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

CASE NO: 2024-102803

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

26 February 2026 ....
DATE SIGNATURE

In the matter between:

S[...] BODY CORPORATE Applicant

and

MAKWANA MARTHA MACHUBENG Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines.

JUDGMENT

T. OSSIN AJ:

INTRODUCTION

[1] The applicant, S[...] Body Corporate, is a body corporate as contemplated in section 2 of the Section Title Scheme Management Act (hereafter: the STSMA)[1], and has been established for Sectional Title Scheme S[...] (hereafter: S[...]). In these proceedings, the applicant approaches the court through an administrator appointed in terms of section 16 of the STSMA.

[2] The respondent, Mankwana Martha Machubeng, is the registered owner of a sectional title unit in S[...], namely Unit 7[...]. By virtue of her ownership of Unit 7[...], the

[1] Sectional Titles Schemes Management Act 8 of 2011

respondent is a member of the applicant. As such, the respondent is subject to and bound by the applicant's conduct / management rules, and resolutions passed by the applicant's members and trustees.

[3] In these proceedings the applicant seeks an order for payment of arrear amounts owed to it by the respondent, as well as orders authorising the applicant to terminate electricity supply and limit water supply to Unit 7[...].

[4] On 28 August 2024, the applicant's attorneys addressed a letter to the respondent demanding settlement of arrears then totalling R66 213.97, failing which proceedings would be instituted for recovery. The letter of demand, as well as the covering email under which the letter was sent warned the respondent that if the arrears were not settled, the applicant would also request the court to authorise disconnection of the electricity supply to her unit. The respondent then emailed the applicant's attorneys asking them to let her know what she needed to pay before 7 September.

[5] On 29 August, the applicant's attorneys emailed the respondent advising that in order to avoid legal action, she would be required to propose an acceptable repayment arrangement in respect of the arrears, ensure that future monthly charges were timeously paid, and sign an acknowledgment of debt. The respondent was advised that if a payment proposal was not forthcoming, legal action would be instituted. There was no response from the respondent.

[6] On 23 September, the application was served on the respondent at Unit 7[...]. The Deputy-Sheriff's return of service records service to "*Mrs. Bronkhorst, mother of the renting occupier*" and notes that "*Respondent left given address.*"

[7] On 30 September, the applicant sent a further email to the respondent advising her of increased arrears of R86 925.95. The balance of the email was on essentially the same terms as the previous 29 August email, save that the applicant indicated it would accept repayment of the arrears in monthly instalments over 6 months. The respondent then paid an amount of R4 000.00.

[8] On 1 November, the applicant's attorneys emailed the respondent acknowledging payment of a further R10 000.00 and advising that current arrears was R80 564.22. The

respondent was also informed that an application for the termination of electricity supply was in the process of being prepared,[2] and that in order to prevent termination of electricity supply, the full amount was required to be paid.

[9] The respondent immediately emailed the applicant's attorneys expressing surprise at the demand for full payment against the threat of terminating electricity supply and pointing out that the applicant had previously indicated that the respondent would be allowed six months to pay off the arrears. The applicant's attorneys responded to the effect that the respondent had not reverted to them on the proposed payment arrangement and that accordingly legal action had not been suspended. The applicant's attorneys further advised the respondent that legal action would only be suspended once the respondent had signed an acknowledgment of debt.

[10] Later that morning (1 November), the applicant's attorneys emailed an acknowledgment of debt to the respondent for signature. Once again, the respondent was informed that the legal action would only be suspended once the respondent had signed and sent the acknowledgment of debt back to the applicant's attorneys. The respondent did not revert to the applicant's attorneys.

[11] On 15 November 2024, the respondent's attorneys served a notice of intention to oppose. In her answering affidavit, the respondent explained the reason for the late filing of her intention to oppose. Upon the respondents' return from Angola on 15 November, she was informed by her tenant at Unit 7[...] of the application having been served. She then perused that application and noted that the applicant was seeking termination of electricity supply and limitation of water supply to Unit 7[...].

[12] In her answering affidavit, the respondent states her residence as somewhere other than Unit 7[...].

