

# Slack and Another v Sunset Cliff Body Corporate

Community Scheme Ombud Service - Adjudication Order

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**Case Number:** CSOS 578/GP/17  
**Adjudicator:** K Mabaso  
**Date:** 20 March 2018  
**Applicant:** Clive Stanley Slack and Santa Fe Development  
**Respondent:** Sunset Cliff Body Corporate



## PARTIES

**[1]** The Applicant is the sole shareholder in Santa Fe Development (Pty) Ltd which is the owner of Units 5 and 6 in the Sunset Cliff Sectional Title Scheme situated at Northcliff, Johannesburg.

**[2]** The Applicant cited himself as a party although he acts in his representative capacity as a duly authorized representative of the Company, as evidenced by the Company's resolution which was presented at the hearing. Under the circumstances, the Company itself is entered as a Second Applicant in these proceedings.

**[3]** The Respondent is the Sunset Cliff Body Corporate. The Respondent was duly represented in these proceedings by:

- 3.1 Ronald Lennox, Trustee;
- 3.2 Bernard Parschau, Trustee;
- 3.3 Marge Stadler, Earthzone, the Managing Agent; and
- 3.4 Brenda Zeelie, Earthzone.

## PROCESS FOLLOWED

**[4]** On 13 June 2017 the Applicant lodged his Application Form for dispute resolution with the Community Schemes Ombud Service ("CSOS") in terms of Section 38 of the CSOS Act 9 of 2011 ("the Act") in the prescribed manner.

**[5]** The relief sought in the Application Form falls within the ambit of relief contemplated in Section 39 of the Act.

**[6]** On 19 July 2017 the Applicant's Application Form and supporting documents were forwarded to the Respondent, with a request to the Respondent to make its submissions to CSOS within 7 (seven) days. On 1 August 2017, the Respondent requested an extension through its attorneys, Polson Attorneys and filed its submissions on 16 August 2017.

**[7]** The matter was set down for Conciliation in terms of Section 47 of the Act on 19 September 2017. CSOS received feedback on the implementation of the Settlement Agreement which indicated that certain aspects could not be implemented.

**[8]** As a result, on 7 November 2017, the Ombud issued a notice of non-resolution and referred the matter to adjudication in terms of Section 48 of the Act. The said notice was duly issued and served on the Applicant and the Respondent. The fee prescribed in terms of Section 49 read with Regulation 3(2) was duly paid by the Applicant.

**[9]** The matter was then duly set down for adjudication for 17 January 2018 at 12h00 and all parties were duly served with a notice of set down. The matter proceeded and became part-heard.

**[10]** On 29 January 2018, the adjudication hearing was continued. The Applicants and the Respondent were duly represented as aforesaid.

## RELIEF SOUGHT

**[11]** The Applicant prays for the following relief:

*"We request that your office demand that the body corporate and the managing agent hand over all documents, records and information.*

*That all legal fees are removed from our levy account and for the penalties and other charges to be recalculated.*

*The body corporate is not debating any proposal we submit and flatly refuse any proposal we submit. This is many times on the very same day we make contact and that proves that it is not discussed at formal meetings.*

*They demand that we stop building alterations, alternatively to restore the sections to its "erstwhile" condition. Yet many other sections have done restorations and alterations without being subjected to the same rulings."*

## THE APPLICANT'S CASE

**[12]** In his Application Form for dispute resolution, the Applicant raised the following issues:

### 12.1 Alterations

12.1.1 In 2013, he sent a request to the Trustees to

effect a few cosmetic changes to his Unit, to cover the courtyard of section 5 and to convert the garages to an entrance lobby and reception area.

12.1.2 The trustees refused to approve the alterations but advised the Applicant to get approval from a majority of the Body Corporate.

12.1. The Applicant circulated an email, with building plans, to the Body Corporate. Of all the 11 owners, 8 gave their approval and the alterations were commenced with in December 2016. In this Adjudication Order regard, the Applicant submitted copies of his email sent to the owners, his building plans and the emails he received from the 8 members of the Body Corporate consenting to the alterations.

12.1.4 The Applicant further submitted photographs indicating that each house in the complex is unique and that most of the houses have been altered, a fact which was conceded by the Trustees at this hearing.

12.1.5 On 30 May 2017, he received a letter from the attorneys of the Body Corporate instructing him to cease all works.

## 12.2 Telkom Line

12.2.1 During the course of effecting the aforesaid alterations to both units, the Telkom line was damaged twice.

12.2.2 In relation to the first incident, the Trustees instructed him to repair the lines at the Body Corporate's costs.

12.2.3 The Trustees refused to pay his invoice after the work was completed.

## 12.3 Documents requested

12.3.1 Emails were sent on 16 May 2017 and 29 May 2017 requesting information from the Managing Agent and the Body Corporate.

12.3.2 The information requested was to enable him to ascertain what is common property for the purposes of the alterations as many changes have been made in the complex by other owners.

## 12.4 Accounts

12.4.1 The Managing Agent and Trustees have over the years refused to give an accurate account of the levy statements and payments made.

