



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

**Case Number: CSOS000747/GP/19**

In the matter between:

**THEDA OAKS BODY CORPORATE**

**APPLICANT**

and

**M.I. DENATH**

**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 Respondent pay to the Applicant:



The amount of R 13017.74 (Thirteen Thousand and Seventeen Rand and Seventy 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 106 at the Applicant scheme, being the unit owned by the Respondent in the Applicant scheme to the end of August 2020.

## INTRODUCTION

1. The Applicant is the Body Corporate of Theda Oaks, 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 Respondent is the registered owner of unit number 106 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. 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, whilst the Respondent sent a letter explaining why his levy account is in arrears.

## BACKGROUND

6. 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.



7. 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.
8. 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.
9. The adjudication was conducted on the written submissions, and evidence, submitted by the parties.

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

10. 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”*
11. 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’.*
12. 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”.*
13. 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.
14. 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**



15. The Applicant submitted that the Respondent is indebted to it in the amount of R 13017.74 (Thirteen Thousand and Seventeen Rand and Seventy Four Cents) in respect of levies and ancillary amounts charged (which ancillary charges include CSOS levies charged monthly) for unit 106 at the Applicant scheme, being the unit owned by the Respondent in the Applicant scheme to the end of August 2020.
16. The Applicant submitted a statement of account of the Respondent's indebtedness to the Applicant as proof thereof.

#### RELIEF PRAYED FOR BY THE APPLICANT

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

#### RESPONDENT'S SUBMISSIONS



18. The Respondent submitted that he is not in arrears with his levy account to the Applicant.
19. He stated that he pays his levies by or before the 7<sup>th</sup> of the month, *and sometimes a little late*.
20. Apart from the levies there is an account for repairs done to the carport due to an accident by Mr Rasool, the tenant, who is a close relative of the owner, that has been debited to his account in the amount of R 2271.00.
21. Mr Rasool undertook to attend to the repair of the aforesaid damages himself, but he was hospitalised "*for a time*" and would have undertaken the repairs when he returned from hospital.
22. A day before Mr Rasool's "people" were due to do the work, Selection Estates sent "their people" to do the work.
23. The Respondent says that the cost of the repairs to the carport was 4 or 5 times higher than what Mr Rasool could have had the work carried out for and Mr Rasool refuses to pay for this cost.
24. The cost remains on Mr Denath's levy account.

25. Interest has been added to his levy account on the above amount as well.
26. Then there was a problem with the geyser in the unit.
27. There was a blockage and water overflowed onto the ceiling and caused a lot of damage.
28. Mr Denath got his own plumber who carried out repairs to the geyser.
29. Selection Estates then told him he needed to carry out the repairs to the ceiling himself.
30. The Respondent states that he is a pensioner and since the Lockdown he has been through a financial crisis and he missed the levy payment for May but was going to make it up.
31. The Respondent also noted that he had requested a separate statement showing only his levy charges and not the ancillary costs and charges.

#### RELIEF REQUESTED BY RESPONDENT

32. Dismissal of the matter and removal of interest and other charges, including the amount in respect of repairs to the carport.

#### REPLY BY THE APPLICANT

33. The Applicant confirmed that it had given the Respondent multiple opportunities to resolve the matter of the arrear levies, which included the issue of the costs of the repairs to the carport – the managing agent had also spoken to the Respondent on numerous occasions and asked him to submit a payment plan in writing, however the Respondent had failed to do so.
34. The Applicant also stated that the credit control procedure was approved by members of the Applicant at the AGM.
35. As regards the Respondent's request for a separate statement, leaving off the ancillary amounts such as the plumbing cost and repairs to the carport, the Applicant stated that it only prepared one account for each unit owner per month.
36. With reference to the insurance claim, the insurance claim in respect of the geyser was submitted to the broker and settled in the amount of R 750. After the fact, the Respondent



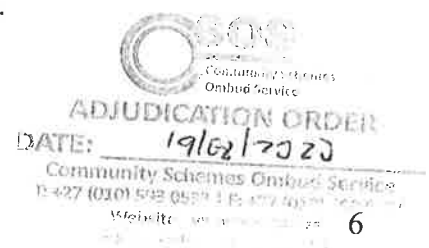
came back to the broker and advised the plumber (who had been appointed by the Trustees) not to proceed with the work as he had made contact with Kwikot, the geyser manufacturer, directly, since the geyser was still under guarantee.

37. The managing agent then enquired from the brokers whether the claim for the geyser could be cancelled and a new claim be submitted in respect of the resultant damages sustained as a result of the burst geyser; they agreed.
38. A quotation was received from Mr Denath for R 1980, but the quotation included repairs to the basin and bath silicone sealant, which was not as a result of the burst geyser, so the managing agent asked the Respondent to furnish the Applicant with an amended quotation that does not reflect any repair and maintenance work, *but the Respondent has failed to do so.*
39. Since it has been over a year since the damage occurred the insurance refuses to re-open the matter again.

#### EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

40. 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.
41. 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.
42. 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



43. I have perused all written submissions.

44. 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)**

45. 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 . . . “*

46. The body corporate cannot perform its functions and duties in the absence of funds from owners.

47. As regards the repairs to the carport:



Whilst the tenant may have agreed to attend to the repairs, the damage occurred on common property and it remained the Applicant's responsibility to attend to such repairs and maintenance.

In his letter of the 25<sup>th</sup> of September 2019 addressed to the CSOS, the Respondent admits that his tenant was in hospital "*for some time*", although he does not state what that time period was.

As stated above, it is the Body Corporate's responsibility to attend to repairs and maintenance of common property in terms of section 3(1)(a)(i) of the Sectional Titles Schemes Management Act 8 of 2011 ("the STSM Act").

Since the Respondent's tenant had admitted to causing the damage to the common property and had not attended to repairs within a reasonable time, the Applicant was entitled to attend to the repairs itself and debit the amount to the unit-owner's levy account subject to Management Rule 25(5) – see paragraph 50 below.



**“3. (1) 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);”**

**48. As regards the insurance claim for the geyser and the resultant damage arising therefrom:**

The insurance quote originally obtained from the managing agent to repair/replace the damaged geyser and the resultant damage from the burst geyser was approved by the Applicant's Insurer and R 750, less the excess, paid out/refunded to the Respondent.

Since the Respondent cancelled the original quotation and he called out Kwikot himself, and since he Respondent thereafter failed (*and to this day has failed*) to provide the Applicant's Managing Agent with an amended quotation for the resultant damage that excludes



maintenance work, which includes applying silicone sealant to the basin, the insurance company has repudiated the claim.

49. The Applicant's managing agent has provided a comprehensive and detailed diary of its contact and correspondence with the Respondent during this period, which includes phone calls.

50. 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**

51. 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;
- in the event of the electricity supply to a dwelling being disconnected or reconnected, a disconnection / reconnection fee of R 200.00.



**ADJUDICATION ORDER**  
DATE: 19/08/2020  
Community Schemes Ombud Service  
T: +27 (0)10 592 0543 F: +27 (0)10 596 0154  
Website: [www.sos.org.za](http://www.sos.org.za)  
Fraud Hotline: +2700 701 701

52. Except for the electricity disconnection charge, all the other 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.
53. **I am unable to do so.**
54. 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.**
55. **Members in a general meeting do not have the requisite capacity in terms of the law to override the provisions of the Management Rules.**
56. 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.

#### **POWERS AND JURISDICTION OF THE ADJUDICATOR**

57. 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.
58. 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.

  
Community Schemes  
Ombud Service  
**ADJUDICATION ORDER**  
DATE: 19/08/2020  
Community Schemes Ombud Service  
T: +27 (0)10 595 0523 | F: +27 (0)10 590 6156  
Website: www.csos.org.za  
Fraud Hotline: 0800 701 701

## ADJUDICATION ORDER

59. Accordingly, the following order is made:

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

59.1. Consequently, the Applicant is ordered and compelled to do a reconciliation of the Respondent's levy account for the period November 2018 to August 2020, **within 14 (fourteen) days of the date of this order**, which 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) The monthly maintenance levy (which has been charged from May 2019);
- iv) The monthly security levy (which has been charged from May 2019);
- v) The monthly refuse charge (which has been charged from May 2019);

And the following charge, which is ordered to be paid by the Respondent in terms hereof:

- vi) Body Corporate Repairs – Carport Damaged – December 2018, in the amount of R 2271.00.

59.2. Once the reconciliation is completed, reflecting payments made by the Respondent, 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 Respondent (if any).

59.3. The reconciliation must be sent to the Respondent and to the Adjudicator **within 5 days** of the completion of the reconciliation.

59.4. The Respondent shall pay to the Applicant the amount shown as being due and owing to the Applicant on the aforesaid reconciliation, in **6 (six) equal monthly instalments**.



- 59.5. The first payment shall commence within 90 days from date of delivery of this order.
- 59.6. Thereafter, payment of the further 5 outstanding instalments must be made on the 1<sup>st</sup> day of each succeeding month.
- 59.7. No interest shall accrue to the outstanding amount within the period allowed for the payment.
- 59.8. In the event of the Respondent defaulting on any 1 payment as ordered above, the full amount due to the Applicant shall become immediately due and payable by the Respondent.
- 59.9. *The above order does not affect the usual regular monthly levies and ancillary payments required to be made by the Respondent.***
- 59.10. There is no order as to costs.

#### RIGHT OF APPEAL

60. 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

