

SOUTH AFRICA / JUDGMENT

Selorne Park Body Corporate SS184/2001 v Mc Gregor (D12787/2018) [2023] ZAKZDHC 75 (16 October 2023) [2023] ZAKZDHC 75

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Harrison AJ

CASE / FILE NUMBER

D12787/2018

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

LOCAL DIVISION, DURBAN

CASE

NO: D12787/2018

In

the matter between:

SELORNE
PARK BODY CORPORATE SS184/2001
PLAINTIFF
and
LAWERNCE
JAMES JOHN MC GREGOR
DEFENDANT
ORDER
Judgment

is granted against the
defendant for:

- (a) Payment of the sum of R2 498 477.84 (two million, four hundred and ninety-eight thousand, four hundred and seventy-seven Rand, eighty-four cents);
- (b) Payment of the sum of R2 882 074.13 (two million, eight hundred and eighty-two thousand and seventy-four Rand, thirteen cents);
- (c) Interest at the rate of two percent (2%) per month compounded daily in arrears from 22 April 2020 to date of final payment;
- (d) Costs of suit on the scale as between attorney and client.

JUDGMENT

Harrison AJ

[1] I commence this judgment with three quotations by the defendant:

- (a) 'What the Plaintiff does not seem to appreciate is that I am willing and disposed to paying whatever it is that I in fact owe to the Plaintiff for my levies on each of the eight developed units. . . .';[1]
- (b) "... and although I always maintained that an amount was due for levies...";[2]
- (c) "... definitely is an amount due for levies ...".[3]

These three statements highlight at the back of the defendant's mind that there is a debt which is owing and payable.

[2] The plaintiff body corporate sues the defendant and owner of units in the body corporate for payments of the amounts of:

- (a) R2 498 477.84;[4] and
- (b) R2 882 074.13.

[3] These amounts arise out of levies, expenses and utilities owing to the plaintiff, together with interest at two percent per month, and attorney-client costs.

[4] Mr Hoar appeared for the plaintiff. The defendant appeared in person.

[5] When this action commenced in 2018, the plaintiff sued the defendant for the sums of:

- (a) R572 114.62 (in respect of the developed units); and
- (b) R679 869.57 (in respect of the 13 real right units).

[6] Those amounts were amended to include further amounts due by the defendant with the plaintiff having chosen to draw a line in the sand at 22 April 2020. The plaintiff has not amended its pleadings to include all the current amounts outstanding, Mr Hoar having indicated that the plaintiff just wished to bring the matter before court and did not wish to invite applications for adjournments

occasioned by any subsequent amendment.

[7] The plaintiff claims the amounts due in terms of its statutory obligations in terms of s 3 of the Sectional Title Schemes Management Act 8 of 2011 ('the STSMA'). Section 3 specifically provides the following:

'3 Functions of bodies corporate

- (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);
 - (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;
 - (c) to require the owners, whenever necessary, to make contributions to such funds: Provided that the body corporate must require the owners of sections entitled to the right to the exclusive use of a part or parts of the common property, whether or not such right is registered or conferred by rules, to make such additional contribution to the funds as is estimated necessary to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts, including the provision of electricity and water, unless in terms of the rules the owners concerned are responsible for such costs;

- (d) to require from a developer who is entitled to extend the scheme in terms of a right reserved in section 25(1) of the Sectional Titles Act, to make such reasonable additional contribution to the funds as may be necessary to defray the cost of rates and taxes, insurance and maintenance of the part or parts of the common property affected by the reservation, including a contribution for the provision of electricity and water and other expenses and costs in respect of and attributable to the relevant part or part;
- (e) to determine the amounts to be raised for the purposes of paragraphs (a), (b) and (c);
- (f) to raise the amounts so determined by levying contributions on the owners in proportion to the quotas of their respective sections;
- (g) to open and operate an account with any registered bank or any other financial institution;
- (h) to insure the building or buildings and keep it or them insured to the replacement value thereof against fire and such other risks as may be prescribed;
- (i) to insure against such other risks as the owners may by special resolution determine;
- (j) subject to section 17 and to the rights of the holder of any sectional mortgage bond, forthwith to apply any insurance money received by it in respect of damage to the building, in rebuilding and reinstating the building or buildings in so far as this may be effected;
- (k) to pay the premiums on any insurance policy effected by it;
- (l) to maintain all the common property and to keep it in a state of good and serviceable repair;
- (m) to comply with any notice or order by any competent authority requiring any repairs to or work in respect of the relevant land or building;
- (n) to comply with any reasonable request for the names and addresses of the persons who are the trustees of the body corporate in terms of the rules or who are members of the body corporate;
- (o) to notify the chief ombud, the local municipality concerned and the registrar of its domicilium citandi et executandi, which is its address for service of any process;
- (p) to ensure compliance with any law relating to the common property or to any improvement of land comprised in the common property;
- (q) to maintain any plant, machinery, fixtures and fittings used in connection with the common property and sections and to keep them in a state of good and serviceable repair;
- (r) subject to the rights of the local municipality concerned, to maintain and repair including renewal where reasonably necessary, pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one section or of the common property or in favour of one section over the common property;

