

DISCONNECTING DEFAULTING SECTIONAL TITLE OWNERS' WATER AND ELECTRICITY

Lion Ridge Body Corporate v Alexander; Lion Ridge Body Corporate v Morata; Lion Ridge Body Corporate v Mukona and Another (17074/2022; 18106/2022; 19220/2022) [2022] ZAGPJHC 713 (21 September 2022)

It might, on the face of it, sound perfectly reasonable that a body corporate in a sectional title scheme may cut the water and electricity supply of non-paying owners, until they bring their accounts up to date. Legally, it is not so simple, as this judgment explains. This judgment indicates that if there is a scheme rule to this effect, the disconnection is likely to be allowable. But remember that even this is not plain sailing: There exists a CSOS statement that a rule allowing for the disconnection of electricity or other essential services because of non-payment of levies is likely to be considered undesirable by the Ombud.

The Judgment can be viewed [here](#).

FACTS

In this matter, the Lion Ridge Body Corporate ("Lion Ridge") approached the Court for judgment in an amount it claimed certain of its members (who were owners in the scheme) owed it in respect of arrear levies, water and electricity charges.

In addition to judgment in respect of the outstanding amounts, Lion Ridge also sought an order allowing it to disconnect the electricity supplied to each of these owners' units and an order limiting the water supplied to each unit to not more than six kilolitres per month, until the judgment amounts were paid in full. Lion Ridge also asked the Court to declare that these owners would be liable for the cost of disconnecting, limiting, and, if necessary, reconnecting each of their water and electricity supplies.

According to Lion Ridge, the Sectional Title Schemes Management Act (the "STSMA") holds it, as body corporate, "responsible for the enforcement of the rules and for the control, administration and management of the common property for the benefit of all owners". The relevant portion of section 4(h) of the Act empowers Lion Ridge to "enter into an agreement with any owner or occupier of a section for the provision of amenities or services by the body corporate to such section or to the owner or occupier thereof". Section 4(i) of the Act allows Lion Ridge "to do all things reasonably necessary for the enforcement of the rules and for the management and administration of the common property".

Lion Ridge argued that, in exercising its powers under these subsections, it had 'entered into an agreement' with the owners for the provision of amenities and services to their units. By virtue of its powers under section 4(i) of the STSMA, it could now claim the right to take judgment against the defaulting owners and to limit or disconnect the utilities supplied to these owners' units. (Lion Ridge did not, however, indicate to the Court what the terms of the alleged agreement was, nor did it set out the rules of scheme that it sought to enforce.)

HELD

- Lion Ridge is in principle entitled to claim judgment for outstanding levies. The power to do so is an incident of section 4(i), read with Management Rule 25. The Management and Conduct Rules in the regulations will apply to most bodies corporate by operation of law.
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- The disconnection or limitation of the owners' utilities raises more difficult issues. Neither the STSMA nor the standard Management and Conduct Rules promulgated under it empower a body corporate to interfere with a member's utility supply, and Lion Ridge does not allege any other common law or statutory power to do so. It follows that Lion Ridge had not identified the source of its alleged right to disconnect or limit these owners' utilities. Critically in this regard, was that Lion Ridge did not allege that it had adopted a specific rule, as allowed in the STSMA, that empowers it to disconnect its members' utilities to recover outstanding levies. Nor did it set out the terms of the agreement it says it entered into with these owners which empower it, on breach, to seek the relief. Even a tacit agreement to this effect, which Lion Ridge alleged existed, was not shown to exist.
- It is tempting to consider it as little more than common sense that a body corporate can collect debt from its members, and seek to withdraw services provided through the body corporate until that debt is paid. The reality is more complex:
 - i. Sectional title schemes exist to allow their members to negotiate and manage the terms on which they will live together, share the burdens of property ownership, regulate access to common property, and achieve a range of other ends associated with the administration of a particular scheme. A body corporate is not an ordinary commercial entity. It derives its existence and its authority from the STSMA and its own rules. The terms on which a body corporate's members' rights to receive water and electricity may be limited are a classic example the sort of thing that should be deliberated upon and agreed between them by way of an agreement or a rule. This did not happen in the present instance.
 - ii. Secondly, Management Rule 25 sets out the procedure to be followed by a body corporate that wishes to collect a debt owing by its members. It includes giving written notice, not later than 14 days after the adoption of a body corporate's budget, of the contributions and charges due by each member, the due payment date, the rate of interest, if any, payable on arrear amounts, and the details of a dispute resolution process the member can engage if they wish to challenge the charges sought to be levied. A body corporate may not "debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act" or the Management Rules, unless the member consents to the charge, or judgment has been given for it. In the present matter, Lion Ridge did not show the Court that it had complied with this requirement.
 - iii. Thirdly, and probably most importantly, the relief that Lion Ridge claimed implicated a delicate web of constitutional rights. These are the right against arbitrary deprivation of property (section 25 of the Constitution), the right to sufficient water (section 27(1) b) of the Constitution), the public law right to receive electricity from a municipality, even where the electricity is transmitted through an intermediary such as a landlord or a body corporate. Relief limiting these constitutional rights is plainly incompetent if it is not authorised by law. The form which that "law" might take, depends on the facts of a particular case. In this matter, the very least that Lion Ridge would have had to establish was that there was a provision to that effect in the STSMA, or a rule of the body corporate, or a term in an agreement with the owners that authorises it to do that. Lion Ridge did not allege any of this.

CONCLUSION

In consequence, the application was dismissed.