



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

Case Number: CSOS00389/GP/19

IN THE MATTER BETWEEN

CERI LEE MOODIE

(APPLICANT)

and

BAGATELLE HOMEOWNERS ASSOCIATION

(RESPONDENT)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

This is an application for dispute resolution in terms of the following sections of the Community Schemes Ombud Service Act:

- Section 39 (1) in respect of financial issues;
- Section 39 (4) in respect of meetings;
- Section 39 (5) in respect of management services;
- Section 39 (6) in respect of works pertaining to private and common areas;
- Section 39 (7) in respect of general and other issues;

Applicant seeks an order in the following terms:

- (a) An order requiring the HOA to call a special general meeting of its members to deal with specified business: Proceedings at the AGM held on the 3rd of December 2019;



- (b) Order declaring the purported general meetings of the HOA were not validly convened;
- (c) An order declaring that a resolution purportedly passed at a general meeting of the HOA was invalid;
- (d) An order requiring the HOA to approve and record a new scheme governance provision (MOI);
- (e) An order for the payment or repayment of a contribution or any other amount: special levies for legal fees;
- (f) An order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way;
- (g) An order requiring the HOA to have its accounts, or accounts for a specified period, audited by an auditor specified in the order;
- (h) An order requiring the HOA to take out insurance;
- (i) An order declaring that the Applicant has wrongfully been denied access to information or documents;
- (j) Any other order proposed by the Chief Ombud: Security Review;
- (k) Any other order proposed by the Chief Ombud: Provision of monthly information to Members;
- (l) Any other order proposed by the Chief Ombud: AGM notices to be accompanied by AFS signed and dated by both the Directors and the Auditors;
- (m) An order for the payment of all outstanding UIF to be paid over immediately and order for future monthly UIF payments to be paid over monthly;
- (n) An order for the immediate appointment of an independent expert to work with the City of Johannesburg to establish any potential contingent liability for municipal taxes, taxes and water with the City of Johannesburg;
- (o) Any other proposed by the Chief Ombud: The newly presented Rules of the Bagatelle HOA in 2018 need to be voted on by the Members, they were simply issued and many of my comments were totally ignored;
- (p) Any other order proposed by the Chief Ombud: An order for the Directors to confirm cameras acquired per Directors Minute of 30 March 2015 are situated and can be inspected and compared to the underlying invoice and Directors minute;
- (q) Any other proposed by the Chief Ombud: An order requesting that Peter Watt, Colin Levin and Anthony Briggs formally respond to Mr Fourie's forensic report and indicate where they disagree with his independent forensic work such that his draft report can be finalised;



ADJUDICATION ORDER
DATE: 29/06/2022

Community Schemes Ombud Service
T: +27 (0)10 593 0533 | F: +27 (0)10 590 6154
Website: www.csos.org.za
Fraud Hotline: 0800 701 701

- (r) An order declaring that an owner or occupier reasonably requires exclusive use rights over a certain part of a common area, that the HOA has unreasonably refused to grant such rights and requiring the HOA to give exclusive rights to the owner or occupier, on terms that may require a payment or period payments to the HOA, over a specific part of a common area;
- (s) An order declaring that the HOA does have the right to terminate the appointment of a managing agent, and the appointment of Venkam is terminated.

The order is in line with Section 39 (1), (4), (5), (6) and (7) of the CSOS Act No.9 of 2011 (the CSOS Act).

FINDINGS

The relief sought by the Applicant in so far as it relates to prayers (a), (b), (c), (d), (e), (h), (g), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r) and (s) is dismissed.

INTRODUCTION

1. The Applicant is Ceri Lee Moodie the registered owner of Unit 1, 14 Coleraine Drive, Riverclub, Johannesburg, GAUTENG PROVINCE. The Applicant made written submissions.
2. The Respondent is the Bagatelle Homeowners Association, a community scheme as defined in the CSOS Act No. 9 of 2011 and to which it would be convenient to refer to as the "HOA". The Respondent made written submissions.
3. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Gauteng Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
4. A conciliation hearing was held on the 18th of December 2019, which was attended by both the Applicant and the Respondent. This application is before me because of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
5. The parties entered an appearance in terms of the Notice of Set Down which as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011.



