



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: **12884/2023**

In the matter between:

ABIGAIL PROKOPES N.O.

First Applicant

ELAINE FLORENCE ANNE DAVIES N.O.

Second Applicant

JANETTE RICHTER N.O.

Third Applicant

LOURENS MARTINUS OBERHOLZER N.O.

Fourth Applicant

TANYA ANNE EDWARDS N.O.

Fifth Applicant

*(in their capacity as trustees for the time being of the
Heron Cove Body Corporate, Scheme Registration SS320/1996)*

and

LIMELIGHT PROPERTY SOLUTIONS CC

First Respondent

SHARON GRILLENBERG

Second Respondent

Date of hearing: 10 September 2024

GORDON-TURNER, AJ:

Introduction

1. This matter came before the Court on the return day of a Rule *nisi* issued on 2 April 2024 calling upon the respondents to show cause why sanctions defined in the Order (**the Erasmus Order**) should not be imposed upon them for contempt of court.
2. The applicants are the trustees for the time being of the Heron Cove Body Corporate a body corporate and residential community scheme situated in the Table Bay area comprising 198 households (**the body corporate**). The first respondent is a close corporation that operates a managing agent business for body corporates and homeowners' associations. The second respondent is the sole member and controlling mind of the first respondent.
3. The Erasmus Order found the respondents to be in contempt of this Court's order of 28 July 2023 (**the July 2023 Order**), imposed sanctions subject to the Rule *nisi*, and awarded attorney and client costs to the body corporate. The sanctions so proposed are a judicial fine of R100 000 upon the first respondent, and 90 days imprisonment upon the second respondent respectively.
4. The body corporate no longer pursues the imposition of sanctions against the respondents yet recognises the Court's prerogative to maintain its dignity authority¹, and to nevertheless impose an appropriate sanction in view of its earlier finding that the respondents were in contempt of court.
5. The respondents seek the discharge of the Rule *nisi*, and an order that the body corporate pay their costs incurred with effect from 28 May 2024, alternatively

¹ *Fakie NO v CCII Systems (Pty) Ltd* 2006 (4) SA 326 (SCA) at para [7]

that each party bear their own costs.

Background to the litigation

6. The first respondent was previously mandated to act as managing agent to the body corporate. Its mandate was terminated on 11 July 2022 as a result of the first respondent having failed to provide the trustees with monthly financial statements and her convening a special general meeting without the approval of the trustees. From October 2022, and over the ensuing 20 months up to 10 June 2024, seven requests were made to the respondents on behalf of the body corporate to hand over its documents, but to no avail.

7. The first respondent did not heed the cancellation of its mandate. The body corporate applied for dispute resolution in terms of section 38 of the Community Schemes Ombud Service Act, 9 of 2011 (**the CSOS Act**). The first respondent was cited as the respondent.

8. The adjudication was completed, without a formal hearing, by December 2022 after written submissions were made by both the body corporate and the first respondent. The adjudication was handed down on 11 January 2023. The adjudicator found that the management agreement concluded between the trustees on behalf of the body corporate and the first respondent was lawfully terminated with effect from 31 October 2022. The respondent was directed to provide the trustees or their nominated representative with the necessary documents and with the funds requested by the trustees, within ten days of receipt of that order as per the provisions of prescribed Management Rule 27(7).

9. The respondents contend that the CSOS adjudication of 11 January 2023 did not come to their attention. This is belied² by what followed.

² It is, in any event, a curious averment given the imperative requiring the adjudicator to serve upon the first respondent, as provided in section 55(1) of the CSOS Act:

"55 Notice of order

(1) An adjudicator must cause a copy of an order made in terms of this Act to be delivered to-

- (a) the applicant;*
- (b) the association;*
- (c) the ombud; and*

10. Subsequent to the adjudication, both the body corporate and its attorney, Mr De Abreu, who was then part practising in the firm De Abreu & Cohen, addressed correspondence to the respondents. On 28 January 2023, the trustees sent a copy of the adjudication to the first respondent, requesting that the documents be provided by 27 January 2023, failing which the matter would be handed over to the body corporate's attorneys. On 27 February 2023, Mr De Abreu requested the respondents to comply with the adjudication, failing which contempt of court proceedings would be instituted. Mr De Abreu moved to another firm, De Abreu Essop, thereafter, but continued to act as the attorney for the body corporate. The movement of Mr De Abreu from one firm to another is the basis of a belated challenge to the authority of the firm De Abreu Essop, to which further reference is made below.