[13] When the matter was called for hearing before me, there was no appearance from the respondent. This did not surprise me since the respondent's legal representatives had failed to file the required heads of argument. What did surprise me was that about 10 minutes into applicant's counsel addressing me, someone wearing a robe entered the well of the court and sat down near applicant's counsel. Glances were exchanged. I then

[2] In fact, the application had already been served

thought it wise to find out who this person was. I requested applicant's counsel to stay his address whilst I made the inquiry. The person advised me his name (Mr. Kubayi) and that he was in the employ of the respondent's attorneys. Mr. Kubayi informed me that the respondent's attorney had passed away over the weekend, and that a postponement of the application was being sought. I asked Mr. Kubayi whether he had rights of appearance. He replied in the negative. I then requested Mr. Kubayi to please take his seat. I directed applicant's counsel to continue his address to me. Mr. Kubayi remained in attendance during the hearing.

THE CLAIM FOR ARREAR AMOUNTS

[14] The applicant alleges that for the period May 2023 to September 2024, the aggregate arrears charged by the respondent to the applicant was R77 713.97. During that time the respondent, however, made a payment of R11 500.00. The arrear amount thus owing as of September 2024 was R66 213.97. This is the amount for which the applicant seeks payment.

[15] The R77 713.97 comprised the following components: levies, electricity, water, refuse charges, parking, CSOS levies, remote control access card, sewerage, legal costs, interest and municipal repayment contributions.

[16] The respondent denies liability for the legal costs, the interest and the municipal repayment contributions. These items aggregate to R23 181.97 of the R77 713.97. The respondent admits being liable for R43 032.00. (This arises from the deduction of the R11 500.00 payment and the aggregated disputed charges of R23 181.97.)

[17] I address each disputed item below.

Legal costs

[18] The applicant submits an entitlement to legal costs in the amount of R17 547.27.

[19] The basis for this entitlement is a resolution passed by the administrator on 28 September 2022 (hereafter: the administrator's resolution). The administrator's resolution provides *inter alia* as follows:

> 5. Any and all costs incurred by the [applicant] in the collection of any arrear contribution or to remedy a breach of any Conduct Rule, will be due and payable by the defaulting member, which costs include attorney and own client legal fees (*vide* clause 20.3 of the conduct rules).
> 6. The [applicant] is authorised to levy the aforementioned costs on the defaulting owner's levy statement as a contribution which is due and payable immediately.

[20] In support of the quantified legal costs, the applicant's heads of argument referred to and relied on the judgment in *SS Glen High* (which I subsequently found reported).[3] Reliance was also placed on Regulations 24(4) and 24(5) of the Regulations to the STSMA.[4]

[21] Regulations 24(4) and 24(5) provide as follows:

> (4) A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.
>
> (5) The body corporate must not debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgment or order by a judge, adjudicator or arbitrator.

[22] In *SS Glen High,* the basis for the legal costs claim was that body corporate's conduct rule which read as follows:

> If the Body Corporate or the Trustees instruct a firm of Attorneys in connection with or arising out of any infringement by an occupant of any provision of these rules, such occupant shall be liable to reimburse the Body Corporate on demand for all its legal costs incurred in respect thereof on an Attorney Client basis.

[23] In holding that the body corporate was entitled to quantified legal costs, the court in *SS Glen High* (De Beer AJ) stated as follows:

> [29] The Respondent upon becoming a member 'consented' and/or 'agreed' to reimburse the body corporate on demand, for all its 'legal costs incurred', thereby, in my view, also further satisfying the requirements in subrules 25(4) and 25(5).
>
> [30] Accordingly, the legal costs incurred in this matter need not be taxed to be included in the claim. Subrules 25(4) and 25(5) are further satisfied in that the Respondent consented and or agreed that such legal costs so incurred be reimbursed which constitutes a liquidated amount for the purposes of summary judgment.

[24] Notwithstanding *SS Glen High,* I questioned applicant's counsel as to the competency of a claim for quantified legal costs. Counsel then referred me to the judgment in *Mannikin* (which I subsequently also found reported).[5] In *Mannikin,* Du Plessis J declined to follow

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[3] *SS Glen High v Kruger NO* 2024 JDR 4512 (GJ) at [27] to [32]

[4] *Sectional Titles Schemes Management Regulations, 2016* published under GN R1231 in *GG* 40335 of 7 October 2016

[5] *Mannikin Close Body Corporate v Mrabalala & Others* [2025] JOL 69745 (GJ)

the approach adopted in *SS Glen High.* (*SS Glen High* and *Mannikin* were decided in the context of a summary judgment application.)