APPLICABLE PROVISIONS OF THE ACT

6. 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”*
7. 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”*.
8. 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”*.
9. Accordingly, a certificate of Non- Resolution was issued in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of the Act.

SUMMARY OF EVIDENCE

Applicant’s Submissions

10. The Applicant submitted that the Annual General Meeting held on the 27th of November 2018, and the Annual General Meeting held on 3rd of December 2019 were not validly convened. The capacity of the Directors to call such a meeting is further disputed by the Applicant.
11. According to the Applicant she had previously highlighted her position regarding the meeting of the Executive Committee of the HOA, which was invalidly convened.
12. The Applicant submitted that the HOA did not quorate since 2006, and that the Chairman and Directors have continued to conduct business despite being aware of this.



ADJUDICATION ORDER

DATE: 29/06/2023
Community Schemes Ombud Service
T: +27 (010) 590 0500 | F: +27 (010) 590 6154
Website: www.csos.org.za
Fraud Hotline: 0800 701 701

13. The Minutes of the AGM for 2018, which was held on the 27th of November 2018, were only distributed to the Applicant on the 4th of February 2019, despite numerous requests made to the managing agent and directors.
14. According to the Applicant the notice calling the Annual General Meeting and reconvened in late 2018, were deficient with regard to the special resolution and the resolution was not seconded, which a requirement of the Articles of the HOA.
15. The Applicant submitted that the HOA has been operating without a formal MOI. The Articles have been operating as the HOA's MOI. A new MOI is required by the HOA according to the Applicant to adequately protect the member's rights.
16. The Applicant submitted that special levies close to R60000.00 were paid by members of the HOA to fund the Director's legal dispute with the Applicant.
17. According to the Applicant the Trustees are obliged to pro rata the costs payable by each unit in terms of the unit's PQ. The levy structure according to the Applicant is not fair and reasonable considering the size of the properties in the HOA.
18. The Applicant further submitted that the Respondent has denied her access to the bank statements for the period 31 December 2017 to the end of May 2020.
19. The Applicant submitted that the HOA does not have adequate insurance cover, as per the existing insurance policies.
20. The Applicant submitted that a full security review be undertaken by the Applicant and a fellow member of the HOA, who will report back to members.
21. According to the Applicant there should be no limit in terms of access to information held by the HOA. Further that information should be made available to members of the HOA on a monthly basis.
22. The Applicant submitted that the provisions of the Companies Act should be complied with by ensuring that AGM notices are accompanied by signed and dated Annual Financial statements.
23. The Applicant stated in her written submissions that UIF is being deducted from the HOA's gardener's salaries and not paid over to the UIF.



ADJUDICATION ORDER

DATE: 29/02/2019

Community Schemes Ombud Service

T: +27 (0)10 509 0390 | F: +27 (0)10 590 6154

Website: www.csos.org.za

Freelud Hotline: 0800 701 701

24. According to the Applicant the contingent liability for the HOA, appears to date back to when the HOA was established. The Applicant accordingly seeks an order that the Directors be held personally liable for any shortfall.
25. The Applicant submitted that the provisions in the Memorandum and Articles of Association of the HOA, which makes provision for the Directors to make rules, is considered contra bones mores (against good morals).
26. The Applicant further submitted that the cameras acquired by the HOA in 2015, were acquired from a company who issued an invoice prior to its registration.
27. That the Director of the HOA engage with the author of a Forensic report and provide their inputs to said report.
28. According to the Applicant she seeks an order to protect the portion of her erf where her visitors park, but which overlaps with the common property of the HOA.
29. The Applicant questions the authority of the HOA to terminate or appoint a managing agent.

APPLICANT'S PRAYERS

- (a) An order requiring the HOA to call a special general meeting of its members to deal with specified business: Proceedings at the AGM held on the 3rd of December 2019;
- (b) Order declaring the purported general meetings of the HOA were not validly convened;
- (c) An order declaring that a resolution purportedly passed at a general meeting of the HOA was invalid;
- (d) An order requiring the HOA to approve and record a new scheme governance provision (MOI);
- (e) An order for the payment or repayment of a contribution or any other amount: special levies for legal fees;
- (f) An order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way;
- (g) An order requiring the HOA to have its accounts, or accounts for a specified period, audited by an auditor specified in the order;
- (h) An order requiring the HOA to take out insurance;

