

Coral Island Body Corporate v Hoge - More Questions Than Answers

by Graham Paddock

In the *Coral Island Body Corporate v Hoge* case, the body corporate employed advocates and attorneys in a High Court action against an owner, when the dispute could have been determined by the Community Schemes Ombud Service for R150. The judgment records that about two weeks before the hearing in May 2019 Ms. Hoge backed off and agreed to all the trustees' demands. She had determined that the cost of compliance would be less than R10 000. In this context, she was unable to afford the cost of litigating the dispute in the High Court.

The judge, the Hon. Mr Justice Binns-Ward, gave an order that reflected the parties' settlement of what he described as a *"simple and uncomplicated"* dispute. He said: *"it was undoubtedly inappropriate for the trustees to have proceeded for the relief that they sought in the current matter in the High Court rather than through the Community Schemes Ombud Service."* He stated that such actions should be discouraged by way of costs orders, and accordingly he made no order as to costs. This means that the owners at Coral Island will have to pay the body corporate's High Court legal fees and disbursements.

The judgment records that the trustees were subject to a spending limitation. They had been directed not to incur any unbudgeted expense of more than R25 000 without first obtaining owner authority. This they did not do before launching the High Court action. They also appear to have breached the requirements of prescribed management rule 9 (c) which obliges trustees to *"apply the body corporate's funds in accordance with budgets approved by members in general meeting"*.

However, the text of a judgment cannot be expected to give the full story. There are many unanswered questions, such as:

1. Why did the trustees and their legal advisers decide to go to the High Court rather than the CSOS? Was it a tactic to force Ms Hoge to incur substantial costs and thus encourage her to settle? Did they have no confidence in the CSOS processes or its adjudicators?
2. Were the trustees properly authorised to expose the body corporate to the risk of legal costs? These might have included Ms Hoge's legal expenses, if she had been successful. In her pleadings she had claimed the trustees were not authorised, but because of her settlement concessions, the judge did not have to decide this issue.
3. Why would the trustees ignore a spending restriction? Why would a managing agent, attorney or advocate advise them to do so, despite knowing this would come to the court's attention?
4. 4.If the body corporate has to bear a loss, could the trustees be held liable? If so, could the body corporate now make application to the CSOS to recover its loss from them? Does the scheme have trustee insurance that would cover such a loss?

5. But there are some clear messages to trustees, the most important are:

- A. Don't ignore spending restrictions.
- B. Don't go to the High Court when you can go to CSOS.
- C. Check the annual budget before instructing attorneys or making any other spending decision.

You can [click here](#) to read an article by the Sunday Times that covered this case.