[25] In *Mannikin,* Du Plessis J framed the inquiry as one which required an analysis of the meaning of Regulation 24(4), more particularly the words "*as taxed or agreed by the member*",[6] particularly in the context of a trustees' resolution.

[26] In *Mannikin,* the trustees' resolution provided as follows:

> 2.2. An owner who is handed over to a firm of attorneys for any reason whatsoever, including, but not limited to debt collection, legal action and the sequestration of the owners, will be liable to pay the costs of the attorneys' fees on a scale as between attorney and client, as charged by the attorneys / as per the invoice received from the attorneys.

[27] Du Plessis J expressed discomfort with the approach adopted in *SS Glen High*:

> [14] I do not agree with the reasoning in *SS Glen High* insofar as taxation is concerned. There are good reasons to exercise caution before extending the drastic remedy of summary judgment to untaxed legal costs, even if agreed to in a resolution. To allow untaxed fees risks saddling sectional title owners with charges they had no opportunity to scrutinise, an argument that the defendant made in this case. Furthermore, if untaxed fees are accepted as liquidated, then trustees and attorneys may inflate accounts without any oversight opportunities. Taxation serves as a check on such practices. Thus, my reason for departing from *SS Glen High* is that it is fairer to require taxation, especially where costs are disputed. Summary judgment cannot be granted for the legal costs where it is disputed.
>
> [17] Even if the trustee resolution of 1 December 2021 is interpreted to authorise debiting members' accounts with whatever amounts are reflected in an attorney's invoice, such an arrangement has the potential to operate unfairly against sectional title owners. The owners have no direct knowledge of the work done and cannot reasonably be expected to assess the proportionality of the charges with only a line entry on the statements they receive...

[28] It appears to me that Du Plessis J was also of the view that the trustees' resolution was eclipsed by the wording of Regulation 25(4):

> [17] ...Moreover, to treat an invoice as conclusive proof of indebtedness would deprive members of the safeguard expressly built into rule 25(4), namely that the legal costs must be either taxed or agreed upon. Taxation exists to ensure reasonableness and proportionality, and to dispense with it would effectively allow trustees and the attorneys to set charges unilaterally. For this reason, I am not persuaded that reliance on the resolution cures the Body Corporate's difficulty in seeking to recover untaxed legal fees on summary judgment.

[29] I agree with the views expressed by Du Plessis J. Additionally, the legal costs appear as mere line items on the statement of account, they are not supported by invoices from the applicant's attorneys which presumably themselves would have broken down each cost

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[6] *Mannikin* (supra) at [10] to [12]

item, and there is quite simply no explanation as to exactly what these legal costs entailed. Moreover, some of the legal costs charged would in my view, and in any event, have required further explanation. For example, there is an amount of R9 674.37 charged on 15 September 2023, almost a full year prior to institution of the present application. Lastly, it is by no means certain that the costs order sought by the applicant in these proceedings would not in some way be duplicated in the quantified legal costs claim.

[30] In its heads of argument, the applicant allowed for the possibility that the court might not be prepared to include the legal costs, as quantified by the applicant, in a money order, and that legal costs would have to be subjected to taxation.

[31] In the present circumstances, I find that the applicant has not made out a case for quantified legal costs. R17 547.27 is accordingly to be deducted from R77 713.97.

Interest

[32] The applicant submits an entitlement to interest at prime plus 15% per annum, compounded monthly in arrears. In money terms, this translates, according to the applicant, to quantified interest of R4 162.12 over the period.

[33] The basis for the interest component is also the administrator's resolution, more particularly paragraph 7 thereof:

> 7. Interest shall be charged at prime plus 15% per annum, compounded monthly in arrears on all arrear contributions including levies, utility charges, administration costs and legal costs.