11. The body corporate appointed a new managing agent, the Belmont Group. During April 2023, Ms Faye Smee of the Belmont Group corresponded with the second respondent concerning the documents that were to be delivered in terms of the adjudication by the Ombud.

12. On 5 April 2023, the second respondent wrote to Ms Smee *"I will make contact with you early next week to drop all the boxes off, kindly ensure the office is open on the same day to enable me to move all my property"*.

13. On 12 April 2023, Ms Smee wrote to the first respondent requesting that a list of furniture that she was claiming together with proof of ownership be provided, and advising that a time could be arranged for her to collect her property from the office on the premises of the body corporate.

14. On 14 April 2023, Ms Smee alerted the second respondent to the fact that at a special general meeting the previous evening, the body corporate had resolved that unless the documents had been handed over by 19 April 2023, the body corporate would take legal steps to retrieve them. Two further reminders followed on

(d) *any other affected person.*"
There was no evidence that the adjudicator failed to do so.

17 April 2023. On 19 April 2023, Ms Smee advised the second respondent that the *“trustees will be advising the attorney to start the legal procedures today”*.

15. On 28 July 2023, the adjudication order against the first respondent was registered as an order of this Court pursuant to section 56(2) of the CSOS Act.³

16. It is common cause that on 11 August 2023 the registered adjudication order was duly served by way of personal service on the second respondent, and it thereby came to the attention of the respondents.

17. Despite her promises made in the April 2023 correspondence to hand over documents to the new managing agent, the second respondent failed to do so.

18. She was again forewarned about contempt proceedings on 5 September 2023.

19. However, the trustees held back and only brought the present contempt application against the respondents on 7 March 2024. Service of the notice of motion and founding papers was effected by the Sheriff on 8 March 2024 on the second respondent's daughter, who is described in the respective returns of service as *“apparently a responsible employee and not less than 16 years of age, and in control of the principal place of business of [the first respondent]”* and as the *“responsible person residing at the place of residence of the [second respondent] and not less than 16 years of age, and in control at the place of residence of [the second respondent]”*.

20. The second respondent's evidence was that her daughter did not bring to her attention that the papers had been served. She explains in her affidavit that her daughter is cognitively impaired. As a result of the second respondent's ignorance of

³ That section provides:

“Enforcement of orders

56. (1) ...

(2) *If an adjudicator's order is for the payment of money or any other relief which is beyond the jurisdiction of the magistrate's court, the order may be enforced as if it were a judgment of the High Court, and a registrar of such a Court must, on lodgement of a copy of the order, register it as an order in such Court.”*

the contempt application, there was no appearance for the respondents on 2 April 2024 when the application was heard by Erasmus J.

21. Accordingly, an order in default of their appearance was granted. However, Erasmus J deviated from the prayers in the notice of motion which sought the imposition of a sanction immediately upon a finding of contempt. Instead, Erasmus J ordered a slightly modified sanction subject to a Rule *nisi*, thereby making a 'coercive order', and standing over any 'punitive order' for determination on the return day.

Challenge to authority of the body corporate's attorney

22. In the heads of argument delivered on behalf of respondents, it was contended that the applicants' attorneys of record, De Abreu Essop, did not have the requisite mandate to take instructions from the applicants and to launch this application against the respondents. It was further submitted that the applicants do not have the necessary *locus standi* to have launched the application against the second respondent.