- (i) An order declaring that the Applicant has wrongfully been denied access to information or documents;
- (j) Any other order proposed by the Chief Ombud: Security Review;
- (k) Any other order proposed by the Chief Ombud: Provision of monthly information to Members;
- (l) Any order proposed by the Chief Ombud: AGM notices to be accompanied by AFS signed and dated by both the Directors and the Auditors;
- (m) An order for the payment of all outstanding UIF to be paid over immediately and order for future monthly UIF payments to be paid over monthly;
- (n) An order for the immediate appointment of an independent expert to work with the City of Johannesburg to establish any potential contingent liability for municipal taxes, taxes and water with the City of Johannesburg;
- (o) Any other proposed by the Chief Ombud: The newly presented Rules of the Bagatelle HOA in 2018 need to be voted on by the Members, they were simply issued and many of my comments were totally ignored;
- (p) Any other order proposed by the Chief Ombud: An order for the Directors to confirm cameras acquired per Directors Minute of 30 March 2015 are situated and can be inspected and compared to the underlying invoice and Directors minute;
- (q) Any other proposed by the Chief Ombud: An order requesting that Peter Watt, Colin Levin and Anthony Briggs formally respond to Mr Fourie's forensic report and indicate where they disagree with his independent forensic work such that his draft report can be finalised;
- (r) An order declaring that an owner or occupier reasonably requires exclusive use rights over a certain part of a common area, that the HOA has unreasonably refused to grant such rights and requiring the HOA to give exclusive rights to the owner or occupier, on terms that may require a payment or period payments to the HOA, over a specific part of a common area;
- (s) An order declaring that the HOA does have the right to terminate the appointment of a managing agent, and the appointment of Venkam is terminated.

Respondent's Submissions

COLIN LEVIN (DIRECTOR BAGATELLE HOA)

30. The Respondent submitted that the HOA's 2019 AGM was convened after the Applicant had lodged her dispute with the CSOS and should therefore not be considered with her other prayers for relief.



31. According to the Respondent a substantial number of owners attended the AGM, where the current Directors were re-elected, with the only opposition noted from the Applicant.
32. The minutes of the 2019 AGM, which accurately reflects the discussions at the meeting, were prepared by the newly appointed managing agent, and were accepted by the majority of the owners, with the exception of the Applicant.
33. With regard to the 2017/2018 AGM, the Respondent submitted that initially there was no quorum, and the meeting was postponed for seven days as provided for in the MOI and Articles of Association of the HOA.
34. According to the Respondent the decisions takes, and resolutions adopted at all the AGM's of the HOA were valid and complied with the provisions of the HOA's MOI and the Companies Act.
35. The Respondent submitted that the Applicant seeks an amendment of provisions which she fails to specify, or alternatively provide reasons as to why same should be amended.
36. Regarding legal costs, the Respondent submitted that the HOA incurred legal costs relating to levy collection, as well as defending litigation instituted by the Applicant in the High Court.
37. According to the Respondent members of the HOA pay the same levy because they have equal access to the HOA facilities and common property such as common roads, common gardens and security. The costs of contribution by each member of the HOA, is not determined by the size of the member's erf.
38. The Respondent submitted that it would be wasteful expenditure to have the HOA's financials subjected to another audit. Since the financials are audited annually, and the HOA has received clean audits.
39. The Respondent further submitted that the HOA has adequate insurance cover, and that they are willing to make this available to the Applicant for inspection.
40. According to the Respondent the Applicant has already been furnished with all the information she had requested and to which she was entitled too.



Community Schemes
Ombud Service

ADJUDICATION ORDER

DATE: 29/06/2012

Community Schemes Ombud Service
P.O. Box 709, 05501 Ft. +27 (010) 590 6154
Website: www.csos.org.za
e-raud Hotline: 0800 701 701