- (s) on the written request of any owner or registered mortgagee of a section, to produce to such owner or mortgagee, or any person authorised in writing by such owner or mortgagee, the insurance policy effected by the body corporate and the receipt for the last premium in respect thereof; and
 - (t) in general, to control, manage and administer the common property for the benefit of all owners.
- (2) Liability for contributions levied under any provision of subsection (1), save for special contributions contemplated by subsection (4), accrues from the passing of a resolution to that effect by the trustees of the body corporate, and may be recovered by the body corporate by an application to an ombud from the persons who were owners of units at the time when such resolution was passed: Provided that upon the change of ownership of a unit, the successor in title becomes liable for the pro rata payment of such contributions from the date of change of such ownership.
- (3) Any special contribution becomes due on the passing of a resolution in this regard by the trustees of the body corporate levying such contribution and may be recovered by the body corporate by an application to an ombud, from the persons who were owners of units at the time when such resolution was passed: Provided that upon the change of ownership of a unit, the successor in title becomes liable for the pro rata payment of such contributions from the date of change of such ownership.
- (4) "Special contribution", for the purposes of this section, means any contribution levied under subsection (1) other than contributions which arise from the approval of the estimate of income and expenditure at an annual general meeting of a body corporate, determined to be a contribution to be levied upon the owners during the current financial year.
- (5) The body corporate must, annually or whenever there is a change in levy, certify in writing-
- (a) the amount determined as the contribution of each owner;
 - (b) the manner in which such contribution is payable; and
 - (c) the extent to which such contribution has been paid by each owner.
- (6) The body corporate is, for the purposes of effecting any insurance under subsection (1) (h), considered to have an insurable interest for the replacement value of the building and must, for the purposes of effecting any other insurance under that subsection, be considered to have an insurable interest in the subject matter of such insurance.[5]
- [8] At the commencement of the trial, Mr Hoar identified five issues which were in dispute and I set these out hereunder as they incorporate and conveniently summarise the defences raised by the defendant in his plea.[6]

- [9] The identification of these issues is premised on the common cause facts that the defendant purchased and is the owner of real right 45 in the scheme, which real right has eight developed and 13 undeveloped sites.[7]
- [10] The issues in this trial, and as raised on the pleadings, and as correctly identified by Mr Hoar, are:
- (a) whether the defendant is legally obliged to pay for each undeveloped site, or whether there should be a single charge in respect of real right 45 being the real right to develop;
 - (b) whether the defendant is only obliged to comply with the rules of the scheme and the requirements to pay levies where same complies with 3(1)(f) of the STSMA, and that the application of a participation quota ('PQ') formula is preemptory;[8]
 - (c) whether the defendant is obliged to pay interest and, if so, at what rate;
 - (d) whether the defendant is exempt from paying levies where the management rule is in contravention of s 35(3) of the Sectional Titles Act 95 of 1986 ('STA'); and,
 - (e) finally, the computation of the exact amount due.
- [11] The amount sought by the plaintiff spans a period from January 2018 to April 2020. Considering the length of time, the number of units and the number of invoices involved, the plaintiff indicated that such documentation exceeded 1 600 pages but had prepared what it termed a 'core bundle', which became exhibit 'A'.
- [12] The Plaintiff when introducing into evidence the core bundle, exhibit 'A', had the corresponding supporting documentation available should the defendant place any issue in dispute. A salient approach. The defendant ultimately did not challenge any of the documents or the correctness of the amounts or the actual computations. During the course of the trial, I specifically raised with the defendant his right and obligation to challenge any amount he believed to be incorrect by specifically putting it to the witnesses. This was put to the defendant on two occasions.
- [13] The plaintiff's first witness was Mr Ridl, a trustee of the plaintiff from 2015. His evidence was clear and unambiguous.
- [14] The plaintiff was one of the first golfing estates which initially was a share block, but was subsequently converted to a sectional title scheme with the sectional title scheme still holding certain shares in the share block company, for example, the shares relating to the golf course are owned by the plaintiff.
- [15] In terms of s 11(3)(e) of the STA, and in terms of a certificate by Roger Stanley Green, the conveyancer, the prescribed management rules[9] ('the management rules') for the plaintiff were amended by the addition of certain rules set out in an annexure thereto, and the amendment as contained in the certificate, the relevant portions of which are set out below:

