PRESCRIPTION OF OUTSTANDING LEVIES: IS IT ALWAYS 3 YEARS?

L.A and Another v Body Corporate of London Place and Others (11463/2023) [2024] ZAWCHC 92 (27 March 2024)

Generally, by virtue of the Prescription Act, a debt prescribes three years from the date upon which it became due. Section 13(1)(e) of that Act adds a pragmatic twist: if the creditor is a juristic person and the debtor a member of its governing body, then the prescription period will extend for another 12 months after the debtor has ceased to be a governing body member. The legislature's rationale is realistic: the close relationship that exists between, for example, a company and one of its directors, may impede the company's decision to sue the director for an outstanding debt. Does the same apply where the creditor is a body corporate and the debtor is a member of the sectional title scheme? No - and the judgment below explains why.

The Judgment can be viewed here

FACTS

L and H, the registered owners of a unit in a sectional title scheme in Cape Town, divorced in September 2011. In terms of the consent paper incorporated in their decree of divorce, L purchased H's undivided half share in the unit. Transfer has however been delayed due to the body corporate's refusal to issue a levy clearance certificate, claiming payment of amounts allegedly owing to it.

The total amount outstanding is comprised of arrear levies, interest thereon and collection charges which accrued during the period 2011 to 2016 (the "historic arrear levies").

L and H argued that the claim of the body corporate had prescribed, which the latter denied, relying on section 13(1)(e) of the Prescription Act. This section provides in relevant part as follows:

> '13. Completion of prescription delayed in certain circumstances—
> (1) If…
> (e) the creditor is a juristic person and the debtor is a member of the governing body of such juristic person; or…
> (i) the relevant period of prescription would, but for the provisions of this subsection, be completed before or on, or within one year after, the day on which the relevant impediment referred to in paragraph … (e) … has ceased to exist,
>
> the period of prescription shall not be completed before a year has elapsed after the day referred to in paragraph (i).'

L and H then instituted these proceedings. Neither of them has ever been a trustee of the Scheme's body corporate.

HELD

- The issue for determination is whether a *member of a body corporate in a sectional title scheme* is also a *member of its governing body* for purposes of section 13(1)(e) of the Prescription Act.
- It is common cause that, generally, a debt prescribes three years from the date upon which it became due (section 10 read with section 11(d) of the Prescription Act). However, section 13(1) sets out several impediments which will suspend the completion of prescription, one being section 13(1)(e).

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- The rationale for this section is that the existence of a close relationship between a juristic person and a member of its governing body, would impede the juristic person's decision to sue. In these circumstances, the prescription period is only completed a year after the impediment has been removed (in other words, after the debtor ceases to be a member of the juristic person's governing body).

Does the same apply in respect of outstanding levies owed by ordinary members (owners) in a sectional title scheme?

- If one considers the provisions of the Sectional Titles Schemes Management Act ('the STSMA'), it is apparent that the legislature placed the management and administration of a scheme in the hands of the trustees, acting as a "governing body". It is so that the trustees also act on the instruction of the members (as body corporate), but it remains the trustees upon whom the STSMA confers the exercise of the powers and the functions of the body corporate. It also a feasible measure that in a sectional title scheme, potentially consisting of hundreds of unit owners, the body corporate functions through its elected body, i.e. the trustees. Notably, trustees and not members (owners) act in a fiduciary capacity towards the body corporate, and may be held liable if they breach this responsibility.

Trustees as "governing body" for purposes of the Prescription Act

- Section 13(1)(e) of the Prescription Act was intended to obviate the problems that arise from the potential conflict of interest where a debtor sits on the governing body or board of a juristic person and delays or prevents the juristic person from recovering that which is lawfully due to it.
- The mere fact that an owner of a unit is a *member of the body corporate*, does not place him in the position of a member of the scheme's governing body ,as envisaged in the Prescription Act. Rather, it is the trustees, as governing body of the body corporate, who are empowered to administer the affairs of the body corporate and in respect of whom such potential conflict (which section 13(1)(e) of the Prescription Act seeks to address), can arise.
- Accordingly, the failure of the trustees in this matter to take timeous steps against L and H to collect the historic arrear levies, has resulted in that claim having prescribed. The body corporate is precluded from relying on section 15B(3)(a)(i)(aa) of the Sectional Titles Act in refusing to issue the levy clearance certificate

CONCLUSION

The declaratory relief sought by L and H is granted.

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