23. In support of both these contentions, the respondents' counsel referred to the resolution by the trustees of the body corporate dated 20 April 2023 attached to the founding affidavit. That resolution states:

"1. The Body Corporate hereby authorises Lourens Oberholzer to represent the Heron Cove Body Corporate for the purposes of:

1.1 Instituting legal proceedings and/or litigation against Limelight Property Solutions with the ultimate goal of the return / handing over of Body Corporate documentation currently held by Limelight Property Solutions.

1.2 Appointing and instructing De Abreu & Cohen Table View Inc. as the Heron Cove Body Corporate's attorneys of record for all legal matters, including but not limited to the institution of contempt of

court proceedings in the Western Cape High Court.

2. *The Body Corporate furthermore authorises Lourens Oberholzer to do all such things and to sign all such documents as may be necessary to give effect to the resolutions recorded herein, including but not limited to deposing to any affidavits in connection therewith.*

3. *The Body Corporate hereby ratifies and accepts any and all actions (if any) that may have already been taken by Lourens Oberholzer on behalf of the Heron Cove Body Corporate to fulfil the objects of the resolutions contained herein, even if such actions were taken prior to date of this resolution.”*

24. The respondents’ counsel submitted that the resolution authorised the institution of legal proceedings only against the first respondent and that it authorised the appointment of De Abreu & Cohen Table View Inc. as the body corporate’s attorneys of record for all legal matters.

25. The firm of attorneys who addressed earlier correspondence and who are on record in this application is not De Abreu & Cohen Table View Inc., as contemplated in the resolution, but is De Abreu Essop Inc. The respondents’ counsel argued that the latter firm did not have the requisite mandate to attend to the matter against either respondent. She further contended that because the body corporate did not authorise proceedings against the second respondent, the applicants do not have the necessary *locus standi* to bring contempt proceedings against her. She sought a dismissal of the application on these bases with attorney and own client costs.

26. At the hearing of the matter, Mr De Abreu appeared for the applicants. He submitted that the points *in limine* raised by respondents’ counsel had appeared for the first time in her heads of argument, yet they should have been raised in the respondent’s answering papers in order to afford the applicants an opportunity to deal therewith in reply. Given what is at stake for the respondents in facing a sanction from the Court, I condoned this procedural imperfection and dealt with the points *in limine* by hearing argument thereon ahead of argument on the merits.

27. The respondents' contentions do not engage with the fact that Mr De Abreu deposed to service affidavits on 26 March 2024 and on 30 April 2024 in which he states (without contradiction in the answering affidavit):

"I am an adult male attorney practising at De Abreu Essop Inc., with its offices situate at 3rd Floor, Soho On Strand, 6 Rose Street, De Waterkant, Cape Town, 8001. I am the duly appointed attorney for the applicants therein." (my underlining)

28. It is furthermore plain from the contents of Mr Oberholzer's founding and replying affidavits that the body corporate regarded Mr De Abreu as their attorney of record, both when he was with his former firm and when in his current firm.

29. A challenge to an attorney's authority should be made⁴ by way of a notice in terms of Uniform Rule 7. The respondents did not avail themselves of this procedure. The respondents' counsel sought to justify their failure to do so on the basis that it would make no difference because the resolution of the trustees was definitive and afforded a different authority to that being asserted. This submission misapprehends the substance of Rule 7(1) which provides:

"(1) Subject to the provisions of sub-rules (2) and (3), a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of the party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application."

30. The mechanism of the rule therefore allows for an attorney to procure a power

⁴ *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA) at 624 I to 625A. See also *Unlawful Occupiers of the School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) at 206F to 207B.

of attorney from his client or (as would apply in this case) a ratifying resolution which could have been attached to a replying affidavit to thereby cure defective authority.⁵ In this matter, satisfactory evidence is already on record regarding De Abreu Essop's authority to act for the body corporate.

31. The point styled as a *locus standi* challenge to institute proceedings against second respondent is mischaracterised: the framing of the body corporate's resolution is relevant only to the issue of the attorney's authority. Whether or not the body corporate had the necessary *locus standi* to institute proceedings against the second respondent is a matter of substantive law, quite distinct from the issue of the attorney's authority to institute proceedings against the second respondent on behalf of the body corporate.

