



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

Case Number: CSOS0001799/GP/19

IN THE MATTER BETWEEN

ISABEL MARINDA SEKOSANA

(APPLICANT)

And

DIRECTORS OF WILLOW FARM HOMEOWNERS ASSOCIATION

(RESPONDENT)

ADJUDICATION ORDER

EXECUTIVE SUMMARY

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

- Section 39 (1) in respect of financial issues;

Applicant seeks an order in the following terms:

- (a) That the late building penalties, fees, costs and interest charges be reversed and removed from the levy statement;
- (b) That the Respondent desist from bullying the Applicant on this matter;
- (c) That any paint work as recommended by the Respondent be done at the personal costs of the Respondent.

The order is in line with Section 39 (1) of the CSOS Act No.9 of 2011 (the CSOS Act).



FINDINGS

The Applicant's application insofar as it relates prayer (b) and (c) is dismissed.

INTRODUCTION

1. The Applicant ISABEL MARINDA SEKOSANA, the registered owner of stand 3, Willow Farm, Willow Farm Street, Equestria, Pretoria, GAUTENG PROVINCE. The Applicant made written submissions.
2. The Respondent is the DIRECTORS OF THE WILLOW FARM HOMEOWNERS ASSOCIATION (HOA), 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 HOA made written submission through their managing agent.
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. 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 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 in her submission disputed that the managing agent, had forwarded the amended revised architectural guidelines to the all members of the HOA on the 22nd of September 2016.
11. The Applicant further submitted that she denies that the communication was erroneously communicated, and that the Respondent failed to exercise reasonable care at the time and as result it actions were grossly negligent.
12. According to the Applicant the managing agent, acts on behalf of the directors of the HOA, the Respondent is therefore vicariously liable for all the actions of the managing agent.
13. The Applicant further submitted that it is strange that the Respondent wants to hold the Applicant liable for painting the house as made provision for in the Architectural guidelines which were provided to the Applicant by the Respondent.
14. According to the Applicant it would be immoral and unethical for the Respondent to absolve itself from the consequences that flow as a result of its actions.
15. The Applicant submitted that she would be greatly prejudiced by the Respondent if the Applicant had to repaint the house. As this will amount to an unfair infringement of the Applicant’s constitutional right to equality.

APPLICANT’S PRAYERS

- (a) That the late building penalties, fees, costs and interest charges be reversed and removed from the levy statement;

- (b) That the Respondent desist from bullying the Applicant on this matter;
- (c) That any paint work as recommended by the Respondent be done at the personal costs of the Respondent.

Respondent's Submissions

- 16. The Respondent submitted that the managing agent submitted the revised architectural guidelines to all members by e-mail, including the Applicant on the 22nd of September 2016.
- 17. According to the Respondent the Applicant's house has been painted with the incorrect colour specification due to a bona fide error on the part of the managing agent.
- 18. The Respondent further submitted that the painting of the Applicant's home with incorrect colour specification constitutes a contravention of the architectural guidelines of the HOA.
- 19. The Respondent submitted that they are prepared to waive the payment of penalties due to the oversight on the part of the managing agent.
- 20. With regard to the wall which the Applicant constructed between her property and the neighbouring property no.4. The wall forms part of the garage, and as a result the Applicant is responsible for the painting of both sides of the wall as per the provisions of the Architectural Guidelines.

RESPONDENT'S PRAYERS

- (a) The Respondent seeks an order directing the Applicant to repaint her house with the correct colour specification within 21 days.

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

- 21. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
- 22. 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

23. I have perused all written submissions and taken into consideration all submissions made by the parties.
24. It is evident from the submissions made by both parties, that the main thrust of the Applicant complaint relates to the building penalties that were imposed on her levy statement, as result of the managing agent having purportedly forwarded to the Applicant the incorrect Architectural Guidelines.
25. The Respondent in their response dated the 28th of July 2020, add paragraph (2.1) make the following concession, “that the house is painted with the incorrect colour specification due to a bona fide error on the part of the Managing Agent”.
26. Further add paragraph (6) the Respondent undertakes as follows, “The Respondent is still prepared 6.1.1. to have the building penalties debited against the account to be credited/reversed and to adjust the interest calculation accordingly, 6.1.2 to have the collection commission and ancillary charges debited against the account to be credited/reversed, 6.1.3 to have the legal fees debited against the account to be credited/reversed.
27. The relief sought by the Applicant that the Respondent be held liable for the painting of the Applicant’s house is dismissed, as this falls outside the ambit of Section 39 of the CSOS Act 9 of 2011.
28. The Adjudicator is not empowered in terms of the applicable legislative framework to make an order in respect of damages/losses suffered by a particular party to a dispute.
29. The CSOS is a creature of statute and the adjudicator is bound to make orders that are competent and enforceable in terms of the Act.
30. It is the Adjudicator’s finding that the building penalties, legal fees, costs and interest be reversed, since the Respondent conceded that there was an oversight on the part of the managing agent in communicating the correct Architectural Guidelines to the Applicant.
31. Accordingly, the Applicant’s complaint against the Respondent is dismissed insofar as it relates to prayer (b) and (c).

POWERS AND JURISDICTION OF THE ADJUDICATOR

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

77. Accordingly, the following order is made;

- (a) The Applicant's application insofar as it relates to prayer (b) and (c) is dismissed, since these prayers falls outside the ambit of Section 39 of the CSOS Act.
- (b) The Respondent is directed to reverse all penalties, legal fees, ancillary charges, costs and interest from the Applicant's levy statement relating to this particular matter.
- (c) The Applicant is directed to comply with the provisions of the MOI of the HOA, within 90 days upon receipt of this order.
- (d) No order is made as to costs.

RIGHT OF APPEAL

78. 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 7th day of August 2020.



AJ ANDREAS
ADJUDICATOR

