



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

**Case Number: CSOS0002473/GP/19**

In the matter between:

**THEDA OAKS BODY CORPORATE**

**APPLICANT**

and

**JOSEPH SHAVA**

**FIRST RESPONDENT**

**MILDRED SHAVA**

**SECOND RESPONDENT**

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**ADJUDICATION ORDER**

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**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)(e) in respect of financial issues;  
an order for the payment or re-payment of a contribution or any other amount.

The Applicant seeks an order in the following terms:

That the Respondents pay to the Applicant:

  
**ADJUDICATION ORDER**  
DATE: 19/08/2020  
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The amount of R 162 521.94 (One Hundred and Sixty Two Thousand Five Hundred and Twenty One Rand and Ninety Four Cents) outstanding to it in respect of levies and ancillary amounts charged (which ancillary charges include CSOS levies charged monthly) in respect of unit 83 at the Applicant scheme, being the unit owned jointly by the Respondents in the Applicant scheme, to the end of August 2020.

## INTRODUCTION

1. The Applicant is the Body Corporate of Theda Oaks SS 310/1996, a body corporate as set out in section 2 of the Sectional Titles Schemes Management Act 8 of 2011 (the STSMA), and a community scheme as defined in the Community Schemes Ombud Service Act 9 of 2011 (the CSOS Act).
2. The Respondents are the registered joint owners of unit number 83 at the Applicant scheme, which is situated at 16 Sunny Road, Benoni, Gauteng.
3. A letter under cover of an email was sent to both parties on the 12<sup>th</sup> of June 2020, confirming that due to the current situation regarding the Covid-19 pandemic, the CSOS is taking the appropriate precautions against the further spread of COVID-19 (Coronavirus) and is adjudicating disputes on documents submitted, without the need to meet parties face to face.
4. The parties were given 5-business days to make further submissions.
5. The Applicant submitted a comprehensive summary of the dispute, as well as an updated levy statement.
6. No submission was received from the Respondents.

## BACKGROUND

7. 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's Office, which is situated at 1<sup>st</sup> Floor, Block A, 63 Wierda Road East, Sandton.



8. The application included a statement of case which set out the relief sought by the Applicant, which relief falls within the scope of the prayers of relief contemplated in section 39 of the Act as will appear more fully from the evidence.
9. The matter was before me as the result of a referral by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
10. The adjudication was conducted on the written submissions and evidence submitted by the parties.

#### **APPLICABLE PROVISIONS OF THE ACT**

11. 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”*
12. 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’.*
13. 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”.*
14. A conciliation hearing was not held in the matter due to the outbreak of Covid-19 in South Africa and due to the consequent Lockdown.
15. Consequently, a certificate of Non - Resolution was issued in terms of Section 48(4) of the CSOS Act No.9 of 2011, and the Ombud referred the matter to adjudication in terms of Section 47 of the Act.

#### **SUMMARY OF EVIDENCE**

#### **APPLICANT’S SUBMISSIONS**



16. The Applicant submitted that the Respondents are indebted to it in the amount of R162 521.94 (One Hundred and Sixty Two Thousand Five Hundred and Twenty One Rand and Ninety Four Cents) in respect of levies and ancillary amounts charged (which ancillary charges include CSOS levies charged monthly) for unit 83 at the Applicant scheme, being the unit owned by the Respondents jointly in the Applicant scheme to the end of August 2020.
17. The Applicant submitted a statement of account of the Respondent's indebtedness to the Applicant as proof thereof.