32. On the issue of authority, the respondents' counsel placed great store on the wording of the resolution by the trustees quoted above. She urged me to consider that the resolution contemplated proceedings against the first respondent only, and that when reference was made to the institution of contempt of court proceedings, I should read this as referring to such proceedings against the first respondent only. Ms Steyn's gallant attempt to rescue the second respondent from the prospect of a sanction for contempt of Court requires a strained interpretation of the resolution. I consider the wording, in its totality, to be sufficiently wide to enable Mr Oberholzer to instruct the attorneys to take whatever steps were necessary to achieve the defined goals set out in the resolution. This would include joining the second respondent in the contempt proceedings.

33. The body corporate motivated the joinder of second respondent on the basis that she is the sole member and controlling mind of the first respondent. There is no question that the body corporate enjoyed *locus standi* to sue the first respondent; equally it enjoyed standing to sue the second respondent.

34. There is no merit in the points *in limine*.

⁵ *Merlin Gerin (Pty) Ltd v All Current and Drive Centre (Pty) Ltd and Another* 1994 (1) SA 659 (C) at 660E to 661E.

Evidence on sanction

35. Counsel for the respondents, Ms Steyn, was critical of the formulation of the notice of motion in that (1) it sought a finding of contempt and the imposition of a sanction in a single hearing, and (2) because it was not framed so as to afford the respondents an opportunity to purge their contempt prior to a finding being made that they were in contempt and prior to having any sanction imposed. She submitted that if the notice of motion had allowed for a two stage process, then the respondents would have had an opportunity to purge their contempt before any findings were made.

36. The evidence does not support this submission. Even if the Court accepts, in the respondents' favour, that the second respondent was ignorant of the CSOS adjudication order of 11 January 2023, it is plain from the correspondence to which I have referred above, that (1) the body corporate called upon her shortly thereafter to comply with it, and (2) the second respondent evinced an intention to provide documents, which is a substantial part of the compliance required to purge her contempt.

37. From 11 August 2023, the second respondent was no longer ignorant of the Ombud's adjudication order, or that it had been made an Order of this Court. It is common cause that until 30 April 2024, nearly nine months later, the respondents took no steps whatever to comply with the July 2023 order, or to purge their contempt pursuant to the grant of the Erasmus Order.

38. The second respondent's explanation for her supine attitude and disregard for this Court's orders is that she did not register their existence and significance. This was attributable to her falling into a major depression from late 2022, precipitated by the stress of a pending divorce from her husband. That stress was exacerbated by the dependency of her special needs adult daughter, aged 28, who, due to chronic separation anxiety, does not leave the second respondent's side at any time.

39. The impact of poor mental health on an adult person's functioning cannot be

trivialised.⁶ A measure of compassion⁷ for sufferers such as the second respondent is appropriate. However, this must be tempered by the evidence of the manner in which the second respondent took responsibility for her mental health, and how she had conducted herself in the period since 11 August 2023. She received treatment for depression from her general practitioner in the period from October 2022 to December 2023. Although the second respondent has retained the services of a psychologist to assist her daughter since at least 2020, she only commenced therapy herself in February 2024, and had had nine therapy sessions by the time her answering affidavit was delivered.

40. The second respondent attached to her answering affidavit letters from her own therapist (dated 23 May 2024) as well as her daughter's psychologist (dated 27 May 2024 and 9 July 2024), and from her general practitioner (dated 29 June 2024). The contents of these letters were not confirmed on affidavit by their authors. Their contents largely accord with that which the second respondent herself stated on affidavit, both about her own mental health and that of her daughter. Mr De Abreu did not contend that the letters are inadmissible; he expected the Court to have regard thereto. He submitted that their contents do not support the second respondent's contention that her breach of the July 2023 Order was not wilful or *mala fide*. This submission goes to the finding of contempt, which Erasmus J has finally determined. In regard to the issue of sanction, it would be unjust to disregard their contents, to which some weight must be given, having regard also to what was not canvassed in those letters.

