



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

Case Number: CSOS02254/KZN/18



IN THE MATTER BETWEEN
VASUDEVAN PADAYACHY
(Applicant)

And

PRINCE GRANT HOMEOWNERS ASSOCIATION
(Respondent)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

Category of dispute S39(1): in respect of financial issues.

1. The Applicant seeks an order:
requiring the payment or repayment of a contribution or any other amount.

INTRODUCTION

2. The Applicant is Vasudevan Padayachy an adult male and who is the owner of Unit 102 at Princes Grant Body Corporate, representing himself via skype, as per arrangement with him.

3. The Respondent is the Directors of Princes Grant Homeowners Association (PGHOA), a legal person in terms of the provisions of the Sectional Titles Schemes Management Act No. 8 of 2011("STSMA") which is situated at the KwaDukuza, duly represented by Mr Nicolaas Wessels of Trafalgar Property Management (Managing Agents).
4. The application was brought in terms of s 38 of the Community Schemes Ombud Service Act No 9 of 2011 ("the CSOS Act") which provides that:
"An application made in terms of section 38 must include one or more of the following orders."
5. This is an application for dispute resolution in terms of the CSOS Act. The application was made in the prescribed form and lodged with CSOS.
6. A Notice of Set Down was communicated to all parties. The adjudication hearing took place on 6 November 2019 and both parties were present, the applicant via skype.

RELEVANT STATUTORY PROVISION

7. The hearing was conducted in terms of section 38 of the CSOS Act which provides that –

"Any person may make an application if such person is a party to or affected materially by a dispute".
8. 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"



9. 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.”



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”.

11. Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(1) of the CSOS Act. The Ombud therefore, referred the matter to adjudication, in terms of Section 48.

12. **SUMMARY OF RELEVANT EVIDENCE** (That relating to the issues in dispute)

Applicant's Submissions

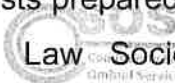
12.1 The Applicant concedes that he was in arrears with the payment of his levies and this is illustrated through his communication with the Accounts Section wherein he requested leniency due to the financial constraint that he was experiencing.

12.2 There was continuous communication between the Applicant and the Accounts Section between January and June 2018 regarding the outstanding arrears.

- 12.3 The Applicant was advised in an email dated 29 June 2018 that he had an outstanding amount of R28 004.39 in respect of arrear levies and that he would be handed over to Attorneys. The Applicant responded to the email and indicated that he was of the view that it was unwarranted to incur Attorney costs.
- 12.4 The Applicant did make payments as follows: R1 000 (11 April 2018); R 5000 (6 July 2018) and R 5000 (12 July 2018), however there were still outstanding levies despite the payments.
- 12.5 The Applicant does not believe that he should have been handed over to Attorneys because he was proactive regarding his account and was in constant communication with the Accounts Section and requested leniency.

13 Respondent's submissions

- 13.1 The Respondent was duly represented by the appointed managing agent, Mr Wessels. The Respondent indicated that an offer to reduce the legal costs was made to Mr Padayachy. The amount that they were willing to reduce the legal costs of R 7 913.15 by was R 1378.00 to which the Applicant refused.
- 13.2 The Respondent's submission is that the PGHOA Memorandum of Incorporation indicates under clause 55.1 headed **Payment of levies** reads "Every levy shall be payable monthly in advance on the first day of each and every month..." Clause 76.1 headed **Legal Remedies** reads, "The rights given to the companyeither to recover any arrear or other monies or to claim specific performance ,damage or any recourse in law."
- 76.2 "A member shall be liable for and shall pay, all legal costs, including costs on an attorney and client scale ...in obtaining the recovery of arrear levies..."
- 76.2 "if the member disputes the legal costs incurred by the company, then the parties agree that the company may refer the bill of costs prepared by the attorney to the Fee Assessment Committee of the Law Society for


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consideration and determination, and the decision of the Fee Committee shall be final.”

14 **EVALUATION OF INFORMATION AND EVIDENCE OBTAINED**

- 14.1 In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
- 14.2 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 and determine whether the applicant’s version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
- 14.3 The Applicant illustrated to be a responsible individual in that he was proactive in advising about his financial situation and was in constant communication with the Accounts Section of the PGHOA.
- 14.4 He made some payments towards his arrears but unfortunately failed to settle the amount due and payable by him which was a substantial amount.
- 14.5 The Applicant’s request to the PGHOA is not a fair one in that they should not have handed him over to the Attorneys. The Applicant was in six (6) months arrears when his account was handed over and he had only paid less than half of the arrears.
- 14.6 The question to be asked is for how long should the PGHOA have granted the leniency to the Applicant and if this is to be allowed how many owners would actually pay their levies if they are not handed over to Attorneys.



14.7 It is also common practice that once debtors are handed over to Attorneys, they pay the amount due immediately as is the case in point. Payment of a substantial amount was immediately made.

14.8 PGHOA acted within their prescribed rules and have submitted a breakdown of the Attorneys statement. The Applicant could have subjected the legal costs for taxation as prescribed in the PGHOA Memorandum of Incorporation but did not because his contention is that he should never have been handed over to Attorneys. I beg to differ, by virtue of being in arrears for more than 60 days and this was for quite a long time the PGHOA had no other option but to hand the Applicant over to Attorneys in fact in my humble view they were lenient for some time.

14.9 The Respondent further attempted to write off an amount of R 1378.00 from the legal costs in an attempt to settle the matter and that to me was an extension of leniency as the legal costs were due and payable by the Applicant, but the Applicant rejected the offer.

14.10 I don't believe that the Applicant has substantiated his application and it is worth noting that the Applicant has already made the payment for the legal costs.

14.11 It is based on the above submissions that I dismiss the Applicants application.

15 ADJUDICATION ORDER

In the circumstances the Applicants application is dismissed.

16. RIGHT OF APPEAL

The parties' attention is drawn to –

Section 57(1) of the CSOS Act of 2011 which provides –

“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 within 30 days after the delivery of the adjudication order.”

DATED AT DURBAN on 22 November 2019



T.P QWABE
ADJUDICATOR



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