'2. The prescribed Management Rules have been amended by way of a determination made by the Developer in terms of Section 32 (4) of the Act whereby the liability for maintenance by owners, the liability to make contributions under Section 37 (1)(a) of the Act, the liability under Section 47 (1) of the Act and the value of voting rights of the owners shall be reckoned in accordance with the existing rights and obligations set forth in the Use Agreement concluded between Selborne Park Share Block Co. Limited (the Share Block Company Company) and the holder of the share blocks in that company. Therefore:-

2.1 The liability of owners and of holders of Portions of a Right of Extension issued in terms of Section 25 of the Act (the holders) for expenses shall be reckoned as follows:-

- (a) If sections are not separately rated, rates levied by the Local Authority in respect of sections shall be apportioned between owners in accordance with the rateable value of the sections.
- (b) Rates levies in respect of the land on which the sections are situate including the common property and the land in respect of which Certificates of Real Rights are issued in terms of Section 25 of the Act shall be equitably apportioned by the Trustees of the Body Corporate (the Trustees) between the owners and the holders.
- (c) Insurance premiums shall be apportioned to owners in relation to the insured value of their sections.
- (d) Expenses incurred in connection with the supply of potable water and electricity will be apportioned between owners in such manner as the Trustees may from time to time decide, provided that the Trustees wherever practicable shall have due regard to the quantities of water and electricity consumed on the buildings comprising each section.
- (e) Expenses incurred in respect of the provision of television facilities shall be equitably apportioned by the Trustees between the owners.
- (f) Expenses incurred in connection with household rubbish removal shall be equitably apportioned by the Trustees between the owners.
- (g) Expenses incurred by the Body Corporate exclusively in connection with the residential units, such as exterior maintenance, shall be apportioned between the owners of the residential units in such equitable manner as the Trustees may from time to time determine.
- (h) All other expenses incurred by the Body Corporate, including all operating expenses relating to the Beach Club shall be divided equitably between the owners and the holders in such manner as the Trustees from time to time determine.
- (i) Levies shall not be imposed on the holders in respect of those portions of the land which formerly pertained to the deferred share blocks in the share block company until such time as the holders thereof commence construction of residential units upon such land. Expenses in relation to that land will then be apportioned in accordance with the provisions of this determination.

- (j) Until the Body Corporate of Selborne Park comes into existence, the function of the Trustees in equitably apportioning expenses shall be attended to by the directors of the Share Block Company.

2.2 The value of voting rights of the owners and of the holders of Portions of a Right of Extension issued in terms of Section 25 of the Act (the holders) is set out in the Schedule annexed hereto marked "8". The holders in terms of those portions of the land which formally [sic] pertained to the deferred share blocks in the Share Block Company shall not have any voting rights until such time as those holders have constructed residential units and extended the sectional title register to incorporate the units into the sectional title scheme. As each unit is incorporated into the Sectional Title Scheme by virtue of the registration of the extension of the Sectional Title Register being registered in the Deeds Office, each owner of a unit will be allocated one vote.

3. The prescribed Conduct Rules have been substituted by the Conduct Rules annexed hereto marked "C".

[16] These amendments specifically to the management rules deal with the rateable value of the sections, how rates are levied, how expenses are to be apportioned and specifically address the issue of the right to develop under s 25 of the STA. The certificate specifies allocation of rates, levies and expenses and, specifically, that levies would not be imposed on holders of real rights (referred to as 'deferred share blocks') until such time as the holders 'commence construction of residential units'.

[17] The levies and expenses are divided by the trustees in a detailed fashion. Mr Ridl and his co-trustees drafted the budget. The expense items are interrogated line by line, and divided into direct levies, being directly apportioned to developed units according to their PQ and indirect levies being divided between all units.

[18] The allocation is detailed, extensive and clearly developed over a lengthy history of the existence of the body corporate. This budgetary process and allocation was well-known to the defendant as he became a trustee on the body corporate and, being a trustee, was involved in the budgetary process which allocated between direct and indirect levies.