41. There is no evidence that either the second respondent or her daughter were hospitalised at any time during the nine month period from 11 August 2023 to 27 May 2024, nor is there evidence that the second respondent had sought treatment

⁶ The World Health Organisation (WHO) estimates that, globally, 5% of adults suffer from depression. See [Depressive disorder \(depression\) \(who.int\)](https://www.who.int/news-room/fact-sheets/detail/depression)

Depression is the leading cause of mental health-related disease burden globally and affects more than 300 million people worldwide.

See Patel et al Addressing the burden of mental, neurological, and substance use disorders: key messages from Disease Control Priorities Lancet Lond. Engl., 387 (2016), pp. 1672-1685, 10.1016/S0140-6736(15)00390-6

⁷ As was shown by Lowe J in *Harnwell v Harnwell* 2021 JDR 1705 (ECG) at paragraph [18], when granting condonation for a belated leave to appeal application against a coercive order in contempt of court proceedings.

by a specialist psychiatrist or taken prescribed medication to lift her out of her protracted depression. Although she sketched a picture of gross neglect of her self-care due to her depressed state of mind, she adduced no admissible medical evidence that her mental health impeded her day to day functioning to such a degree that she was unable to register the existence of the July 2023 Order, to comprehend its significance, and to appreciate the exigency with which she needed to take steps to comply therewith (as she had indicated she would do during April 2023, which falls within her period of depression). There is certainly no evidence that she was utterly incapacitated as at 17 July 2024 when she was served with the Erasmus Order.

42. The second respondent professes that until she consulted with her attorney and counsel on 25 June 2024 she did not have any awareness (i.e. appreciation of the meaning) of the correspondence addressed to her by the body corporate or its attorney from 25 January 2023 onward, or of the adjudication order, or of the July 2023 Order.

43. This explanation is not plausible, for a number of reasons.

43.1. First, the second respondent would have had to instruct her attorney and counsel on the correspondence and orders, and could only have done so if she was conscious thereof.

43.2. Second, she had participated in the exchanges of correspondence in a coherent manner: that is inconsistent with the picture she has crafted of herself being apathetic and wholly dysfunctional during the relevant period. For example, she addressed an email on 9 November 2023 to the body corporate's new managing agent, advising of the closure of her offices for approximately a month in the forthcoming festive season over December / January, requesting provision of levy statements and inviting queries to be addressed to her. This businesslike correspondence is at odds with her allegations that she was utterly incapable of running her business at that time.

43.3. Third, when she appeared at court on the first return day of 30 April 2024, she had a discussion with Mr De Abreu, in which she demanded that, as

a condition of her handing over the boxes of documents belonging to the body corporate, her furniture in the body corporate's office must be returned to her. She confirmed to him that she had the Court Order saying she must hand over the boxes and that she had not done so.

44. It is plain that, for a protracted period, the second respondent was unwilling to purge her contempt.

45. Accordingly, I am not persuaded that any injustice was occasioned to the respondents by the formulation of the prayers in the notice of motion which provided for a single rather than a two-step process.

46. A full bench of this division⁸ gave due regard in *Chaplin v Fine and Another*⁹ to other cases¹⁰ in which committal or fines had been imposed as part of a single process as well as the argument raised in *Soller v Soller*,¹¹ in which Donen AJ had rejected the argument that the delinquent party should be afforded an opportunity to lead evidence in mitigation of sentence prior to sentence being imposed (but held that considerations of fairness may dictate such a course in some matters).

47. The *Chaplin* judgment per Rogers JA (as he then was) held:

“[200] The institution of civil contempt proceedings on notice of motion has been sanctioned by our highest courts. Although such proceedings have a criminal dimension, the private applicant has a personal interest in having the contempt addressed by an appropriate sanction. The approved procedure involves the private applicant setting out, in a notice of motion, the relief she seeks, including the sanction, and setting out, in her founding affidavit, the facts relevant inter alia to an appropriate sanction. Unless a court orders a separation of issues in civil proceedings, the whole case is determined pursuant to a single hearing, even though certain issues might only need to be determined if the court finds in favour of the claimant on other issues.