41. The Respondent submitted that the Applicant's request for a review of the HOA's security is unnecessary and without basis and will lead to unnecessary expenditure being incurred by the HOA.
42. According to the Respondent should the Applicant's demands for frequent information be granted, this will necessitate the HOA employing a person on a part-time basis, which would lead to unwarranted costs being incurred by the HOA.
43. The Respondent submitted that draft Audited Financial Statements are sent to members prior to the AGM. Which enables members of the HOA to raise possible queries and identify errors. The Audited Financial Statements are then signed by both the Auditors and the Directors after the AGM is held.
44. The relief sought by the Applicant insofar as it relates to the UIF contribution by the HOA, relating to staff in its employ, does not fall within the ambit of the Section 39 of the CSOS Act.
45. According to the Respondent no other member of the HOA, has raised concerns regarding the Conduct Rules of the HOA. Further, the Applicant fails to specify or identify which clause she finds unacceptable and which therefore should be amended.
46. Further the Conduct Rules of the HOA, are similar to what is made provisions in other HOA's Conduct Rules
47. The Respondent submitted that they see no value in engaging with the forensic report, since it will undoubtedly lead to the HOA incurring additional costs. According to the Respondent the previous managing agent had extended an invitation to the Applicant to discuss the forensic report, which was declined by the Applicant.
48. The Respondent submitted that it would be unreasonable to grant the Applicant exclusive use of a generic common area between the road and the entrance to properties in circumstances where the common-area is not demarcated as exclusive use are for all the other owners.
49. According to the Respondent the HOA does have the necessary authority to terminate the contracts entered into with its managing agent. However, the current managing agent has executed their functions diligently and there is no valid reason for their mandate to be terminated.

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

50. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
51. 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.

DISCUSSION

52. I have perused all written submissions and taken into consideration all submissions made by the parties.

(Prayer A) An order requiring the HOA to call a special general meeting of its members to deal with specified business: Proceedings at the AGM held on the 3rd of December 2019;

53. The Annual General Meeting referenced by the Applicant in her prayer for relief was held on the 3rd of December 2019. The Applicant lodged the complaint with CSOS on the 6th of May 2019, approximately 6 months before the Annual General Meeting was held.
54. The Respondent has objected to the Applicant's submission, to what is ostensibly the introduction of a new dispute, which did not form part of the Applicant's initial complaint to the CSOS.
55. The Respondent further submitted that a substantial number of members attended the AGM held in December 2019. At this AGM, the same directors were re-elected, with the only opposition from the Applicant.
56. I can find no justification for the relief sought by the Applicant against the Respondent.
57. The Applicant is hereby directed to comply with the applicable provisions of the MOI, in calling a special general meeting of its members to deal with specified business.

(Prayer B) Order declaring the purported general meetings of the HOA were not validly convened;

58. Clause 16 **QUORUM AND ADJOURNMENT OF MEMBERS MEETINGS** of the Bagatelle Homeowners Association MOI states that , "If within a half an hour after the time appointed for the meeting a quorum is not present for the meeting to commence, it must stand adjourned without motion or vote, to a day not earlier than 5 (five) Business Days and not later than 15 (fifteen) Business Days after the date of the adjourned meeting, the new date to be determined by the Chairman, failing which it will take place on the same date and time the following week (or the next Business Day if that day falls on a weekend or a public holiday), and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, **the members present in person or by proxy will be a quorum; (writer's emphasis)**

59. The Applicant has not made out a case to support a finding that the decisions taken at Annual General Meeting held on the 27th of November 2018 were unlawful and must be set aside.

60. Accordingly, the Adjudicator finds that a prima facie case has not been made against the decisions taken at the Annual General Meeting held in 2018, and that the decisions taken at the AGM are valid.

(Prayer C) An order declaring that a resolution purportedly passed at a general meeting of the HOA was invalid;

61. It is common cause that one of the causes of the dispute (AGM held on 27 November 2018) that gave rise to the complaint before the adjudicator occurred in 2018. The Applicant lodged the complaint with CSOS on the 6th of May 2019, approximately 6 months after the cause of action arose.

62. In law, legislation does not operate retrospectively unless the law shows a clear intention to do so. Section 21 of the Act further provides for transitional arrangements prior to the promulgation of Regulations by the Ombud.

63. Section 41(1) of the CSOS act 9 of 2011 states as follows: **"An application for an order declaring a decision of an association or an executive committee to be void, may not be made later than 60 days after such a decision has been taken."**

64. Section 41(2) states as follows:



“An ombud may, on good cause shown, condone the late submission of an application contemplated in sub section (1).”

