

SOUTH AFRICA / JUDGMENT

Body Corporate Garden v Ekoere (19470/13) [2014] ZAGPPHC 586 (15 August 2014) [2014] ZAGPPHC 586

COURT

North Gauteng High Court, Pretoria

BEFORE

BAM

CASE / FILE NUMBER

19470/13

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case Number:

19470/13

Date: 15 August 2014

In the matter

between

THE BODY CORPORATE

GARDEN.....Applicant

and

EMANUEL TOM

EKOERE.....Resportdent

JUDGMENT

BAM J

1. The applicant, a home owners association, applied for an order that the respondent be sequestrated. The application is opposed. The basis for the application is that the respondent, one of eleven owners of units in the applicant's association, owes certain amounts which he refuses to pay. The legal action instituted against respondent ended up with two nulla bona returns.

2. The applicant's claim is based on two default judgments, respectively in the amounts of R4 848.42 for outstanding levies, granted under case nr. 10612/12 on 25 June 2012, and R34 017.54, also for outstanding levies, granted under case nr. 75913/12 on 17 January 2013.
3. It however transpired that in respect of the first judgement the outstanding levy was R3981.96 and that an amount of R3500 was actually paid by the respondent on 2 March 2012, before the judgment was granted. The amount paid by the respondent was not taken into account when the default judgment was sought and granted. It appears that the difference in the amount of R3500 paid by the respondent and the default judgment amount, namely R1348.42, represents legal fees.

It is the respondent's case that in the circumstances default judgment should not have been sought on the basis of outstanding levies and that it was wrongly granted.

The applicant, in its replying affidavit said that the payment of the R3550 was not made to the applicant's attorneys and that the respondent failed to inform the attorneys of the payment. The warrant of execution was served by the Sheriff on 14 August 2012. It is disputed by the respondent that the said warrant as served on him as the return of service indicates.

4. The second default judgment under case number 75193/2012 was rescinded on 6 November 2023.
5. The applicant's submission in its replying affidavit is that the respondent had been recalcitrant to pay due levies. In this regard the applicant referred to its un-contradicted allegation in the founding affidavit that the respondent from October 2011 to 7 March 2013 made only two payments in respect of levies and that no payments in that regard had been made in 2013.
6. From the papers it does appear that the applicant is experiencing difficulties in collecting due levies from the respondent. However, as far as this application for the respondent's sequestration is concerned, although the respondent has committed deeds of insolvency, the factual situation remains that the only proved debt of the respondent is the remaining amount of R1148 alluded to above.
7. The applicant's frustration with the respondent's conduct is evident and appreciated. It indeed appears that the respondent may very well be recalcitrant to pay the levies due. There also seems no merit in the criticism levelled at the Sheriffs return. However, in my view the circumstances do not justify the sequestration of the respondent. In this regard it is trite that the court has discretionary powers.

8. Accordingly I make the following order:

The application is dismissed with costs.

A J BAM

JUDGE OF THE HIGH COURT

13 August 2014

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