⁸ Erasmus J, Steyn J and Rogers J (as he then was).

⁹ (A115/2019) [2020] ZAWCHC 139 (21 July 2020).

¹⁰ At footnote 131 of the judgment.

¹¹ [2000] 3 All SA 531 (C).

[201] *A respondent in civil contempt proceedings is not an accused person. I accept that where a criminal sanction is sought the respondent is entitled to ‘analogous protections’ to those enjoyed by an accused person but it is the substantive aspect of protection rather than procedural technicalities that need to be assessed when deciding what adaptations, if any, should be made to ordinary motion proceedings.*

[202] *In relation to sanction, the most important substantive aspect of ‘analogous protection’ is that the respondent in civil contempt proceedings is entitled to be heard on the question of sanction. The conventional single-stage procedure accommodates this. First, the respondent in his answering affidavit is entitled, and is indeed expected, to advance facts germane to the issue of sanction in case the court finds him to be in contempt. Second, the respondent is entitled, during argument, to make submissions of the question of sentence if the court should find against the respondent on the merits.*

...

[208] *I do not think that fairness dictates that in every contempt application where a criminal sanction is sought a two-stage process must be followed. To insist on a two-stage process in every case would delay the finalisation of contempt proceedings [where expeditious determination is usually desirable] and involve both parties in additional expense. Where fairness dictates that sanction be held over for later determination depends, in my view, on the circumstances of the case. I thus consider Donen AJ’s approach in Soller to be correct.” (my underlining)*

48. The Erasmus Order clearly recognises that, because the contempt proceedings had been heard and a finding of contempt made in the absence of the respondents, considerations of fairness required that the Court, in this particular instance, afford them the opportunity to deliver papers and submissions regarding the question of sanction. He provided that opportunity by including in his order a provision that the sanction was subject to a Rule *nisi*.

49. For this reason also, I find that the formulation of the prayers in the notice of

motion did not occasion prejudice or any injustice to the respondents.

50. It is common cause that the Erasmus Order was duly served upon the respondents on 17 April 2024, and, on this occasion, the service came to the attention of the second respondent. She appeared without representation on the return day of 30 April 2024. The Court then extended the Rule *nisi* to 28 May 2024 on which date, by agreement between the parties, the matter was referred for hearing on the semi-urgent roll on 10 September 2024, with a timetable provided for the filing of affidavits and heads of argument.

51. In her answering affidavit, the second respondent states that after receipt of the 2 April 2024 order on 17 April 2024 she realised the “*veracity*” of the matter and attended at Court on the return day and extended return day. I understand her to mean that she realised the gravity of the matter. However, her evidence is that it was only after the Court appearance on 30 April 2024 that she started taking steps to comply with the order of 28 July 2023. She did so with the assistance of her husband (**Quintin**) who delivered all hard copy documents in her offices to the attorneys for the applicants on 27 May 2024.

52. Her attorney (who acts for Quintin too) addressed a series of letters dating from 14 May 2024 to 19 June 2024 to the body corporate’s attorneys asserting the second respondent’s position that she was not wilful and *mala fide* in her non-compliance with the July 2023 Order. She contended that she had complied with that order, and requested that the Rule *nisi* be discharged with costs in her favour on an attorney / client scale.

53. In the replying affidavit, substantial compliance by the respondents was acknowledged. However, in a further affidavit of 10 September 2024 deposed by Mr De Abreu, that was handed up by agreement at the hearing, it was recorded that full compliance was only attained on 5 September 2024, i.e., only three court days before the hearing on sanction on the extended return day of 10 September 2024.