[19] Mr Ridl confirmed his dealings with the defendant when he became a trustee. He also introduced the 2012 resolution which dealt with interest at two percent per month.

[20] The plaintiff's second witness, Mrs Robinson, the administrator and liaison between the managing agents, Trafalgar, and the plaintiff, then testified. She held this capacity for nine years and is the person responsible for the administration of the estate. All the books, documents, and records which were before this court are under

her possession and control, and they have been extracted from the documents under her possession.

- [21] Mrs Robinson, being the administrator, testified as to trustees' resolutions, the preparation and distribution of notices and documents for calling annual general meetings ('AGM'), the documents dispensed to the various homeowners (known as 'AGM packs'), the minutes of the various AGMs which she took and the distribution of resolutions of trustees arising out of budgetary approvals.
- [22] As I have set out above, none of the documents were challenged nor was the evidence of Mrs Robinson regarding the procedure and process adopted in dealing with the levies and expenses.
- [23] Each line item on a homeowners' monthly invoice was explained, with reference to the background and supporting documentation, going all the way back to how the line item was budgeted for, placed before the body corporate AGM, approved, and then circularised by the trustees.
- [24] Mrs Robinson testified and introduced all the books, documents, records and resolutions necessary to support a claim for the amounts contended for, for the years 2018 to 2020 and testified as to the various resolutions of the trustees including the resolutions relating to interest at two percent per annum, save and except the resolution from 2012, dealing with interest, which was before her time.[10]
- [25] The cross-examination of the plaintiff's witnesses, as well as the subsequent statement and testimony by the defendant, highlighted complaints which are different to the defences as pleaded, and demonstrate that the defendant feels aggrieved at the high levies imposed by Selborne. According to the defendant, there was a failure to explain these levies to him thereby purportedly allowing him to justify his non-payment of levies. The cross-examination and the issues put to the witnesses, related to complaints that other real rights holders were not being charged levies or expenses such as those charged to the defendant or, the levies in respect of the units which were hotel rooms were only a quarter of those charged to individual unit holders.
- [26] At the heart of the defendant's complaint is that when he requested information and it was not forthcoming, he was aggrieved by what he perceived to be an inequality or as he put it, it was 'not fair and equitable'. [11]
- [27] As a consequence of this and other interactions with the body corporate, the defendant has conceded that he withheld levies. [12]
- [28] That there is animosity between the plaintiff and defendant would be an understatement as it is clear that the parties are 'at war'. As was correctly pointed out by Mr Hoar, the ancillary issues regarding other units, spoliations, withholding access to the golf estate, and all the other legal battles, are not relevant to the pleaded issues which require determination in this trial.

- [29] It is clear that the parties have, in the past, sought to engage and seek methods to resolve payment of amounts that were outstanding, that it is acknowledged that there are levies outstanding (although the amount and calculation may be in dispute), and that those engagements also involved outside third parties such as the hotel on the estate. The plaintiff and defendant both agree that the body corporate could not operate a letting operation and this had to be dealt with by third parties, that engagement and the complaints relating thereto do not affect the liability to pay rates.
- [30] It is clear that the defendant has conflated the identities of the hotel, the owners of other real rights, the golf course management and the trustees of the body corporate, and, as a consequence, because of a commonality of parties, the defendant has quite clearly blurred the lines of his complaints. The identity of parties and the defendant's complaints as regards the hotel and the letting agents, have clouded the defendant's judgment as regards settling with the body corporate.
- [31] This conflation of issues is *res inter alios acta* yet the defendant has used it as a justification to withhold payments on the basis that it is unfair and inequitable. It is this very conflation of issues which appears to have prevented the defendant from settling this matter.
- [32] I turn now to deal with the issues as correctly identified by Mr Hoar.

Levies on one real right or on 13 sections

- [33] Real right 45 incorporates units 155 to 175. When the developer or holder of that right commenced construction, the liability of the plaintiff commenced. It is the turning of the soil that triggers the event which incurs the liability.
- [34] That there are eight developed units on real right 45, demonstrates that the trigger event has occurred and, accordingly, the allocation of expenses must then occur in accordance with paragraph 2.1 of the certificate as set out above.
- [35] That certificate was proved in terms of sections 19 & 20 of the Civil Proceedings Evidence Act 25 of 1965. That certificate and the amendments to the rules as contained therein, are amended as provided for in s 35(2) of the STA and it is clear that the trustees have applied their minds to the allocation of expenses, pursuant to the certificate in order to differentiate between expenses which should be levied on a PQ basis to those which should be charge on a per unit basis.
- [36] The reasonableness and the allocation was alleged by the defendant as being unfair or inequitable, yet in the trial the actual line items, the amounts or the allocation to direct or indirect costs, was never challenged. In any event the allegations of inequity amounts to a collateral challenge.[13]
- [37] There is no counterclaim or application to set aside any of the discretion exercised by the trustees. Thus, while I am enjoined to do so by the defendant, it would be improper as it is not a matter on which I am called upon to decide.[14]

[38] The defendant is accordingly liable for both the eight developed units as well as the 13 undeveloped sites in respect of real right 45.