[34] According to the statement of account, the applicant commenced charging interest from March 2024. It appears that the monthly interest charge would have been calculated with reference to each month's balance brought forward. The balance brought forward necessarily includes the legal costs charged.

[35] Since I have concluded that the applicant is not entitled to quantified legal costs, it follows that the interest of R4 162.12 sought, as quantified by the applicant, cannot be correct. The amount of R4 162.12 is therefore also to be deducted from R77 713.97.

Municipal repayment contributions

[36] The respondent contends that she is not liable to pay the municipal repayment contribution. This has been quantified by the applicant as R1 472.58 over the period.

[37] The municipal repayment contributions arise from the applicant's indebtedness to the relevant municipality. This indebtedness resulted in an agreement between the municipality and the applicant in terms of which the applicant acknowledged owing R489 810.83 to the municipality and entered into a repayment arrangement.

[38] The repayment arrangement necessarily meant that members of the applicant would be called upon to pay the debt owed to the municipality. On 18 August 2023 the administrator passed a resolution which raised a special levy on all members (hereafter: the special levy resolution). The special levy resolution provided for a monthly special levy of R19 842.00 "*apportioned pro rata to the participation quotas of each section…and continuing in perpetuity until the municipal arrangement is settled in full.*" The apportionment for each section was set out in a schedule attached to and forming part of the special levy resolution. In terms of that schedule the respondent's monthly contribution was to be levied at R77.00.

[39] The special levy resolution recorded 1 September 2023 as the commencement date of the special levy. The respondent's statement of account, however, reflects the applicant including the special levy on the respondent's monthly account for a period of time prior to 1 September 2023. In my view, the charges prior to 1 September 2023 are unjustified.

[40] The respondent's total liability for this item is therefore R1 001.00 and not R1 472.58 as contended by the applicant. The difference of R471.58 is therefore to be deducted from the R77 713.97.

Appropriate relief

[41] I therefore find that the applicant has made out a case for payment of R44 034.00.

[42] I arrive at this amount by deducting the following from R77 713.97: the respondent's payment of R11 500.00 (for which the applicant gives the respondent credit in any event), quantified legal costs of R17 547.27, quantified interest of R4 161.12 and R471.58 in respect of municipal repayment contributions.

CLAIM FOR TERMINATION OF ELECTRICITY SUPPLY

[43] The applicant seeks an order authorising it to terminate electricity supply to Unit 7[...] (hereafter: the electricity termination order):

> 1.1 Authorising the Applicant to terminate the supply of electricity to the premises owned by the Respondent, being at Unit 7[...], S[...] Body Corporate, 2[…] P[…] S[…] Road, R[…], Boksburg, 1459 ("the premises").
>
> 1.2 The Sheriff of the Honourable Court is authorised to grant an electrician, appointed by the Applicant, access to the premises in order to disconnect the electricity supply to the premises.
>
> 1.3 The Respondent is prohibited from tampering with any installation or removal by the electrician for any reason whatsoever, including, but not limited to, reconnecting the power supply to the premises.

[44] According to the applicant, its entitlement to the electricity termination order arises from a rule housed in Rule 20 of its Conduct Rules (hereafter: Rule 20). Reliance is also placed on paragraphs 4 and 4.1 of the administrator's resolution.

[45] Conduct Rule 20 reads as follows:

> If accounts are not paid by the 25th day of the month following the month of submission of the account, the electricity supply to the unit may be summarily and without warning suspended and will only be re-installed upon payment of all arrear accounts plus such deposit as the Trustees may at their discretion direct.

[46] Paragraph 4 and 4.1 of the administrator's resolution reads as follows:

> 4. Whereas it was agreed and resolved by the administrator that, should any member forming part of the [applicant] accrue arrear levy contributions exceeding R20 000.00, the [applicant] will be entitled, but not limited, to the following relief:
>
> 4.1 Applying to court to disconnect the electricity supply to such a member's property

[47] The respondent contends that Rule 20 is unlawful on the basis that it violates her access to electricity which is provided for in the Electricity Regulation Act.[7] In respect of the administrator's resolution the respondent contends that it is unlawful and contrary to Regulation 25(1) of the Prescribed Management Rules, and was never brought to her attention prior to the present proceedings.