#### **RELIEF PRAYED FOR BY THE APPLICANT**

18. The Applicant's prayers are as set out in the executive summary above.

#### **RESPONDENT'S SUBMISSIONS**

19. No submission was received by the Respondents in the matter, despite the request to do so on the 16<sup>th</sup> of June 2020

#### **RELIEF REQUESTED BY RESPONDENT**

20. No submission was made by the Respondents.

#### **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 witness/es must be considered.
22. The general rule is that only evidence that is relevant should be considered. Relevance is determined with reference to the issues in dispute. The requisite standard of proof required, as in all civil matters, is a preponderance of probabilities. This means that once all the evidence has been tendered, it must be weighed up by the Adjudicator in order to determine whether the Applicant has discharged the burden of proving its case on a balance of probabilities. It involves findings of facts based on an assessment of credibility and probabilities.



23. It follows that a unit-owner like the Respondent, in this instance, who defaults on his levy payments is effectively being subsidised by the other members of the HOA who pay their levies and ancillary contributions conscientiously every month.

## DISCUSSION

24. I have perused all written submissions.

25. Section 2(1) of the Sectional Titles Schemes Management Act 8 of 2011 states as follows:

*“With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there shall be deemed to be established for that scheme a body corporate of which the developer and such person are members, **and any person who thereafter becomes an owner of a unit in that scheme is a member of that body corporate**”*  
**(my emphasis)**

26. Section 3(1) of the aforesaid Act further provides as follows:

*“A body corporate must perform the functions entrusted to it by or under this Act or the rules, and such functions include—*

*(a) to establish and maintain an administrative fund which is reasonably sufficient to cover the estimated annual operating costs—*

*(i) for the repair, maintenance, management and administration of the common property (including reasonable provision for future maintenance and repairs);*

*(ii) for the payment of rates and taxes and other local municipality charges for the supply of electricity, gas, water, fuel and sanitary or other services to the building or land;*

*(iii) for the payment of any insurance premiums relating to the building or land; and*

*(iv) for the discharge of any duty or fulfilment of any other obligation of the body corporate;*

*(b) to establish and maintain a reserve fund in such amounts as are reasonably sufficient to cover the cost of future maintenance and repair of common property but not less than such amounts as may be prescribed by the Minister; ...*



and

(c) to require the owners whenever necessary to make contributions to such funds . . . “

27. The body corporate cannot perform its functions and duties in the absence of funds from owners.
28. The Applicant’s managing agent has provided a detailed diary of its contact and correspondence with the Respondents and I am satisfied that every effort has been made to attempt to obtain an agreement with the Respondents to pay their outstanding levy, but to no avail.
29. I am satisfied that the Respondent owes amounts due to the Applicant, **less amounts** which are disallowed in terms of the following Management Rule to the STSM Act:

*“25 (5) The body corporate must not debit a member's account with any amount that is not a contribution, or a charge levied in terms of the Act or these rules without the member's consent **or the authority of a judgment or order by a judge, adjudicator or arbitrator.**”*

**My emphasis**

30. The Applicant has placed me in possession of a resolution passed at the reconvened AGM of the members held on Monday the 15<sup>th</sup> of July 2019, which purports to give the Body Corporate the right to charge unit owners:

- Sms reminders if their levy accounts are in arrears, at R 10 per sms;
- Arrear letters at a cost of R 50 per letter;
- a monthly administrative fee of R 176.00 if levy accounts are in arrears;
- administration cost relating to the forwarding of correspondence to an owner of R 200.00 per correspondence, the cost of which is to be recovered from the responsible owner. This administrative cost applies to electronic / posted / hand delivered correspondence;