[39] As was also correctly submitted by Mr Hoar, the defendant has conceded that he was aware of the charging of levies on the undeveloped units before he bought into Selborne. Having bought the units, and being aware that the levies were being charged, the defendant's complaints ring hollow.

Defendant only liable for contributions which comply with 3(1)(f) of the STSMA

[40] This defence, as raised in the pleadings, is that the defendant is only obliged to pay contributions 'in proportion to the quotas of their respective sections'.

[41] This argument then suggests that the defendant is not liable for any of the undeveloped units as they have no PQ.

[42] This argument ignores s 3(1)(c) of the STSMA which requires owners 'whenever necessary, to make contributions to such funds'. Those funds being the administrative fund in s 3(1)(a) and the reserve fund in s 3(1)(b) of the STSMA.

[43] Section 10 of the STSMA and, more specifically, s 10(5), contemplates that the rules may be amended. This is the very self-same consideration which s 35 of the STA specifically provided for, namely an amendment to the rules.

[44] The requirement for those rules as set out in s 10(3) of the STSMA, is that they 'must be reasonable and apply equally to all owners of units'.

[45] The wording of this section clearly contemplates a discretion being vested upon bodies corporate to manage themselves in a fashion so long as it is reasonable.

[46] Having already found that the manner in which the body corporate has approached the divvying up of the expenses and its detailed and considered approach, there is nothing unreasonable about it and, accordingly, there is no basis to contend that the amendment to the rules is unreasonable.

[47] Accordingly, I find that there is no absolute requirement as contended for by the defendant that only a PQ can be used to allocate costs and in its very implementation, the manner in which the plaintiff has conducted itself, in amending its rules, as it is allowed to do, in its implementation and in the practical application, is reasonable in the circumstances.

Interest

[48] The STSMA specifically provides that interest may be charged. This is contained in management rule 21(3)(c).

[49] The only caveat is that such interest may not exceed the amount in terms of the National Credit Act 34 of 2005 ('the NCA').

[50] The two percent interest per month, whilst equating to 24 percent per annum, is below the limit of the NCA and the resolutions for 2012 (exhibit A28), 2019 (exhibit A216) and 2020 (Exhibit A236), were never put in dispute.

[51] Whilst the 2012 resolution is for all future amounts outstanding, I take the other two documents to merely be a belt and braces approach. There is no reason not to apply two percent per month.

The amendment to the management rule holding unit holders liable, contravenes section 35(3) of the STA

[52] The defence in this regard is that the levy computation formula is corrupted and that the plaintiff is not entitled to charge levies on undeveloped units as it contravenes s 35(3) of the STA.

[53] As has already previously been found, the amendment of the rules under the STA was permissible and, accordingly, once the rules were amended, it is the operation of the certificate which governs the collection. This is perfectly permissible and, accordingly, this argument, too, amounts to a collateral challenge and fails for the same reasons set out in this judgment above.

Amount Due

[54] The final issue for determination is the calculation of the amount due. At exhibit A355, the computation of the amount due and claimed in this case is set out. That schedule, its calculations and the computation were never challenged.

[55] In addition thereto, the plaintiff and its witnesses were meticulous in proving the methodology of interrogating the budget line by line, allocating expenses between direct and indirect expenses and, thereafter, appropriating those levies to the individual statements. In addition, the evidence regarding the reserve funds and the special levies were specifically canvassed as well as the budgeted amounts.

[56] Mrs Robinson was clear and explicit on the utility charges and the allocation of the basic amounts between unit holders and, again, those amounts were never challenged. Her evidence of the trustees resolutions, the AGM board packs, the minutes of the meetings and the notifications thereafter was clear and unequivocal.

[57] I pause to mention that one of the specific items that was canvassed was the special levy at exhibit A325, where a special levy was raised against all owners as there was a shortfall in the funds due to 'material non-payment of special and ordinary levies by defaulters'.