[48] The applicant's heads of argument refer to several recent judgments which have addressed the competency of electricity termination orders. These are *Lion Ridge* (per

[7] Electricity Regulation Act 4 of 2006

Wilson AJ as he then was),[8] *Balboa Park* (per Dippenaar J)[9] and *The Straight* (per Windell J).[10] To these may be added the brief judgment in *Ashwood Manor* (an unopposed application which served before Manoim J),[11] as well its leave to appeal reasons.[12] Of these, *The Straight* is, presently, as far as I am aware, the only judgment which authorised the electricity to be terminated (albeit subject to conditions).

[49] From the aforesaid judgments, it appears to me that the assessment as to whether, in a given situation, an electricity termination order is competent, is carried out with reference to two inquiries. The first inquiry considers the source of a body corporate's entitlement to seek authority to terminate electricity supply. The second inquiry considers constitutional imperatives, mostly in favour of the debtor, as against policy considerations, mostly in favour of a body corporate and its members. On this approach, the second inquiry comes into play only if a body corporate identifies a valid basis and source for its entitlement to seek authority to terminate electricity supply.

Source of the power

[50] In its founding affidavit, the applicant explained the underlying rational and justification for the electricity termination order: the respondent's failure to pay for electricity severely prejudices the other owners and the applicant in that they are "*ultimately required to subsidise the Respondent's consumption of electricity*", and will face severe financial and legal consequences should the electricity termination order not be granted.

[51] I am sympathetic to, and understand, the rational and justification provided by the applicant as to why the court ought to come to its assistance. The question, however, is whether the conduct rule and/or the administrator's resolution establishes a sufficient legal entitlement, in the present circumstances, to the electricity termination order.

[8] *Lion Ridge Body Corporate v Alexander* 2022 JDR 3057 (GJ)
[9] *Body Corporate of Balboa Park v Skeyi and Another* 2024 JDR 1560 (GJ)
[10] *Body Corporate The Straight v Katisi* 2025 JDR 0126 (GJ)
[11] *Body Corporate Ashwood Manor v Macgregor* 2023 JDR 3874 (GJ)
[12] *Body Corporate Ashwood Manor v Macgregor* (leave to appeal) 2023 JDR 4578 (GJ)

[52] In *Lion Ridge,* the body corporate had entered into an agreement with its members for the provision of amenities and services to members' unit as contemplated by § 4(h) of the STSMA. The body corporate argued that this agreement entitled it to seek an electricity termination order by virtue of § 4(i) of the STSMA. § 4(i) empowers a body corporate "*to do all things reasonably necessary for the enforcement of the rules and for the management and administration of the common property.*"

[53] Wilson AJ rejected the body corporate's reliance on § 4(i) of the STSMA because the body corporate had not identified a particular rule empowering it, in the first place, to seek an electricity termination order:

> 7. Neither the Sectional Titles Act nor the standard Management and Conduct Rules promulgated under it empower a body corporate to interfere with a member's utility supply, and Lion Ridge does not allege any other common law or statutory power to do so. It follows that Lion Ridge has not identified the source of its alleged right to disconnect or limit the respondents' utilities. Critically, Lion Ridge does not allege that it has adopted a specific rule, in terms of section 10 of the Act or section 6 of the Regulations, that empowers it to disconnect its members' utilities to recover outstanding levies. Nor does it set out the terms of the agreement it says it entered into with the respondents which empower it, on breach, to seek the relief for which it now asks.[13]

[54] Because neither the STSMA nor its Regulations address the circumstances under which a body corporate might be entitled to terminate electricity supply, a body corporate seeking authority to terminate electricity supply must be able to point to a particular rule or resolution giving it such authority. This was expressed in *Lion Ridge* as follows:[14]

