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WHEN MAY A SECTIONAL TITLE BODY CORPORATE WITHHOLD CLEARANCE FOR TRANSFER?

The Body Corporate Marsh Rose v Steinmuller and Others (A5002/2020) [2021] ZAGPJHC 440 (23 September 2021)

One item that invariably finds itself on the agenda of trustee meetings is the issue of non-compliance by owners with the rules. Many of these, such as the failure to obtain building approval and to comply with architectural building guidelines, are detrimental to the well-being of the scheme and the interests of the individual owners. What can the body corporate do?

Even if the rules allow the trustees to impose penalties in respect of the transgressions, a headstrong owner who denies that he transgressed a rule, or one that is struggling financially, soon accumulates a hefty outstanding penalty liability (often in conjunction with being in arrears with levy payments). In these circumstances a body corporate may feel perfectly entitled to withhold its consent to transfer, where such an owner has sold his unit, by refusing to issue the “clearance certificate” that the owner will need for transfer, unless the penalties for transgressions of the rules are paid. The judgment advises why this practice of body corporates is not within the powers granted to body corporates in the Sectional Titles Act.

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

FACTS

Section 15B(3)(a)(i)(aa) of the Sectional Titles Act 95 of 1986 (‘the STA’) is a very important provision for management of schemes because it establishes the basis of the body corporate’s right to place an embargo against the transfer of a section when the owner thereof is in arrears with his levies. Whilst the effect of section 15 is to assist a body corporate in the recovery of outstanding levies, it has now become common practice for scheme managers to withhold the clearance certificates, also for non-financial reasons, such as non-compliance with the rules of a scheme.

This was one of the questions before the court in this matter. The dispute arose in respect of a unit that was purchased at an execution sale. In terms of the agreement, the purchaser would pay the amounts due to the body corporate. Subsequently, when the conveyancers applied for a levy clearance certificate (as part of the process to achieve registration of transfer), the Marsh Rose body corporate provided an account listing outstanding levies as well as interest (charged at a higher rate than had been awarded by a court) on a judgment debt and un-taxed legal costs. These had been debited to the owner’s account.

The purchaser disputed that he was liable for the additional amounts and argued that the provisions in the STA that bears on the issuing of a clearance certificate, only required that the levy payments had to be up to date. It did not bear on other debts that may exist between the owner (seller) and the body corporate.

The body corporate subsequently reduced its claim after the amounts were queried by the conveyancers, but it refused to provide documentation substantiating its levy and interest claims. It also refused to accept the purchaser's offer of security in an amount that was less than its claim. It argued that the purchaser had to pay *all* the amounts it claimed in full before it would issue the levy clearance certificate.

Ultimately, the dispute remained unresolved and the purchaser approached the Gauteng High Court. The Court ordered the body corporate to accept a specified amount of security for the claim and issue the levy clearance certificate. This would allow transfer to proceed.

The body corporate appealed.

HELD

- Section 15B(3)(a)(i)(aa) of the STA provides as follows:

*“(3) The registrar shall not register a transfer of a unit or an undivided share therein, unless there is produced to him:
a. a conveyancer’s certificate confirming that as at date of registration:
(i)(aa) If a body corporate is deemed to be established in terms of section 2(1) of the Sectional Titles Schemes Management Act, that body corporate has certified that all moneys due to the body corporate by the transferor in respect of the said unit have been paid, or that provision has been made to the satisfaction of the body corporate for the payment thereof.”*

- The Court noted that:
 - The purpose of section 15B(3)(a)(i)(aa) is to ensure the economic viability and sustainability of bodies corporate. Looking at the ordinary meaning of the words of this section, in the context, it indicates that the sole purpose of a levy clearance certificate is to ensure that the *monies due to a body corporate* are paid before the property is transferred to a new owner, or that provision has been made to the satisfaction of the body corporate for the payment thereof.
 - Therefore, to use the levy clearance certificate as leverage to enforce compliance with rules or any applicable law, is not in accordance with section 15B(3)(a)(i)(aa). Had the legislature intended the clearance certificate to be used as a mechanism to ensure compliance with all the rules of a sectional titles scheme, or any applicable law, it would have clearly said so.
- Ultimately the Court found that a body corporate is obligated to issue a levy clearance certificate if all the amounts relating to levies (validly raised) due to it, is paid. In the matter in question, the Court directed and compelled the body corporate to immediately issue a clearance certificate.

- What is the status of other debts in this context? The Court noted that when a body corporate takes judgment against an owner for outstanding levies and attaches a unit in execution, its claim is no longer a *burden on the unit* as meant in section 15B(3)(a)(i)(aa), as the nature of the debt has changed. The judgment debtor remains personally liable for the debt and costs. The body corporate cannot claim this debt from the person who purchases the unit at a sale in execution (unless this was specified in the agreement with the purchaser).
- In addition, the body corporate had in any event acted unlawfully in debiting the collection and legal costs, as well as interest thereon, to the owner's account. As these costs had not been taxed or agreed by the owner, they were not due. The body corporate had also not shown that it had any authority to charge interest.

CONCLUSION

Once all outstanding levies are paid to a body corporate, it must issue the Section 15(B)3 clearance for transfer purposes.