



Five Summarized Adjudication Orders of CSOS

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In this article, we summarize 5 adjudication orders of the CSOS and while doing so refer to certain legislation and lessons to learn in respect of such orders:

1. TRUSTEES INSTRUCTING ATTORNEYS/FIDUCIARY POSITION OF TRUSTEES

Sukhoo vs Strydom and Mandy, CSOS000385/GP/19:

Sukhoo, the applicant owner, sought an order against Strydom and Mandy in their personal capacities, to pay back legal fees of some R45 000.00, expended by them, while acting as trustees. The owner claimed that the legal fees were spent on personal matters that did not involve the body corporate and that the authority of the owners should have been obtained before payment of these legal fees was made.

The trustees explained that the legal costs were in respect of 2 civil matters and a defamation case, which had been handled by the body corporates attorneys, arising out of the assault of an employee of the body corporate. The trustees had obtained legal advice confirming that the legal fees could be incurred, as the employee was acting on behalf of the body corporate and on instructions of the trustees and as the trustees were cited in the civil matter by the perpetrator of the assault. The trustees also explained that, no directions or restrictions had been placed on the trustees in terms on S7(1) of the STSMA.

The adjudicator confirmed that the trustees were entitled to appoint an employee in terms of PMR 9(d). Further that the employee was acting in the course of his employment when the assault occurred and that the trustees were acting in their official capacities when dealing with the matter and not in their personal capacities. Therefore, in terms of S8(3) of the STSMA, the trustees had not breached their fiduciary relationship and were not personally liable for the legal costs incurred. The adjudicator dismissed the owner's application.

Lesson to learn:

- The trustees must resolve to appoint attorneys - PMR9(b);
- Attorneys and employees must be appointed in terms of a written contract - PMR9(d);
- The trustees must always act in accordance with – S8 STSMA (fiduciary position of trustees) and S7(1) STSMA (restrictions and directions placed on trustees);
- Legal fees expended, should be reported on at the AGM, in the trustees report on activities and decisions – PMR 17(6)(j)(i).

2. **CSOS RESTRICTING ELECTRICITY/SPOLIATION/PRE-PAID METERS**

Eagle Breeze BC vs Khaas and Motsei, CSOS0001810/GP/19:

The applicant BC sought payment of arrear contributions of some R40 000.00 from the owners and an order that the BC could restrict the electricity supply to the owner's section by installing a 15-amp circuit breaker *alternatively* an order that a prepaid electricity supply meter be installed by the owners.

The owners seemed to agree to the installation of the prepaid electricity meter. The BC stated it was willing to have a prepaid electricity meter installed at the owner's section, at the owner's expense.

The adjudicator stated she was not permitted to reduce the electricity supply to the owner's section by installing a small circuit breaker, as this would amount to spoliation. The adjudicator ordered the owners to make payment of the amount outstanding in instalments, ruled that no interest would accrue on the outstanding amount, that the usual future monthly levies and ancillary payments must still be paid by the owners and that, the BC must install a prepaid electricity supply at the owner's section, at the BC's cost, which cost could be debited to the owner's levy account, to be paid by the owners in the normal course.

Lesson to learn:

- The adjudicator's ruling that an order by her, to restrict/reduce the electrical supply, would amount to a spoliation, despite the fact that it would be carried out, based on her CSOS order (equivalent to an order of court);
- The ruling that a prepaid electricity meter be installed at the section, despite this not being relief which the CSOS can grant in terms of S38 of the CSOSA.
- No reference was made by the adjudicator to PMR 29(4) which refers to installation on the common property (as opposed to on the section, as in this case) of pre-paid meters and which requires a special resolution of owners.

3. **URGENT HEARING/SPOLIATION/BIOMETRIC ACCESS**

Ramushu vs Midlands HOA, CSOS000333/GP/20:

The applicant owner approached CSOS to have the HOA restore to her full biometric access. The owner since her biometric access was suspended, had to enter like a visitor, by signing in with the security guard. CSOS heard this part of the application urgently.

The HOA's defence was that in terms of section 41 of the CSOSA, the owner had to bring the application within 60 days of the decision being taken to remove the biometric access of the owner, and that this was not done timeously.

The adjudicator stated that unrestricted access to the scheme and to the owner's home is part and parcel of the owners right of ownership and that only a court could restrict such access. The adjudicator while taking note of the lapse of the 60-day period ruled that the owner's application could not be dismissed on these grounds, as spoliation cannot be justified in any circumstances. The adjudicator ordered reinstatement of full and unhindered biometric access, by the HOA to the owner.

Lesson to learn:

- Schemes cannot, without a court order, restrict access of owners, by removing them from the biometrics, and making them sign in as visitors.

4. PETS/CONDUCT RULES NOT ALLOWING CERTAIN PETS/SETTING ASIDE A CONDUCT RULE**Van Niekerk vs Ireland Gardens BC, CSOS 736/GP/17:**

The applicant owner approached CSOS wanting to keep a kitten on the bases that the existing conduct rule, not allowing cats (dogs were allowed) was unconstitutional and not binding. The owner wanted the rule amended on the bases that the rule discriminates against cats and the owner's constitutional rights as a person. The applicant wanted both cats and dogs to be treated equally and reasonably. Reference was made to the legislation that a conduct rule must be reasonable and apply equally to all owners of units.

The body corporate stated that over time many complaints were received about cats, such as eating food in other people's sections and climbing on a bed of a child who was allergic to cat hair, which led to the complex amending its conduct rules by a special resolution of owners and prohibiting cats.

The adjudicator ruled that the problem with the rule not allowing cats was that it constituted a ban on keeping certain animals which affected the use of and enjoyment of sections by owners who love such banded animals and therefore rendered the rule unreasonable and not of equal application. The adjudicator ruled the rule not allowing cats unreasonable and set aside the rule.

Lesson to learn:

- Regulation 6 of the management regulations was referred to, which states that rules must be considered to be and interpreted as laws made by and for the BC;
- S10 (3) STSMA '*rules must apply equally to all owners*' was interpreted to mean that cat loving owners, should be allowed cats, like dog loving owners, who are allowed dogs.

5. NEGATIVE AESTHETIC APPEARANCE OF THE COMPLEX (ALTHOUGH OLD PMR 68 (iv), HARMONIOUS APPEARANCE IS NO LONGER APPLICABLE)**Venter vs The Trustees of Cerf BC, CSOS00420/KZN/17:**

The applicant owner wished to install an air-conditioning unit on the patio of her unit. The Trustees had approved the installation of the air-conditioner, not on the patio but rather at the back of the scheme. The patio of the owner was part of the owner's section and only the narrow side of the air-conditioner was visible to third parties.

The adjudicator ruled that the positioning of the air-conditioning unit on the owner's patio would have no negative aesthetic appearance to the scheme and would not inconvenience any other occupant. The adjudicator ruled that the refusal by the trustees to allow the owner permission to put the air-conditioning unit on the floor of

the owner's patio was unreasonable and unfair and allowed the applicant to install the air-conditioning unit on the patio.

Lesson to learn:

- PMR 30 (e), an owner may not do anything to a section that has a material negative effect on the value of any other section.



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