> 9. ...It is tempting to consider it as little more than common sense that a body corporate can collect debt from its members, and seek to withdraw services provided through the body corporate until that debt is paid.
>
> 10. The reality is more complex. In the first place, sectional title schemes exist to allow their members to negotiate and manage the terms on which they will live together, share the burdens of property ownership, regulate access to common property, and achieve a range of other ends associated with the administration of a particular scheme.
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> 11. A body corporate is not an ordinary commercial entity. It derives its existence and its authority from the Sectional Titles Act, and from the rules its members make for it. The terms on which a body corporate's members' rights to receive water and electricity may be limited are a classic example the sort of thing that should be deliberated upon and agreed between them. That is precisely what is envisaged under the Act. The Act provides for a body corporate to enter into agreements governing the supply of utilities to particular section owners or occupiers (section 4 (h) of the Act), and sets up a comprehensive procedure for the making and implementation of body corporate rules. These rules "must be considered to be and interpreted as laws made by and for the body corporate" (section 6 of the Regulations).
>
> 12. Neither the Act nor the Regulations themselves set out whether and under what circumstances a body corporate may limit or discontinue the utilities supplied to one of its members. It follows either that the "laws" the body corporate makes "by and for" itself must grant such a power

[13] *Lion Ridge* (supra)

[14] *Lion Ridge* (supra)

> before the body corporate exercises it, or that a disconnection must be authorised in terms of an agreement reached between the body corporate and a particular section owner or occupier. I do not know whether Lion Ridge has made such a "law", or entered into an agreement with the respondents, that envisages the disconnection of water and electricity for non-payment, because Lion Ridge's founding papers do not address its powers to limit or disconnect the respondents' utilities. There is accordingly no pleaded basis on which I can order the disconnection or limitation of the respondents' utilities.

[55] In *Balboa Park,* the body corporate initially appears to have relied on a trustees' resolution which appointing the body corporate's attorney to "*apply via the courts to obtain a (sic) court order to disconnect all owners in Balboa who are in arrears with their levy accounts with outstanding amounts of R40 000 or more.*" It appears to have been accepted that this resolution did not, in and of itself, give rise to the type of express agreement between the body corporate and its members which would empower and entitle the body corporate to seek an electricity termination order, as alluded to in *Lion Ridge.*[15]

[56] In *Balboa Park,* the body corporate then sought to house its entitlement to an electricity termination order in "*an implied, inferred or ancillary power to disconnect electricity and limit water consumption*" deriving from its express power to collect levies and act in the common interests of its members. The body corporate argued that under such circumstances, "*communal interests must override the interests of the respondents.*" Dippenaar J formulated her understanding of the body corporate's case as follows:

> [28] Ultimately, the nub of the applicants' case amounted to whether there was any merit in their contention that the power to terminate electricity and water supply was an implied, inferred or ancillary power afforded to a body corporate and whether the resolutions adopted by the trustees of the respective body corporates were competent.

[57] Dippenaar J agreed with Wilson AJ's approach (as recorded in paragraph [54] above), that such a power could not be implied from the express debt collection powers given to body corporates under the applicable statutory and regulatory framework. Dippenaar J also pointed out that the body corporate's conduct / management rules, not only did not expressly authorise the body corporate to seek an electricity termination order, they also did not expressly give such authority to the trustees.

[58] Dippenaar J's reasoning as to why a power to seek an electricity termination order could not be implied from regular express debt collection powers is as follows:

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[15] *Balboa Park* (supra) at [13]

[37] The test for considering whether the powers contended for can be implied, are set out thus in *Lekhari*.[16]

> It should be emphasised, I think, that in order that such a power may be implied, it is not sufficient that its existence would be reasonably ancillary or incidental to the exercise of any express power, in the sense that it would be useful in giving effect to that power. It must be reasonably necessary for that purpose. The test is not mere usefulness or convenience, but necessity. There must be a need of sufficient cogency to rebut the presumption that the Legislature, in conferring the power relied upon, intended to authorise legislation affecting the subjects of the State and not the State itself in its judicial organs. Nor must the implied power be extended beyond the requirement of the occasion. What can be dispensed with without defeating the object of the express power or preventing its exercise in a reasonably effective way, is not to be implied.

[38] In applying this test, it cannot in my view be concluded that the applicants have illustrated any basis to infer that such implied power is reasonably necessary. The high water mark of their case is that legal proceedings cause substantial delays before the proceeds of any claim against a recalcitrant member can be recovered. Moreover, the risks referred to in the applicants' founding papers and in argument are based on speculation and supposition, rather than primary facts.

