and always have excuses.
13. Respondent company owns two properties in the complex, being units 72 and 21. Respondent's current levy account in respect of unit 21 amounts to a credit of R4405,49 and in respect of unit 72 a debit amount of R2624,82.
14. Applicant conceded that in actual fact this then means that respondent's account in respect of both units (72 and 21) calculated together amount to a credit. This dispute however concerns unit 72 only.
15. Payment received was mostly late, which accumulate interest then as well. A payment (for one month only) was further also received yesterday from respondent – his levy account currently reflects no outstanding amount.

16. Respondent's front door was damaged, replaced and his account debited in the amount of R1725.00 on 26 August 2015 as reflected in the February 2016 statement.
17. Applicant contests that he requires written authorization from the respondent /owner to re-allocate monies to another account – in this regard levies received in respect of unit 21 to be re-allocated to unit 72, alternatively requires respondent to make two separate payments in respect of the two units.
18. The sequence of events *inter alia* regarding the arrear levies, as follows;
  - 18.1 A letter of demand was sent to respondent on 17 September 2015 where after respondent was handed over to Roopa Potgieter Attorneys on 5 February 2016 to collect the outstanding levies.
  - 18.2 Roopa Potgieter issued a Letter of Demand in this regard on 9 February 2016 where after a Summons apparently followed.
  - 18.3 Laas Doman Ingelyf Attorneys (on behalf of respondent) requested some information as per their letter dated 4 March 2016, which was provided.
  - 18.4 On 15 April 2016 Roopa Potgieter informed OSRO that respondent is willing to resolve the matter, whereupon further legal action was halted. OSRO was subsequently informed on 1 September 2016 that Mr Venter will travel to Cape Town to address the issues.
19. Mr van der Merwe conceded that he cannot with certainty confirm that at any given time the accounts with respect to units 72 and 21 calculated together (in total) were in arrears.
20. Applicant also conceded that he would "stand in" for the amount charged (R1725.00) for the replacement of the door in order to resolve this issue and that respondent's account would be corrected accordingly.

## **APPLICANT'S PRAYERS**

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

21.1 An order for the payment of all outstanding levies owed in respect of unit 72.

## **RESPONDENT'S VERSION**

22. Mr Venter states that he is unhappy with the fact that there is currently two different processes continuing in this matter – civil action and CSOS procedure and request that applicant formally withdraws the civil action herein.
23. His levy account is technically currently in credit, which was apparently also telephonically conveyed to applicant. The levies of the two units are debited and calculated in one account.
24. Maletsatsi Beleggings (EDMS)Bpk is the owner of both units (72 and 21), which is also occupied by tenants currently.
25. Mr Venter avers that he has been paying his levies regularly since 1983 and that the payments also reflect the necessary details. He has further provided permission that the two accounts with respect to units 72 and 21 be "joint" in that monies can be transferred from one account to the other.
26. He confirms that a summons was served and that he entered "Appearance to Defend" in the matter. His attorney was also in hospital for six months, which delayed the matter.
27. Mr Venter contests that he bears no knowledge of the front door and that his tenant probably gave permission for it to be replaced. It is further the responsibility of the body corporate to maintain the building, alternatively damages should have been recovered in terms of the insurance policy (according to respondent). The costs for the replacement of the front door is however not in dispute any more (refer to clause 20 above) and therefore not relevant further.

28. Mr Venter further contests that the interest charged on alleged arrear levy amounts together with legal costs should be written off in the circumstances. Legal costs can only be charged on arrear amounts in terms of legislation.
29. Respondent undertakes to provide applicant immediately with a formal permission letter to enable applicant to transfer monies from respondent's one levy account to the other when necessary.

### **EVALUATION OF EVIDENCE SUBMITTED**

30. Having considered the submissions made by both parties herein I am not convinced that applicant proved (on a balance of probabilities) that respondent's levy account is in arrears and that he is liable for any arrear payments. In the circumstances it is only reasonable that both accounts (with reference to units 72 and 21) of respondent should be evaluated simultaneously and not individually.
31. Le Chasseur Body corporate and / or OSRO Property Managing Agents *inter alia* are responsible for the financial management of all accounts. The body corporate 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)).
32. 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)). It is however not clear from the evidence if and indeed when any arrear amount(s) became due and payable and therefore respondent is not liable for any interest on any arrear amount(s).
33. 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)). Again it is not clear if there was in fact any arrear amount (in respect of both units calculated together) at any given

time due and payable. Therefore respondent cannot be held liable for any body corporate legal fees in this instance in the circumstances.

34. No convincing evidence was submitted indicating that respondent is liable for any outstanding levies (as mentioned above), nor is the R1725.00 (door replacement value amount) recoverable in light of the concession from applicant herein. It is however evident that this matter was prolonged due to poor communication and could have been resolved some time ago.

### **ADJUDICATION ORDER**

35. 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;

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

35.2 Applicant to write off the amount debited (R1725.00) on respondent's account – to be reflected on the next monthly account statement.

35.3 Applicant to write off all interest charged on "alleged arrear account" in respect of unit 72 and related legal costs – to reflect on next monthly account statement.

35.4 No order is made as to costs herein.

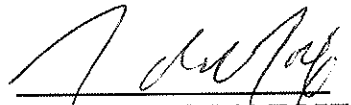
### **RIGHT TO APPEAL**

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: 26/2/2018  
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**ADV DRIES DU TOIT**  
**ADJUDICATOR**  
**26 FEBRUARY 2017**