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- in the event of the electricity supply to a dwelling being disconnected or reconnected, a disconnection / reconnection fee of R 200.00.
31. All the charges as aforesaid, have been debited to the Respondent's levy account, and the Applicant, albeit tacitly, requests that I ratify these charges by ordering that the Respondent pay what the Applicant claims is owed to it.
32. **I am unable to do so.**
33. Management Rule 25(5) is both peremptory and very specific that **a body corporate "must not" debit a members account with any amount that is not a contribution or charge levied in terms of the Act or Rules "without the member's consent" or unless there is a judgment or an adjudication order authorising the charges.**
34. **Members in a general meeting do not have the capacity in terms of the law to override the provisions of the Management Rules.**
35. Should the members of the Body Corporate wish to make decisions that are contrary to the Prescribed Management Rules, then the Prescribed Managed Rules must be appropriately amended in terms of section 10(2)(b) of the STSM Act, to allow for sms, arrear charges and the like to debited to a unit owners levy account.
36. Additionally, in studying the Respondents' levy account, it is evident that the Respondents have made no payments whatsoever towards the levy for the period shown (i.e. 1 August 2018 to August 2020).
37. In terms of the Prescription Act, No. 68 of 1969 debts arising from a contract prescribe (become extinguished) after a period of 3 years in the case.
38. In order to avoid losing the legal right to enforce a claim payment of a "debt"), a creditor must interrupt prescription by obtaining a judgment or an arbitration/adjudication order.
39. Whilst a levy history statement for a period of 2 years only has been provided, it is evident, taking into account the amount brought forward as owing on the Respondents' levy account at the beginning of August 2018, that levies and ancillary amounts had accumulated over a period of more than the preceding 12 months.



## POWERS AND JURISDICTION OF THE ADJUDICATOR

40. 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.
41. In such matters it is common to order the Respondent to pay the outstanding debt within a matter of weeks. However, the extraordinary circumstances in which our country finds itself as a result of the Covid-19 pandemic justify a different approach. Without condoning the Respondent's non-payment, these circumstances persuade me that it is in the interests of justice and fairness to grant the Respondent more time to pay the debt.

## ADJUDICATION ORDER

42. Accordingly, the following order is made:



I find for the Applicant, **but not in the amount as claimed by the Applicant, for the reasons as aforesaid:**

- 42.1. Consequently, the Applicant is ordered and compelled to do a reconciliation of the Respondents' levy account from 1 August 2017 to August 2020, commencing with a ZERO BALANCE AS AT 1 AUGUST 2017 in order to take prescription into account, within 14 (fourteen) days of the date of this order.
- 42.2. The aforesaid reconciliation must **only** show the following lawful and permitted charges in terms of the Sectional Titles Schemes Management Act 8 of 2011 and the Rules promulgated thereunder:
- i) The monthly levy;
  - ii) The monthly CSOS Levy;
  - iii) 1 April 2019 remote controls, gates R 300;



- iv) December 2019, broken/cracked windows R 230;
- v) The monthly maintenance levy (which has been charged from May 2019);
- vi) The monthly security levy (which has been charged from May 2019);
- vii) The monthly refuse charge (which has been charged from May 2019).

- 42.3. Once the reconciliation is completed, interest, calculated at the rate determined and charged by the Trustees in terms of Management Rule 21(3)(c) of the STSM Act, must be charged on outstanding amounts due and payable by the Respondents.
- 42.4. The reconciliation must be sent to the Respondents and to the Adjudicator within 5 days of the completion of the reconciliation.
- 42.5. The Respondents shall pay to the Applicant the amount shown as being due and owing to the Applicant on the aforesaid reconciliation, in 12 (twelve) equal monthly instalments.
- 42.6. The first payment shall commence within 90 days from date of delivery of this order.
- 42.7. Thereafter, payment of the further 11 outstanding instalments must be made on the 1<sup>st</sup> day of each succeeding month.
- 42.8. No interest shall accrue to the outstanding amount within the period allowed for the payment.
- 42.9. In the event of the Respondents defaulting on any 1 payment as ordered above, the full amount due to the Applicant shall become immediately due and payable by the Respondents jointly and severally, one paying the other to be absolved.
- 42.10. *The above order does not affect the usual regular monthly levies and ancillary payments required to be made by the Respondent.***
- 42.11. There is no order as to costs.

#### RIGHT OF APPEAL



43. 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 4<sup>TH</sup> OF AUGUST 2020.



K. BLEIJS  
ADJUDICATOR



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