[58] By 2020, the defendant, by his own admission, was a defaulter, owed money and was withholding levies. The establishment of administration and reserve funds, both in terms of the STA and the STSMA, are specifically contemplated at bodies corporate operating such that their income is sufficient to discharge their liabilities. When that income is divided by the unit holders, and defaulters accumulate, such as in the present circumstance, it is

inevitable that a special levy will have to be raised to satisfy the loss/differential created by the defaulters.

[59] Whilst on this side, the defendant, having admitted that he withheld levies and having admitted that he owes levies, can hardly be surprised that he was not allowed to vote at the AGMs as the STSMA specifically provides that a unit holder who is in arrears may not vote and, accordingly, the defendant's complaint that he was not allowed to vote his shares again rings hollow.[15] He was legitimately precluded from voting where he deliberately withheld levies.

[60] The defendant in court displayed a sense of entitlement which is best described as wanting to have his cake and eat it, in circumstances where he wanted to benefit from the income of the properties, have the body corporate pay the utilities and then withheld all payments including for the utilities. He then complains the Plaintiff prevented him from operating his business. This again is an issue which I do not have to decide upon, I have referenced it in order to negate the misguided thinking of the defendant that simply because he did not like the size or extent of the levies, he was excused from paying them. If he wishes to correct that situation, his remedies lie elsewhere but do not allow him to withhold payments as he has done in the present circumstances.

[61] In all the circumstances, I find that the plaintiff has made out its case for relief as set out in the summons and, accordingly, I make the following order.

Order

[62] Judgment is granted against the defendant for:

- (a) Payment of the sum of R2 498 477.84 (two million, four hundred and ninety- eight thousand, four hundred and seventy-seven Rand, eighty-four cents);
- (b) Payment of the sum of R2 882 074.13 (two million, eight hundred and eighty- two thousand and seventy-four Rand, thirteen cents);

HARRISON AJ

Appearances

For the Plaintiff: Mr S Hoar Instructed by: Cox Yeats Attorneys 21 Richefond Circle Ridgeside Office Park Umhlanga Ridge Ref: L Paloa/N Cura/04S014002 Tel: 031 536 8500 Email: lpaola@coxyeats.co.za And to: stewarthaor@vodamail.co.za For the Defendant: IP Instructed by: Talbot Attorneys Address: 02 Shackelford Road Pelham, Pietermaritzburg c/o ER Browne Address: 310 Cowey Road 3rd Floor 91-123 Problem Mkhize Road Durban, 4001 Email: secretary@talbotlaw.co.za Date of reserved: 03 October 2023 Date of delivery: 16 October 2023

[1] Opposing Affidavit to Summary Judgment, para 40. Affidavit deposed to on 2 April 2019.

[2] Exhibit C4, para 2.

[3] Defendant's closing address.

[4] This is a reduced amount in respect of developed units, it having become common cause that units G29 and G30 had been sold, levies

paid (when the levy clearance certificate was required), and those properties transferred.

[5] I have specifically incorporated the entire section 3 in this judgment for the benefit of the defendant as a litigant in person.

[6] I must mention that the plea was drafted at a time when the defendant was represented by both an attorney and counsel.

[7] The existence of the developed sites is admitted in the defendant's plea and during the course of the trial, the identification,

numbering and square meterages of the developed sites was also clarified and became common cause. It also became common cause

during the trial that real right 45 has 21 sites, eight developed and 13 undeveloped. These are units 155 to 175 of which 155 to 162 are the developed sites, and 163 to 175 are the undeveloped sites.

[8] This defence is effectively in the alternative to the argument that there should only be a single charge, if a PQ is only to be applied, then, the 13 undeveloped units will not attract a levy as being undeveloped sites they do not have a PQ.

[9] Annexure 1 to the Sectional Titles Schemes Management Regulations GN R1231, GG 40335, 7 October 2016.

[10] Nothing turns on this as the issue of the interest and the 2012 resolution was introduced by Ridl and has never been challenged.

[11] Annexure 'C4', para 2.

[12] Exhibit 'C', page 6, penultimate paragraph.

[13] Oudekraal Estates (Pty) Ltd v City of Cape Town and Others 2004 (6) SA 222 (SCA).

[14] Baront Investments (Pty) Ltd v West Dune Properties 296 (Pty) Ltd and Others 2014 (6) SA 286 (KZP).

[15] Management rule 20(2) (Annexure 1 to the Sectional Titles Schemes Management Regulations GN R1231, GG40335, 7October2016).

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