IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 033151/22

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

[redacted]

25 AUGUST 2025

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SIGNATURE DATE

In the matter between:

THE LEISURE BAY BODY CORPORATE (SS NO. 1411/2007)	Applicant
and	
HARD YAKKA (PTY) LTD	Respondent

JUDGMENT OF COSTS

<u>LABUSCHAGNE J</u>

[1] The applicant brought winding-up proceedings against the respondent for non-payment of levies in a sectional title scheme. The respondent is the holder of a Real Right of Extension in respect of property located to next to

that of Oabile Trading (Pty) Ltd, in respect of which I delivered a judgment related to the present judgment.

[2] The two matters were argued together. In both applications liquidation proceedings were launched by the applicant but, as the matters have now become disputed, the parties agreed to refer the matter to the Ombud in the Community Schemes Ombud Services Act, 9 of 2011.

[3] Both applications for winding-up were consequently withdrawn but the issue of costs remains to be decided.

[4] When an application is withdrawn, the normal principle is that the applicant bears the costs. In a matter such as the present, however, the normal rule would not be appropriate.

[5] The applicant's attempts to obtain payment of outstanding levies from the respondent was met with indifference and a lack of co-operation.

[6] The applicant has been seeking payment of outstanding levies since 2022.

[7] The last payment of levies was made in 2019.

[8] When the applicant sent a section 345 notice in terms of the Companies Act to the respondent, the respondent responded by asking for copies of full statements and invoices. The correspondence in this regard was scrutinised and never was there a dispute raised by the respondent contesting its liability.

[9] Only when the respondent instructed new attorneys in approximately May 2024 was a dispute regarding the underlying debt raised.

[10] The application against the respondent for its liquidation was set down for hearing on 16 January 2023. A day before the hearing, the respondent undertook to pay the full amount. The respondent, in fact, paid most of the outstanding levies barring an amount of approximately R10 000.00.

[11] By its conduct the respondent consequently bound themselves to pay the outstanding levies and is liable therefor (see **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."

[12] The respondent has only disputed its liability as a matter of principle since approximately May 2024. The dispute that currently exists serves before the Ombud.

[13] In light thereof that the applicant withdraws its liquidation application, the following order in respect of costs will follow:

1. The applicant is entitled to its costs in the winding-up application until the filing of the respondent's rule 6(5)(d)(iii) notice.

2. As from the aforesaid date of such notice, each party to 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 : VAN VUUREN