



ADJUDICATION ORDER
DATE: 19/07/2020
Community Schemes Ombud Service
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**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Case Number: CSOS001560/GP/19

IN THE MATTER BETWEEN

JOHANNES VAN ZYL

(APPLICANT)

and

MEADOWRIDGE 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 (6) in respect of works pertaining to private and common areas.

Applicant seeks an order in the following terms:

- (a) That the ultimatum given by the Board of Directors to have the screen removed the 31st of July 2019 be set aside;
- (b) And that the vegetation be given the opportunity to grow to such level that the screen could then be removed;
- (c) Thus, enabling the Applicant to have some sort of privacy similar to what they had before the building works were done.

The order is in line with Section 39 (6) of the CSOS Act No.9 of 2011 (the CSOS Act).

FINDINGS

The relief sought by the Applicant is dismissed.

INTRODUCTION

1. The Applicant JOHANNES PIENAAR VAN ZYL is the registered owner of Unit Number 02, Moreleta Park Ext 60, 11B Londolozzi Street, Pretoria, GAUTENG PROVINCE. The Applicant made written submissions.
2. The Respondent is Meadowridge 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. 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.

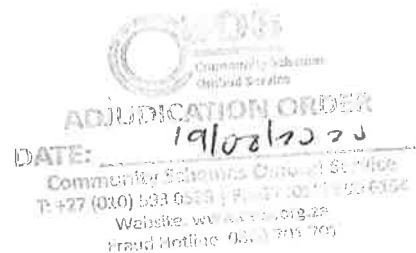
APPLICABLE PROVISIONS OF THE ACT

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 submitted that due to the design and construction of his neighbours home, which was approved by the Board of Directors, but was invading his privacy due to the very bright light emanating from the patio.
11. He decided to install a sight restricting screen which was designed in such a manner to blend in with the shrubs and vegetation, and to create privacy and shade.
12. According to the Applicant this sight restricting screen will be closed off in a couple of years when the current vegetation which is already quite high, grows to that level.
13. Once the vegetation has grown to a certain height the sight restricting screen will be removed.
14. The Applicant further submitted that they had received email correspondence from the Estate Manager on the 9th of July 2019, instructing them to remove the sight restricting screen.
15. According to the Applicant he subsequently responded to the aforementioned correspondence requesting that he be permitted to retain the screen.
16. His request was however refused by the Directors of the HOA, without affording him an opportunity to submit the details for approval.
17. According to the Applicant he was given an ultimatum to remove the screen on before the 31st of July 2019.

PRAYER APPLICANT

- (a) That the ultimatum given by the Board of Directors to have the screen removed by the 31st of July 2019 be set aside;
- (b) And that the vegetation be given the opportunity to grow to such level that the screen could then be removed;
- (c) Thus, enabling the Applicant to have some sort of privacy similar to what they had before the building works were done.

RESPONDENT

Respondent's submissions

- 18. In an undated letter sent to the Applicant, the Respondent confirms the need to adhere to requirements of the Estate's residential design guidelines as well as the relevant sections of the MOI of the HOA.
- 19. The Respondent further, emphasizes the need for members of the HOA to first obtain the Directors approval prior to commencing with any construction of any building or structural additions or alterations.
- 20. According to the Respondent's letter, they are aware that a few deviations occurred in the past, but they want to prevent deviations from occurring going forward.

RESPONDENT PRAYER

None submitted.

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. Section 39 (2) (d) of the CSOS Act 9 of 2011, provides as follows:

(d) An order for the removal of all articles placed on or attached illegally to parts of a common area or private area”.

25. Section 13 (1) (g) of the Sectional Title Schemes Management Act states that, “an owner must not use or permit his section or exclusive use area to be used for any other purpose as indicated on the Sectional Title Plan. Provided that with the written consent of all owners such section or exclusive use area may be used for the purpose as consented to”.

26. In email correspondence dated the 9th of July 2019 at 11:31 addressed to the Applicant from the Respondent, the Respondent confirms the following (which has been translated for the benefit of the reader, “We have received a complaint relating to the screen which has been erected between you and your neighbour. This structure has been erected without the necessary consent of the Board of Directors and your neighbours”.

27. The email correspondence goes on further to state that, “The structure erected further does not comply with the specifications as per the attached guidelines”.

28. It is common cause that the Applicant did not obtain the requisite approval from the Board of Directors for erecting the sight restricting screen on his property.

29. In the Supreme Court of Appeal decision of Mount Edgecombe Country Club Estate Management Association Two (RF) NPC v Singh and Others (32/2018) [2019] ZASCA 30 (28 MARCH 2019) add para (19), the court held that “***When the respondents chose to purchase property within the estate and became members of the Association, they agreed to be bound by its rules. The relationship between the Association and the respondents is thus contractual in nature. The conduct rules, and the restrictions imposed by them, are private ones, entered into voluntarily when an owner elects to buy property within the estate***”.

30. In Abraham & another v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC) JOL 32322 (KZD) the court held at add para [5], “***that every prospective***

homeowner, upon purchasing property within the estate, enters into a contract whereby the owner (or prospective owner) agrees to become a member of the respondent, and to be bound by the rules made and decisions taken by the respondent. The applicants, like other residents and the respondent itself, are bound by the rules which have contractual force”.

31. The Respondent’s argument that the Board of Directors elected not to enforce the building regulations which was applicable to his neighbour’s contractor cannot be supported, in the case of *Riverland Resort Shareblock (Pty) Ltd v Letschert* (3794/2010) [2010] ZAKZDHC 101 (25 April 2012) add para [30] the court in dealing with a similar argument held **“In any event, if due regard is had to the fact that the relationship arising out of the agreement between the applicant and the individual Shareblock owners is contractual, a failure to enforce a breach by the applicant, against another Shareblock owner, can have no bearing upon its election to enforce such a breach against the respondent”.**

32. It is the Adjudicators finding that the Respondent is lawfully entitled to enforce the rules against members of the HOA such as the Applicant.

33. The relief sought by the Applicant against the Respondent is dismissed.

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

34. Accordingly, the following order is made;

- (a) The relief sought by the Applicant in respect of prayer (a), (b) and (c) is dismissed.
- (b) The Respondent is ordered to remove the sight restricting screen from his property, within thirty (30) days upon receipt of this order.
- (c) No order is made as to costs



RIGHT OF APPEAL

35. 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


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ADJUDICATION ORDER
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