[39] A coercive action such as the withholding of certain vital municipal services such as electricity and water to effectively force payment of levies or other arrear amounts, may be convenient to a body corporate but cannot be interpreted to be reasonably necessary.

[40] Similarly, such a power cannot be construed as ancillary to the express powers to collect levies and contributions, nor can it be concluded that such power exists as a reasonable consequence of exercise of the express powers afforded to the trustees.

[41] Any interpretation which allows for an alteration of the statutory powers rather than an interpretation thereof cannot be supported. In interpreting the provisions, the meaning must be ascertained in the context of the STSMA as a whole.

[42] The interpretation contended for by the applicants in my view amounts to an alteration of the statutory powers and cannot be supported. The termination of municipal services as a coercive sanction for non-payment is not a necessary corollary to an obligation on the part of members to pay, and body corporate to collect levies and other charges due, nor can it reasonably be inferred to be a reasonable consequence of the exercise of the express powers or the debt collection remedy envisaged in the relevant governing instruments.

[43] …

[44] The very fact that legal proceedings may be instituted by a body corporate against a recalcitrant member, in which both interest and costs can be recovered, and debt collection is available as a remedy to a body corporate, militates against the notion that the power to seek termination of municipal services is an ancillary or incidental power to those afforded body corporates under the STSMA and the management and conduct rules of the respective body corporates. The fact that the legal process may take time to be completed is an inevitable commercial reality all creditors face in seeking to enforce payment from their debtors.

[45] The ultimate sanction that a body corporate can resort to in the collection of a debt is to obtain judgment and pursue the attachment and sale in execution of the unit. A precondition for any sale in execution would be a settlement of the outstanding levies owing to the body corporate from the proceeds of the sale. Failing that, transfer of the property would not take place without a levy clearance certificate being issued. The fact that that would take time to achieve, is not a sound basis to effectively read in, as the applicants seek to do, powers which the Legislature elected not to afford a body corporate.

[46] The entire structure, context and ambit of the STSMA, the STA, the management rules and the conduct rules are aimed at arming body corporates and their trustees with the well-established procedure of debt collection by utilising due legal process. The Legislature saw fit not to afford

[16] *Lekhari v Johannesburg City Council* 1956 (1) SA 552 (A) at 567A-C

> powers such as those currently sought to body corporates, whilst different statutory powers are afforded by statute to entities such as Municipalities in relation to debt collection.
>
> [47] Moreover, the power afforded to trustees to act on resolutions passed at a general meeting is also not unfettered. As held by Malan J in *Fish Eagle* [27] , in law, a body corporate has no power to pass a resolution to the effect that it will not carry out one or more of the duties imposed upon it by s 37 read with s 39 of the STA.
>
> [48] The same principles apply by analogy to the passing of a resolution purporting to authorise the exercise of powers which a body corporate does not have. In both instances the passing of such resolution would be *ultra vires.*
>
> [49] What exacerbates matters in the present instance is that the resolutions in question were not even taken at a general meeting of members of the respective body corporates, but by the trustees thereof in trustees' meetings. That of itself casts doubt upon the validity of the resolutions.

[59] The above long extract from Dippenaar J's judgment also identifies a further concern of the learned Judge: reliance on a trustees' resolution as opposed to a rule passed by the members themselves. It appears that Dippenaar J had added difficulties with accepting that a trustees' resolution, as opposed to a members' resolution, could be regarded as sufficient authority to seek an electricity termination order. This does not mean to suggest that, on my reading of the judgment, Dippenaar J would be prepared to uphold such a power even if passed in general meeting (i.e., by the members).

[60] In *Ashwood Manor,* Manoim J in his short reasons for judgment on that unopposed application, explained that the reason why he did not grant the body corporate an electricity termination order was because "*no legal power was advanced by the [body corporate] to grant such a form of relief to a private body.*"[17] Manoim J adopted the reasoning in *Lion Ridge.*[18] Having so held, Manoim J acknowledged understandable frustration on the part of the body corporate and its members. Manoim J suggested that the body corporate's remedy was, therefore, to adopt a rule giving it such power.[19]