12.4.2 The Managing Agent briefs its attorneys each time he raises a query and this has led to unnecessary legal costs being billed to him.

## EVIDENCE

### [13] TELKOM LINE

13.1 The Body Corporate's version is that it requested a quote from the Applicant's company to re-route a Telkom cable which ran internally from Unit 6 to Units 5, 4 and 3. The Applicant's version is that he was instructed to proceed to effect the works and the Trustees thanked him for doing the work afterwards.

13.2 The Applicant proceeded to effect the works without first providing a quote and charged R14,500.00 therefor.

13.3 The Body Corporate was of the view that the amount charged was excessive and it requested its maintenance "guy" (handyman) to investigate how much the job was worth. The handyman said it could not be more than R1,000.00 as all that was required were a few meters of conduit.

13.4 The Body Corporate contends that the Applicant's invoice included unnecessary items such as use an r-beam.

13.5 The Telkom line was once again, 2 (two) months after it was repaired, amaged and the Applicant quoted R1,500.00 to repair it.

13.6 The line remains unrepaired and this affects the

Applicants' and two other units.

13.7 It is not disputed that the Applicant should be reimbursed for the work done. The issue is the inclusion of I-beams in the invoice.

13.8 The Applicant alleges that the r-beam was recommended by engineers. He denies that the assessment by an unregistered handyman for R1,000.00 is correct.

13.9 An email was sent to the Applicant by Dean Rawlinson after 2 November 2016 which states:

*"Clive ... Your electrician and/or builder must quote Sunset Cliff for the conduit for the new Telkom cable. The complex will fit (sic) the bl1/ and Telkom will run their new cable through the conduit. This will ensure that the conduit is out of sight and out of the way for your renovations."*

13.10 The parties discussed how best to settle this issue and agreed that the Body Corporate will pay the Applicant R4,750.00 to settle the R14,500.00 invoice and for the Applicant to repair the still damaged line.

## [14] ACCOUNTS

14.1 During the Conciliation hearing held in September 2017 at CSOS, it was agreed that the parties would meet to determine the exact amount owed by the Applicant to the Body Corporate.

14.2 This amount was agreed to be R40,000.00 in respect of both units to be settled within 6 (six) months with effect from November 2017.

14.3 The Applicant further alleged that he paid R18,000.00 into his levy account which remains unaccounted for. Having perused and discussed the matter the parties agreed that the R18,000.00 was paid for clearance costs.

14.4 The Applicant further queried the reversal of R5,000.00 paid by him on the same day as the R18,000.00. The Managing Agent alleged that the reversal was effected because the amount came from someone else. It was

agreed during the adjudication hearing that the Applicant would send proof of payment and that the Managing Agent will check the bank statements to see why this amount had to be reversed. I have had no feedback from the parties on this issue.

## [15] TRUSTEES MINUTES

15.1 On 29 May 2017, the Applicant was instructed to stop effecting renovations to his units.

15.2 On 29 May 2017, the Applicant requested a copy of the Conduct Rules to determine if he was in contravention of any rule. These could not be provided to him.

15.3 The Applicant also requested copies of minutes dealing with the renovations issues. The Respondent alleges that these were not provided because there were no such minutes. Only the minutes in existence were provided. The issues he wanted minutes in respect of were never discussed in a meeting.

## [16] CONDUCT RULES

The Respondent alleges that the Rules were not given to the Applicant. It further alleges that they cannot provide them because the entire Scheme's file cannot be found in Pretoria. Therefore, the Scheme uses the Management Rules provided for in the Sectional Titles Schemes Management Act 8 of 2011 ("STSMA").

## [17] RENOVATIONS / ALTERATIONS

17.1 1 The Applicant's version is that:

17.1.1 at the Conciliation hearing, the Applicant was asked to supply his council approved plans in respect of the renovations;

17.1.2 the Applicant started with renovations in December 2016. In May 2017, he received a letter instructing him to stop the renovations;

17.1.3 in 2013, he sent plans to the owners and he received approval;



17.1.4 after the Conciliation, he sent an objection to CSOS objecting to the ruling that he must refer the issue to a Special General Meeting to obtain approval for the renovations;

17.1.5 the Special General Meeting was called to discuss the alterations. He was asked to step outside while the merits/demerits of his request were discussed;

17.1.6 prior to the Special General Meeting, a letter was sent to all the owners by the Chairman saying he owes a lot of money to the Body Corporate, thereby influencing the Body Corporate negatively against him;

17.1.7 the Special General Meeting decided to go on a site visit. After the site visit, the renovations were voted on and rejected.

## 17.2 The Respondent alleges that:

17.2.1 no plans were given to the Trustees (as testified at the adjudication hearing);

17.2.2 however, in its submissions to CSOS, the Body Corporate acknowledges that the Applicant circulated his plans to the owners but pleads that such plans differ from what the Applicant is building;

17.2.3 the Applicant was effecting alterations to common property. With all the alterations in the complex, the facade has kept its character.