65. It is clear from the application that the dispute was lodged by the Applicant more than 60 days after decisions were taken as provided for in Section 41(1) of the Act, and that condonation for the late submission was not sought from the Chief Ombud.
66. The Adjudicator has no doubt about the bona fides of the Applicant in pursuing this complaint against the Respondent. CSOS is however a creature of statute and the adjudicator is bound to make orders that are competent and enforceable in terms of the Act.
67. The Application of the Applicant is therefore out of time and there is no evidence before the adjudicator that the Ombud has condoned the late submission of the Applicant’s application.
68. Accordingly, the relief sought by the Applicant in respect of the prayer (c) is denied.

(Prayer D) An order requiring the HOA to approve and record a new scheme governance provision (MOI);

69. Clause 12.2 **COMPANY RULES** of the MOI states that, “Subject to 12.1 above, the board of the Company may make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters which are not addressed in the Act or this memorandum by, 12.2.1 publishing a copy thereof in any manner permitted or required by the Board”.
70. Ultimately the yardstick which should be used to measure whether the HOA’s MOI need to be reviewed and ultimately approved and recorded, is in establishing whether other owners of the HOA deems the review and amendment of the HOA’s MOI necessary.
71. The Applicant in highlighting why she believed the HOA’s MOI review and amendment necessary, did not refer to any email correspondence, minutes of meetings or written complaints received by the HOA from other owners regarding the provisions of the MOI.
72. It follows that the Applicant is not entitled to the relief sought against the Respondent.

(Prayer E) An order for the payment or repayment of a contribution or any other amount: special levies for legal fees;

Community Ombud Service
1-877-674-6822 | 1-427 (010) 590 6154
Website: www.csos.org.za
Fraud Hotline: 0800 701 700

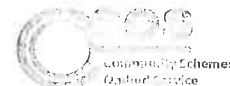
DATE: 29/06/2022

ADJUDICATION ORDER

80. Clause 29.2 of the HOA's MOI provides that, "the Company 29.2.1 may advance expenses to a director to defend litigation in any proceedings arising out of the director's service to the Company".
81. Evidence was submitted by the Applicant that the Respondent had raised a special levy for legal fees. It was subsequently contended by the Respondent that the special levy was raised to cover legal costs of the HOA to defend a High court matter initiated by the Applicant.
82. There is nothing before the adjudicator to prove that the Directors in defending the Applicant's High Court application did not act in the best interests of the HOA.
83. In so far as the Applicant's prayer to be reimbursed for the special levies lawfully raised by the Respondent is concerned as provided for in the MOI of the HOA, the relief sought by the Applicant against the Respondent is denied.

(Prayer F) An order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way;

84. The Applicant made submissions that the levy structure needs to be recalculated to reflect the proportion of the stands in the complex and to be applied to the imposition of ordinary and special levies.
85. In support of her submissions the Applicant made reference to the various sizes of stands within the HOA for example, one of the stands measures 4581 sqm, a double stand measures 1999 sqm and other stands are 800 to 1000 sqm in extent.
86. Yet all owners are required to pay the same levies irrespective of the stand size.
87. In response the Respondent submitted that members of the HOA pay an equal levy because they have equal access to the HOA facilities and common property such as common roads, common gardens and security. None of these services and costs are related to the size of any member's erf.



ADJUDICATION ORDER
DATE: 29/06/2020
Community Schemes Ombud Service
T: +27 (0)10 593 9520 | F: +27 (0)10 590 6154
Website: www.csos.org.za
Fraud Hotline: 0800 703 701

88. Clause (9.3) **LEVIES of the Bagatelle HOA** provides as follows, “members will be liable to pay monthly or special levies to the Company in proportion with the **Participation Quotas**”.
(writer’s emphasis)
89. It is consequently clear, that the current manner in which the Participation Quotas of the HOA are being calculated is not as per the provisions of the MOI of the HOA.
90. I refer to the High Court decision in the matter of **Extra Dimensions 121 (Pty) Limited v Body Corporate of Marine Sands and Another (AR121/2017) [2018] ZAKZPHC 69 (24 August 2018)**, where the appellant sought an order declaring a resolution passed by the Body Corporate, which changed the way in which levies are imposed on the members of the scheme, invalid.
91. The Judge stated that *“the ‘conduct rule’ introduced by the body corporate which modified the liability of the sectional owners to contribute towards the levies of the scheme is not in accordance with the statutory powers of the body corporate in terms of the Act. It is in conflict with s 37(1)(d) and accordingly invalid.”*

“The scheme could not have two different schedules of participation quotas, i.e. one as per the sectional plan and one as per annexure ‘B’”
92. It is the Adjudicator’s finding that the Respondent must engage the services of a Land Surveyor within 90 days of receipt of this order, to ensure that members of the HOA make contributions based on the size of their respective units.
- (Prayer G) An order requiring the HOA to have its accounts, or accounts for a specified period, audited by an auditor specified in the order;**
93. Looking at the evidence as a whole, the adjudicator finds that the Directors acted reasonably within their powers, to ensure compliance with the applicable legislative framework.
94. The Directors ensured that the HOA’s financials are audited annually, further the HOA have obtained clean audits for the past 14 years.
95. There is nothing before the adjudicator to prove that the Directors have not acted in the best interests of the scheme.

(Prayer H) An order requiring the HOA to take out insurance;

96. Section 39 (1) (a) of the CSOS Act makes provision for, “ an order requiring the association to take out insurance or to increase the amount of insurance”.
97. Clause (29.4) of the Bagatelle Homeowners Association MOI states that , “the company must purchase insurance to protect the Company against any contingency including but not limited to....”.
98. The Applicant in her submissions in support of a review of the HOA’s insurance cover, makes reference to a bridge which had no valid cover under a previous policy in 2011. In response the Respondent has agreed to make the current insurance documents available to the Applicant.
99. The Applicant has not made out a case to support a finding relating to the adequacy of the HOA’s insurance cover.

(Prayer I) An order declaring that the Applicant has wrongfully been denied access to information or documents;

100. Clause (28.3) of the Bagatelle Homeowners Association MOI states that , “every member of the company has the right to access information **by direct request made to the company** in the prescribed manner either in person, or through an attorney or other personal representative designated in writing or in accordance with the Promotion of Access to Information Act 2 of 2000”. **(writer’s emphasis)**
101. In support for this prayer the Applicant states that the Directors of the HOA denied permission to Standard Bank to allow her access to the HOA’s bank statements. And then further states that it appears that the erstwhile managing agent was not providing monthly information to the Directors of the HOA.
102. From an ordinary reading of the HOA’s MOI, it is consequently clear that a request for access to information must be made to the HOA alternatively Board of Directors, and not to the entity entrusted with the information in this instance Standard Bank.
103. The Applicant is hereby directed to comply with the applicable provision of the MOI, when requesting access to information from the HOA.

 **CSOS**
Community Services
Company by Schmitz
Gesellschaft
ADJUDICATION ORDER
DATE: 29/06/2020
Community Services Ombud Service
T: +27 (0)21 508 0559 | F: (0)10 590 6154
WebSite: www.csos.org.za
Braud Hovler: 081 701 701

(Prayer J) Any other order proposed by the Chief Ombud: Security Review;

104. Refer to Adjudicators finding in respect of Prayer (I).

(Prayer K) Any other order proposed by the Chief Ombud: Provision of monthly information to Members;

105. Refer to Adjudicators finding in respect of Prayer (I).

(Prayer L) Any other order proposed by the Chief Ombud: AGM notices to be accompanied by AFS signed and dated by both the Directors and the Auditors;

106. Refer to Adjudicators finding in respect of Prayer (G).

(Prayer M) An order for the payment of all outstanding UIF to be paid over immediately and order for future monthly UIF payments to be paid over monthly;

107. Refer to Adjudicators finding in respect of Prayer (N) below.

(Prayer N) An order for the immediate appointment of an independent expert to work with the City of Johannesburg to establish any potential contingent liability for municipal taxes, taxes and water with the City of Johannesburg;

108. The relief sought by the Applicant for the appointment of an independent expert to work with the COJ to establish contingent liability for municipal taxes, is dismissed, as this falls outside the ambit of Section 39 of the CSOS Act 9 of 2011.

109. The Adjudicator is not empowered in terms of the applicable legislative framework to make an order in respect of the relief sought by the Applicant.

(Prayer O) Any other proposed by the Chief Ombud: The newly presented Rules of the Bagatelle HOA in 2018 need to be voted on by the Members, they were simply issued and many of my comments were totally ignored;

110. Refer to Adjudicators finding in respect of Prayer (D).


ADJUDICATION ORDER
DATE: 7/10/2020
Community Schemes Ombud Service
T: +27 (010) 593 0593 | F: +27 (010) 590 6154
Website: www.csos.org.za
Fraud Hotline: 0800 701 701

(Prayer P) Any other order proposed by the Chief Ombud: An order for the Directors to confirm cameras acquired per Directors Minute of 30 March 2015 are situated and can be inspected and compared to the underlying invoice and Directors minute;

111. Refer to Adjudicators finding in respect of Prayer (C).

Prayer Q) Any other proposed by the Chief Ombud: An order requesting that Peter Watt, Colin Levin and Anthony Briggs formally respond to Mr Fourie's forensic report and indicate where they disagree with his independent forensic work such that his draft report can be finalised;

112. The relief sought by the Applicant for an order directing the Board of Directors of the HOA to engage with the author of a Forensic Report and indicate where they disagree, is dismissed, as this falls outside the ambit of Section 39 of the CSOS Act 9 of 2011.

113. The Adjudicator is not empowered in terms of the applicable legislative framework to make an order in respect of the relief sought by the Applicant.

(Prayer R) An order declaring that an owner or occupier reasonably requires exclusive use rights over a certain part of a common area, that the HOA has unreasonably refused to grant such rights and requiring the HOA to give exclusive rights to the owner or occupier, on terms that may require a payment or period payments to the HOA, over a specific part of a common area;

114. In support of the relief sought by the Applicant, the Applicant submitted that she sought to protect the portion of her erf where her visitors park, but which may overlap with the common area.

115. The Respondent in response to the Applicant's request to be granted exclusive use over the area, stated that none of the other owners in the HOA have sought to request exclusive use of areas close to their entrances.

116. And if such a request by the Applicant was permitted, it would undoubtedly lead to a situation where members of the HOA do not have access to visitors parking. Further the common area referred to by the Applicant is demarcated for exclusive use by all owners.

117. It is accordingly the Adjudicator's finding that the Applicant has not made out a case to support a finding for the granting of such exclusive use.

(Prayer S) An order declaring that the HOA does have the right to terminate the appointment of a managing agent, and the appointment of Venkam is terminated.

118. The relief sought by the Applicant that the managing agent's appointment be cancelled or terminated is dismissed, as this falls outside the ambit of Section 39 of the CSOS Act 9 of 2011.
119. It is the Adjudicator's finding that the management agreement entered into by the Respondent and the Managing Agent "Venkam" is valid. Contracts create legal rights and duties between parties.
120. There is nothing before the adjudicator to prove that the Respondent had not acted in the best interests of the HOA.
121. It follows that the Applicant has not succeeded in the Applicant's case against the Respondent and is not entitled to the relief sought, with the exception of the relief sought in respect of prayer (F).
122. For all the reasons which have been set out above, I can find no justification for the relief sought in respect of prayers (a), (b), (c), (d), (e), (h), (g), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r) and (s). Accordingly, the Applicant's complaint against the Respondent in respect of the aforementioned prayers is hereby dismissed.

POWERS AND JURISDICTION OF THE ADJUDICATOR

123. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the applicant to the CSOS.

ADJUDICATION ORDER

124. Accordingly, the following order is made;



- (a) The relief sought by the Applicant in so far as it relates to prayers (a), (b), (c), (d), (e), (h), (g), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r) and (s) is dismissed.
- (b) (Prayer (F) It is the Adjudicator's finding that the Respondent must engage the services of a Land Surveyor within 90 days of receipt of this order, to ensure that members of the HOA make contributions based on the size of their respective units.
- (c) No order is made as to costs.

RIGHT OF APPEAL

125. Section 56 (1) – *“If an adjudicator's order iswithin the jurisdiction of the Magistrates Court, the order must be enforced as if it were a judgment of such Court....”*
126. Section 56(2) – *“If an adjudicator's order isbeyond the jurisdiction of the Magistrates Court, the order must be enforced as if it were a judgment of the High Court....”*
127. The parties' attention is drawn to – Section 57(1) of the CSOS Act of 2011 refers – *“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”.*

SIGNED at SANDTON on this 26th day of June 2020.



AJ ANDREAS
ADJUDICATOR

