



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2024-047628

DELETE WHICHEVER IS NOT APPLICABLE

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

26/03/2026
DATE

SIGNATURE

In the matter between:

COPA CABANA BODY CORPORATE

Applicant

and

CHYRISSE GRIEZEL

Respondent

This Judgment was handed down electronically and by circulation to the parties' legal representatives by way of email and shall be uploaded on caselines/courtonline. The date for hand down is deemed to be on.....

JUDGMENT

MOGOTSI AJ

Introduction

- [1] This is an opposed application in which the applicant seeks summary judgment against the respondent for payment of R32,594.26, representing arrears interest and legal costs. The applicant alleges that the said amount is due by the respondent in her capacity as a member of the sectional title scheme.

Background

- [2] The applicant is a duly established body corporate for the sectional title scheme known as Copa Cabana, registered under Sectional Scheme Number SS 749/1993. The respondent is a registered owner of a unit within the scheme and is therefore a member of the body corporate, bound by its management and conduct rules and liable for contributions in terms of the Sectional Titles Schemes Management Act¹ (the STSMA).
- [3] The applicant initially instituted an action against the respondent to recover arrears of levies and related charges. The applicant initially claimed R77,594.26 in its particulars of claim, supported by a levy statement dated 4 April 2024. The quantum was subsequently reduced to R32,594.26 following the respondent's partial payment, and this is the subject matter of this application. The respondent defended the action, prompting the applicant to seek summary judgment.
- [4] The respondent raised two special pleas. Firstly, the respondent is challenging the jurisdiction of the High Court as a court of first instance and is attacking the adequacy of the particulars of claim, and secondly, the respondent asserts that the applicant lacked the necessary authority by way of a trustee resolution to claim legal costs at the time the summons was issued.

¹ Act 8 of 2011.

Legal Principles

- [5] A summary judgment is a drastic remedy and should only be granted where the plaintiff has an unanswerable case, and the defendant has failed to disclose a *bona fide* defence.
- [6] The court must guard against the abuse of the summary judgment procedure. It is not intended to deprive a defendant of their right to a fair trial, but rather to prevent frivolous or vexatious defences that serve only to delay the resolution of the matter.

Analysis

- [7] Section 38(1) of the Community Schemes Ombud Service Act² (the CSOS Act) provides that any person may make an application to the CSOS if they are a party to or affected by a dispute. Section 39(1)(e) of the CSOS Act specifically provides for an order for the payment or repayment of a contribution. However, our courts have consistently held that the CSOS Act does not oust the High Court's jurisdiction.
- [8] In *Bogatsu and Another v 108 on 8th Street Homeowners Association*³, the court confirmed that the CSOS Act does not expressly or impliedly exclude the jurisdiction of the Magistrate's Court. By analogy, the same applies to the High Court. In *Compeg Services (Pty) Ltd v Sharon Park Lifestyle Estate (NPC)*⁴, the court reaffirmed that the fact that CSOS could hear a matter does not mean it must be, and a party is not barred from proceeding directly to court. Both the High Court and CSOS have concurrent jurisdiction.

² Act 9 of 2011.

³ *Bogatsu and Another v 108 on 8th Street Homeowners Association* (unreported, case no. 2020/34289, 16 March 2021).

⁴ *Compeg Services (Pty) Ltd v Sharon Park Lifestyle Estate (NPC)* (A2022-039678) [2023] ZAGPJHC 1198 (23 October 2023).

- [9] In *Standard Bank of SA Ltd and Others v Thobejane and Others*⁵, the Constitutional Court reaffirmed that where a statute provides for alternative venues, the initiating party retains the discretion to choose between them as a matter of practicality.
- [10] In light of these authorities, I find that the High Court has concurrent jurisdiction with CSOS to adjudicate this matter. The applicant was within its rights to institute action in this court. Accordingly, the first special plea falls to be dismissed.
- [11] In court, the respondent placed on the record that the principal debt has been paid and that the only remaining amount in dispute concerns interest and legal costs. The respondent's complaint regarding the inadequacy of the particulars of claim, insofar as it relates to the calculation of the principal debt, therefore falls away. However, the dispute regarding the calculation of interest and the inclusion of legal costs remains live and requires determination. The respondent disputes the interest charged at 24% per annum and the inclusion of legal fees without taxation. These objections are rooted in the provisions of the Sectional Titles Schemes Management Act⁶ (the STSMA) and its Prescribed Management Rules⁷ (the PMR). Prescribed Management Rule 21(3)(c) provides that a body corporate may charge interest on overdue amounts only "on the authority of a written trustee resolution". The applicant bears the onus of proving that such a resolution was passed.
- [12] Prescribed Management Rule 25(4) provides that a member is liable for reasonable legal costs and disbursements as taxed or agreed by the member. The respondent has not agreed to the legal fees, and they have not been taxed. The unilateral inclusion of such fees in the levy statement is therefore premature and irregular.

⁵ *Standard Bank of SA Ltd and Others v Thobejane and Others* [2021] ZACC 17.

⁶ The Sectional Titles Schemes Management Act 8 of 2011.

⁷ Annexure 1 of the Sectional Titles Schemes Management Act Regulations.

- [13] Critically, the resolution authorising the recovery of legal costs was passed on 20 May 2024. The summons in this matter was issued prior to that date. It follows that, at the time the proceedings were instituted, the applicant lacked the necessary internal authority to claim legal costs from the respondent.
- [14] This is not a mere technicality. It goes to the root of the applicant's cause of action in respect of legal costs. A body corporate may not claim legal costs from a member unless the costs were lawfully incurred and properly authorised in terms of the PMRs. The fact that a resolution was passed after summons was issued does not retrospectively validate the claim.
- [15] In my view, this constitutes a *bona fide* defence which ought to be ventilated at trial. The respondent is entitled to challenge the validity of the interest charges and the inclusion of legal fees, and to require the applicant to produce the necessary resolutions and comply with the taxation requirements of section 25 (4) of the PMR.

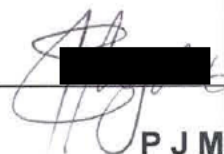
Conclusion

- [16] The respondent has raised a *bona fide* defence to the applicant's claim for interest and legal costs. The defences are grounded in the express provisions of the STSMA and its Prescribed Management Rules, and they are not frivolous or vexatious.
- [17] Summary judgment is not designed to shut out a defendant who has a genuine dispute of fact or law. The drastic nature of the remedy requires the court to exercise its discretion cautiously. Where there is a reasonable possibility that an injustice may be done if summary judgment is granted, the court should refuse it and allow the matter to proceed to trial. I am of the concerted view that these are matters that can only be properly determined after evidence has been led at trial.

Order

[18] In the premises, I make the following order:

1. The application for summary judgment is dismissed.
2. The respondent is granted leave to defend the action.
3. The costs of this application are reserved for determination by the trial court.



P J MOGOTSI

ACTING JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

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Date heard: 16 February 2026

Date of Judgment: