IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2023-080104

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

[redacted]

25 AUGUST 2025

....
SIGNATURE **DATE**

THE LEISURE BAY BODY CORPORATE (SS NO. 1411/2007) Applicant

and

OABILE TRADING (PTY) LTD
(REGISTRATION NO: 2012/021533/07) Respondent

JUDGMENT OF COSTS

<u>LABUSCHAGNE J</u>

[1] This application served before me, together with a related application pertaining to the same applicant against Hard Yakka (Pty) Ltd (case number 033151/22).

[2] Both the applications are liquidation applications of the respondents for non-payment of levies in a sectional title scheme.

[3] In this application I need to determine only the issue of costs as the application for liquidation was withdrawn and the dispute is serving before the Ombud in terms of the Communities Schemes Ombud Services Act, 9 of 2011 (CSOS Act).

[4] The respondent contends that this court does not have jurisdiction by virtue of the dispute and that the applicant should pay the costs.

[5] The applicant contends that it was entitled to collect levies by means of liquidation proceedings where those levies were not being disputed.

[6] The respondent is cited as the owner of RR002 in the sectional title scheme Leisure Bay SS 1411/2007.

[7] The body corporate is responsible for collecting levies from members of the sectional title scheme and contends that the respondent failed to pay its levies. It issued a section 345 notice in terms of the Companies Act, to which there was no response. Based on the failure to respond, the applicant, relying on a presumption that the respondent could not pay its debts, obtained a provisional winding-up order of the respondent. The outstanding levies totalled R146 123.66 by August 2023, when the liquidation proceedings were launched.

[8] A provisional order was obtained on 30 November 2023, and a final order was obtained on 8 March 2024. The respondent then launched an urgent application to rescind the final winding-up order and paid an amount of R200 000.00 as security for the applicant's claim into the applicant's attorneys' trust account. The respondent only then challenged the applicant's claim.

[9] The challenge to the claim arises from *inter alia* the respondent's contention that it is not a member of the Body Corporate as it is a holder of developmental rights in terms of the Sectional Titles Act. As this was not tantamount to ownership, the respondent denied liability for levies as levies are only payable by members of the Body Corporate, which the respondent contends it is not.

[10] The directing mind of the respondent is Ms Moshishi, whose husband is the directing mind of the related company Hard Yakka (Pty) Ltd, which holds similar rights to the adjacent property.

[11] The respondent has been in and out of deregistration from time to time. The applicants had to bring an application under case number 033170/2022 to reinstate the respondent after it went into deregistration for non-payment of annual fees to CIPRO. A reinstatement order was granted. It is after reinstatement that the section 345 notice was sent and the liquidation obtained.

[12] The opposition to an adverse cost order is based on a contention that this matter can serve only before the Ombud in terms of section 39 of the CSOS Act.

[13] Section 39 of the CSOS Act, 9 of 2011 provides a dispute resolution service. A dispute refers to a dispute regarding the administration of a community scheme between persons who have material interest in that scheme, of which one of the parties is the association, occupier or owners acting individually or jointly (see definition of "dispute").

[14] In this matter there was no dispute as to the liability for levies at the time that a final liquidation order was obtained. This was due to the non-participation of the respondent in the liquidation proceedings.

[15] The applicant was consequently entitled to the costs in the liquidation proceedings up to date of the final order.

[16] In the proceedings before me the respondent contended that the debt was disputed all along. It wasn't. It only raised its disputes in a rule 6(5)(d)(iii) notice. The first dispute related to jurisdiction.

[17] In light of my conclusion on costs, it is not necessary to consider the remaining grounds raised in the notice.

[18] It suffices to state that a holder of a real right to develop property within a sectional title scheme can be liable for levies if he agrees to pay such levies. Such a holder of real rights of extension was held liable on this basis by Daffue J in **Goldex 16 (Pty) Ltd v Body Corporate of Waterford Golf and River Estate SS139/2006** [2018] ZAFSHC 193 (9 November 2019) at paragraph [60] where the following is stated:

"Applicant is not entitled to a declaratory order as sought. Although it is not liable as owner of a Real Right of Extension reserved in terms of s 25(1) of the Sectional Titles Act for the payment to the first respondent of any amounts other than those recoverable in terms of s 3(1)(d) of the Management Act, it has bound itself contractually to settle levies charged from time to time by the Body Corporate in respect of all vacant premises, i.e. the areas of the common property demarcated for future construction of houses, such levies to be calculated and payable on a pro rate basis with owners of other sections."

[19] This principle is not applicable in this case as the applicant's entitlement to its costs flow from the presumption arising from section 345 of the Companies Act and the non-participation of the respondent in the winding-up proceedings.

[20] In this application I therefore make the following order:

1. The applicant's is entitled to its costs in the winding-up proceedings up to the date of final winding-up.

2. In respect of any costs incurred thereafter, each party will pay its own costs.

[redacted]

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

APPEARANCES:

ATTORNEYS FOR APPLICANT: MEERE ATTORNEYS
COUNSEL FOR APPLICANT: ADV J VORSTER

ATTORNEYS FOR RESPONDENT: LEN DEKKER ATTORNEYS INC
COUNSEL FOR RESPONDENT : ADV VAN VUUREN