54. Counsel for the respondents submitted that upon receiving substantial compliance by 27 May 2024, the body corporate ought to have withdrawn the

contempt application, and that costs from that date forth should be for the body corporate's account. In support of this submission, Ms Steyn contended that since 27 May 2024, the trustees had failed to bring to the second respondent's attention any deficits in her compliance with the 2023 order and to alert her to any documents that remained outstanding. Her alleged compliance (and purported purging of her contempt) on 27 May 2024 comprised the delivery of multiple boxes of documents, of which the respondents attached photographs to the answering affidavit. Judging by those photographs, there were no less than ten boxes stacked in piles at a height of no less than a metre.¹² Ms Steyn rightly conceded that this amount of documentation could not reasonably have been assimilated and perused prior to the hearing on the extended return date of 28 May 2024.

55. I am not persuaded by the endeavour to shift responsibility for the respondents' non-compliance onto the body corporate. This does the respondents no credit: by 17 April 2024, the respondents ought to have conducted themselves in a manner congruent with the gravity of a contempt finding: showing humility, contrition and a willingness to swiftly make amends.

56. The first respondent is in the business of managing body corporates. Its controlling mind is that of the second respondent. The dispute about termination of its mandate, and its consequent failure to effect a full handover to the newly appointed managing agent had been raging between the parties since mid-2022. The second respondent was in the best position to know whether any documents were still in her possession and what aspects of hand over remained outstanding. Furthermore, the applicants' founding papers included a checklist of takeover documents. In my estimation, it was plain to the respondents what was required of them and what shortcomings there may have been in their belated compliance by 27 May 2024. No explanation was afforded for the respondents, with Quintin's assistance, taking nearly six weeks (from 17 April 2024 to 27 May 2024) to hand over boxes which a year earlier, on 5 April 2023, the second respondent had intimated were ready to be dropped off at the first respondent's offices.

¹² Gauging by the person standing in the foreground of one of the photographs, whose chest line roughly aligns with the height of the highest stack.

57. After delivery of the respondents' answering affidavit, the body corporate's attorney addressed an email on 30 July 2024 to the respondents' attorney advising that the replying affidavit would be delivered the following day, and stating:

"... Kindly note that the outstanding documentation required is made up of the Member's Levy Statements for August, September and October 2022. The documents received from your client were only until July 2022. Notwithstanding that fact, my clients note that there has now been a subsequent substantial compliance with the court order. Our clients have never been motivated by vengeance or malice in this matter, they simply required compliance with the order, and accordingly we are instructed not to request an order for the incarceration or the fine.

In the circumstances, I am instructed to once again propose that this matter be settled on the basis that our client withdraw the application and your clients tender the wasted costs thereof (including the costs of the postponements). This offer will remain open for acceptance any time before the date of the hearing.

Should your clients remain unwilling to accept the above offer (as we suspect), we are instructed to proceed on 10 September for an order declaring your clients to have been in contempt of court and an order for costs on an attorney client scale, however we reiterate that no imprisonment or fine will be sought."

58. The author of the email was plainly under a misapprehension that the issue of a contempt finding and the issue of costs up to 2 April 2024 were also the subject of the Rule *nisi*. However, those issues had already been finally determined by Erasmus J. It was open to the body corporate only to move for a discharge of the Rule *nisi*, and to claim costs incurred subsequent to the Erasmus Order.

59. However, as the respondents did not respond favourably to that email, the body corporate seeks an order that the respondents pay the costs of the application on an attorney and client scale, jointly and severally, the one paying, the other to be

absolved. The body corporate is content to leave the issue of sanction for the Court.

60. The respondents have delivered answering affidavits, which served as the opportunity to deal with an appropriate sanction. The second respondent motivates that she was not *mala fide* and wilful in her failure to comply with the July 2023 Order. She asserts that she only became aware of the CSOS adjudication that underpins it when she consulted with her attorney and counsel on 25 June 2024.