## FINDINGS

### [18] TELKOM LINE

This issue has been settled on the basis that the Respondent will pay R4,500.00 to the Applicant who will, in turn, have the line fixed by Telkom.

### [19] DOCUMENTS REQUESTED

19.1 The Applicant sought to obtain the minutes of the meetings of the Trustees' meetings dealing with his renovations as well as the Scheme's documents to enable him to determine:

19.1.1 what is common property;

19.1.2 what is designated as exclusive use areas;

19.1.3 the extent to which other owners have effected alterations to the outside of their homes (common property) and gardens (common property).

19.2 Needless to say, it is critical to have the sectional plans to determine what owners can and cannot do in the Scheme. The Trustees failed to produce these documents to the prejudice of the Applicant. The Trustees in attendance did admit that certain units in the complex have been altered, albeit with the facade being maintained, implying that the alterations are on the common property (ie. the outside of the units). Walls have been erected outside some of the units, just as the Applicant seeks to do about his property.

19.3 I find it unbelievable that there is no trace of these documents at all anywhere and the effect of my finding will be dealt with under alterations.

### [20] ACCOUNTS

20.1 The settlement agreement did not stipulate that the Applicant had to pay the R40,000.00 in equal installments. It provides that he has to pay in installments over a period of 6 months. Therefore, the Applicant has until 31 May 2018 to effect full payment.

20.2 To the extent that the Applicant owes levies from October 2017, such levies remain owing and can be collected by the Body Corporate in terms of Section 39 of the CSOS Act.

20.3 The only issues which remained outstanding from the conciliation process were:

20.3.1 the R18,000.00 issue. This was clarified to the satisfaction of the Applicant; and

20.3.2 the R5,000.00 issue. The Respondent must prove whose amount this belonged to and justify the reversal. If this cannot be proven, the Applicant's account should be credited with the sum of R5,000.00.

### [21] ALTERATIONS

21.1 In 2013, the Applicant submitted his plans to the

Body Corporate as he was advised by the Trustees. A majority of the owners approved the Applicant's proposed alterations. This is a process which the Body Corporate was happy to follow at the time. It is thus not open to the Body Corporate to now seek to challenge this process on the basis that a general meeting was not convened. Only 3 owners did not respond to the Applicant's request with the majority having given its approval. Insisting on a formal meeting 5 (five) years after the approval was given amounts to no more than giving form over substance.

21.2 In December 2016, the Applicant started effecting alterations and these were not objected to. The Applicant proceeded on the strength of the approval obtained in 2013.

21.3 There was no need for a further Special General Meeting to be convened in 2017 on this aspect. The horse had bolted as the Applicant had already incurred renovation costs on the strength of the approval obtained in 2013.

21.4 Even if such a Special General Meeting was necessary, the following tainted that process:

21.4.1 the email sent to all owners calling them to the Special General Meeting and at the same time advising all owners of the state of the Applicant's levy account and that he had taken the Body Corporate to CSOS. This had the effect of tainting how the Body Corporate viewed the Applicant and his renovation project; and

21.4.2 that the Applicant was denied the right to properly defend his renovations and give the necessary assurances to his neighbours. He was sent outside during the deliberations while the Trustees participated fully in the proceedings. This was grossly unfair.

21.5 I therefore find that, considering the above, the fact that the Applicant was denied access to the Scheme documents and the fact that all properties in the complex are unique, there is no reason why the Applicant should not proceed with the renovations which should be in line with what was presented to the owners in 2013 and approved by them.

21.6 There is a common tendency in the complex of owners and visitors parking their vehicles immediately

outside their units, as evidenced by the photographs tendered into evidence by the Applicant. No reason was provided why the Applicant should be unable to do the same. There are no sectional plans for this Scheme.

## **I THEREFORE ORDER AS FOLLOWS**

### **1 Telkom Lines**

1.1 The Respondent is to pay an amount of R4,500.00 to the Applicant within 7 (seven) days from date hereof either into the Applicant's bank account or levy account as will be chosen by the Applicant; and

1.2 The Applicant is to ensure that the Telkom line is fixed within 7 (seven) days from the date of receipt of payment;

### **2 Scheme Documents**

The Trustees are to conduct an investigation and recreate the Scheme's file. They are to contact the Developer, Surveyors, previous Trustees and Managing Agents in this regard;

### **3 Alterations**

The decision of the Body Corporate taken in 2013 allowing the Applicant to effect alterations to the common property is upheld;

### **4 Accounts**

The Managing Agent is to provide proof to the Applicant that the R5,000.00 reversed from his levy account was erroneously credited to his account within 7 (seven) days from date hereof failing which his levy account should be credited with the said amount;

### **5 Each party to pay its own costs.**

### **6 This order shall take effect immediately on the date on which it is served on the parties by CSOS electronically.**

KINDLY TAKE NOTE that any party who is dissatisfied with this order has a right to lodge an Appeal on a question of law with the High Court within 30 (thirty) days after the date of delivery of this order.