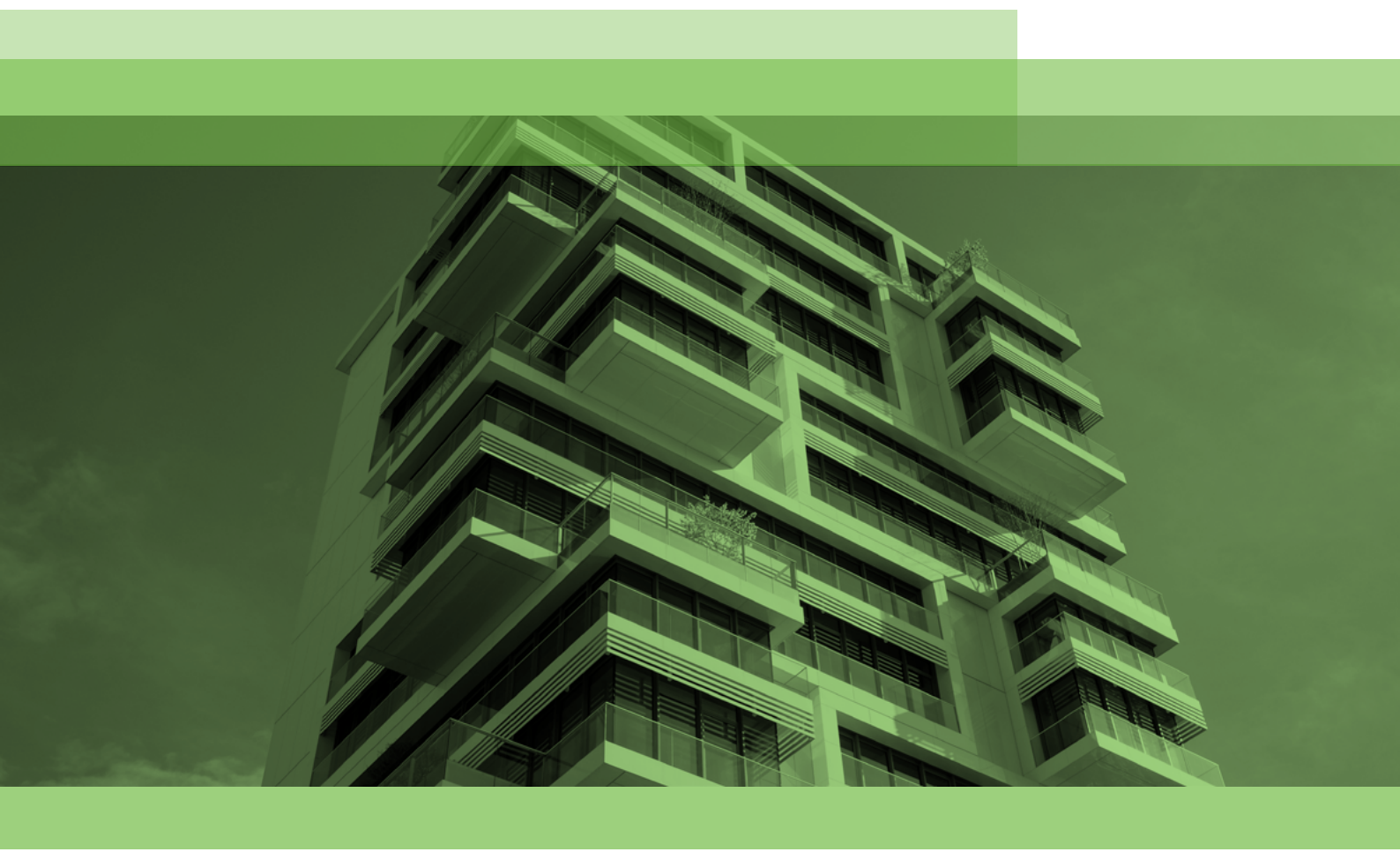


Badenhorst v Heron Waters Body Corporate

Community Scheme Ombud Service - Adjudication Order

Case Number: CSOS 451/WC/17
Adjudicator: Adv. GPC De Kock
Date: 18 January 2018
Applicant: Odile Badenhorst
Respondent: Heron Waters Body Corporate



[1] This is an application for dispute resolution in terms of Section 38 of the Community Schemes Ombud Service Act No. 9 of 2011 ("the CSOS Act"). The application was made in the prescribed form and lodged with the Western Cape Provincial Ombud Office.

[2] The Applicant is the owner of Unit 75 in the scheme known as Heron Waters, Hopley Road, Table View, Western Cape.

[3] The Respondent is the Heron Waters Body Corporate and represented herein by Mr Leigh Maingard, the managing agent.

[4] The adjudication hearing took place on Wednesday, 17 January 2018 at 09:00 at the CSOS offices in Cape Town.

[5] The Applicant appeared in person and the following people appeared for the Respondent:

- a. Mr Leigh Maingard (managing agent);
- b. Mr Felix Holm (trustee);
- c. Mr Mitch Clevely (trustee); and
- d. Mr Johan Ferreira (ex-trustee).

[6] The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the CSOS 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.

[7] In the Application for Dispute Resolution Form the Applicant sought the following relief:

"I wish to be granted the same rights as the other home owners in the complex and be treated in the same manner as they have. I also want the trustees to keep to the word and take responsibility for any financial implications I may face as a result of their mismanagement."

[8] It is not necessary to repeat the full background to this application, save to state that during the 2015/2016 AGM a

land surveyor's report was distributed to homeowners that brought two main issues to light:

- a. certain units had illegal extensions built onto common property; and
- b. certain units had created their own exclusive use areas (EUA's) without following the legal requirements.

[9] The land surveyor indicated that it is imperative to protect these rights, as it would be in the best interest of the homeowners affected. To do this, it was proposed to have the complex re-measured, thereby legalising the extensions and granting the affected homeowners the necessary rights.

[10] The advice from a legal opinion was that homeowners who had not been extended this right should be given the opportunity to do the same before the re-measurement of the complex took place. These owners were told to submit plans for any proposed EUA's as well as any plans for additions to sections.

[11] The Applicant states that she drafted sketch plans and was then advised telephonically that she may proceed in having her garden walls erected so as to enclose a small area at the back of our house. She proceeded with buying materials and scheduling labour, but was contacted shortly thereafter advising her that she may no longer proceed. However, the Applicant proceeded with her additions.

[12] The trustees present at the hearing indicated that they were not against the enclosure of the back section of the units similar to that of the Applicant. However, they would have to meet to decide on the exact size to be allowed, taking into account underground pipes and cables and the type of material to be used in order to obtain uniformity in the complex.

[13] The Applicant was satisfied with this approach and undertook to resubmit her sketch plans to the current trustees for their consideration.

[14] In my view the Applicant acted in haste and erected the outside enclosure without the requisite permission. However, I am not going to order that the construction be removed.

[15] The correct procedure as provided, inter alia, in sections 10(7) and 10(8) of the Sectional Titles Schemes Management Act (8 of 2011) will have to be followed.

[16] I accordingly make the following order:

- a. the Application is hereby dismissed;
- b. no order as to costs is made.

[17] In terms of section 57 of the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011) a person who is dissatisfied with an adjudicator's order is entitled to appeal to the High Court, but only on a question of law. The appeal must be lodged within 30 days after delivery of the order.