61. The second respondent's assertion does not withstand scrutiny. She acknowledges service on her on 17 April 2024 of the Erasmus Order; which refers in the first paragraph to the July 2023 Order when finding the respondents in contempt thereof. She had explained that service of the July 2023 Order did not come to her attention when the Sheriff served it on her daughter on 11 August 2023. However, on 17 April 2024, upon reading the reference to the July 2023 Order in the Erasmus Order, to my mind, she was put to immediate enquiry to establish of what Order she had been found to be in contempt. There is no evidence that the second respondent made any such enquiry, and no explanation for her failure to do so.

62. The evidence summarised above points to the second respondent having an appreciation of the import of the July 2023 Order by no later than 17 April 2024.

63. The second respondent's account does not exhibit the level of conduct that the Court can expect. There is no remorse expressed for her breach of the July 2023 Order. The explanation for her delay in purging her contempt – substantially, but not completely – only by 27 May 2024 is unsatisfactory.

64. The respondents' answer to the question of sanction is that there should be none, and that the finding of contempt is punishment enough, as well as the fact that she had to bare her soul concerning her depression and her daughter's deficits. Ms Steyn submitted that any fine or even a suspended sentence would be superfluous, and not in the interests of justice.

65. It is so that a sanction is no longer necessary to procure compliance with the July 2023 Order, and to satisfy the private litigant (the body corporate). The

respondents' contempt has been purged. The body corporate is satisfied and does not ask for sanctions.

66. However, the Court's authority to enforce its own orders was first disregarded, then (on the most benign construction of the evidence) given inadequate attention for nearly four months. The second respondent's affidavit does not evince any sense that she considers herself responsible for contempt. Her leisurely effort to purge the respondents' contempt was catalysed, it seems, only by the imminence of each extended return day. There is merit in Mr De Abreu's submission that the contempt finding and the Rule *nisi* on sanction were essential to procure compliance with the July 2023 Order.

67. The Constitutional Court has held as follows on the purpose of contempt proceedings in *Pheko and others v Ekurhuleni City*¹³:

"[26] The starting point is the Constitution. It declares its own supremacy and this supremacy pervades all law. Section 165 vouchsafes judicial authority. It provides that courts are vested with judicial authority and that no person or organ of state may interfere with the functioning of the courts. The Constitution explicitly enjoins organs of state to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness. In order to ensure that the courts' authority is effective, s 165(5) makes an order of court binding on 'all persons to whom and organs of state to which it applies'. These obligations must be fulfilled.

...

The object of contempt proceedings is to impose a penalty that will vindicate the court's honour, consequent upon the disregard of its previous order, as well as to compel performance in accordance with the previous order. "

68. Taking all the evidence into consideration, it is not appropriate that the respondents escape sanction. The second respondent's poor mental health over an extended period, the difficulties in her personal life, and her responsibility for her

¹³ 2015 (5) SA 600 (CC); 2015(6) BCLR 771 (CC); [2015] ZACC 10 at para 28

adult dependent daughter do not constitute a licence to disregard a court's order, but I have taken account of them in structuring the sanction.

69. I accordingly order as follows:

69.1. The Order of 2 July 2024 is varied by the substitution of paragraph 2 thereof with the following order:

"2. The sanction imposed upon the First and Second Respondent shall be as follows:

2.1 The First Respondent shall pay a judicial fine in the amount of R100 000.00 (One Hundred Thousand Rand);

2.2 The Second Respondent shall be committed to imprisonment for a period of 30 (thirty) days, to be served as periodic imprisonment at weekends between 17h00 on Friday and 06h00 on Monday, such sentence of committal suspended on condition that she does not again commit the offence of contempt of court."

69.2. The respondents shall pay the applicant's costs incurred in the application from 3 May 2024 on the scale as between attorney and client jointly and severally, the one paying, the other to be absolved.

F J GORDON-TURNER

ACTING JUSTICE OF THE HIGH COURT

Appearances

Attorney for the Applicants

Mr Paulo de Abreu
De Abreu Essop Inc.

Counsel for the Respondents

Adv M Steyn

Instructed by

A B Attorneys