[61] In his leave to appeal reasons in *Ashwood Manor (leave to appeal)*, Manoim J noted a belated argument that the source of the body corporate's power was to be found in section 4(i) of the STSMA but expressed no view as to whether this argument had been sufficiently (in this case, implicitly) raised in the application papers. That being said, the basis upon which Manoim J granted leave to appeal was as follows:

> [9] What I am persuaded by is an argument that courts in this division have sometimes granted such relief i.e. the disconnection relief, whilst others have not. Nor is it clear to me that the

[17] *Ashwood Manor* (supra) at [8]

[18] *Lion Ridge* (supra) at 7

[19] *Ashwood Manor* (supra) at [10]

> argument relying on section 4(i) of the Act has been made sufficiently clearly before, as it has now on appeal. This is probably because most of these cases came on the unopposed motion roll as did this one. Many body corporates are like the applicant, faced with a similar problem in subsidising the electrical debts of a defaulting owner on an ongoing basis. Whether this argument prevails or not, legal clarity on this point is in the best interests of both body corporates and owners. If the applicant does not succeed, then it, and others similarly situated, must know that they must consider alternatives including those suggested by Wilson J. This need for clarity and the prevalence of these cases in the courts, is a sufficiently compelling reason for leave to be granted in terms of section 17(1)(a)(ii) of the Superior Courts Act.[20]

[62] Before turning to a discussion on *The Straight,* I am now at a point in my analysis where, arising from *Lion Ridge, Balboa Park,* and *Ashwood Manor*, I venture to suggest that the following might fairly be gleaned:

(i) The statutory and regulatory regime applicable to body corporates (for example, section 4(i) of the STSMA) does not expressly give body corporates the authority to terminate electricity supply (through a court order, obviously).

(ii) The applicable statutory and regulatory regime does not confer such a power implicitly.

(iii) A body corporate seeking to terminate electricity supply must, at the very least, be able to point to an express conduct or management rule or resolution passed by the general membership rule, which in clear terms, gives it such power. A trustees' resolution may not be sufficient for this purpose. On the other hand, it may be that even a rule or resolution passed by members expressly giving a body corporate such power would be *ultra vires.*

(iv) Assuming that an expressly and clearly worded rule or resolution is not *ultra vires,* it must still pass constitutional scrutiny.

[63] In *The Straight*, the body corporate, in its founding affidavit, justified its entitlement to seek an electricity termination order on the basis of a trustees' resolution authorising the body corporate to appoint agents or attorneys to recover arrears from recalcitrant owners. No reliance was placed on a conduct / management rule. The respondent opposed the relief on the basis that there was no agreement between him and the body corporate authorising disconnection of the electricity supply.

[64] Faced with this denial, the body corporate, in its replying affidavit, asserted that a tacit agreement existed between it and the owner. This tacit agreement, according to the body

[20] *Ashwood Manor* (leave to appeal) (supra) at [9]

corporate, was established when the owner purchased a unit in the scheme. The consequence of this was that the owner was "*bound by the Rules and Regulations passed by the trustees of the Body Corporate.*" and that "*General and special resolutions passed by the trustees were thus enforceable against the respondent.*"[21] The tacit agreement asserted by the body corporate was understood by Windell J as follows:

> [32] The tacit agreement entails that when the Body Corporate pays the electricity charges on behalf of the owners, they in turn have an obligation to reimburse the Body Corporate for such payment....
>
> [33] ...
>
> [34] Thus, in terms of the tacit agreement, if an owner fails to reimburse the Body Corporate, it is entitled to take the necessary steps to mitigate its losses and prevent further usage until the electricity charges had been paid. In effect, what the Body Corporate is seeking, is a termination of the agreement between it and its owner.

[65] In *Lion Ridge,* the body corporate - in argument - also relied on a tacit agreement to justify the electricity termination order. Wilson AJ noted that the tacit agreement had not been made out in the founding papers (it was not made out in the replying affidavit either) and, quite rightly in my view, refused to entertain its existence. On the other hand, in *The Straight,* Windell J was prepared to accept the existence of the asserted tacit agreement even though it had only been raised by the body corporate in its replying affidavit. In this regard Windell J stated as follows:

> [31] In *Lion Ridge* the basis for the authorisation relief was not properly pleaded. In this application, the Body Corporate had made out a case for the authorisation relief based on a tacit agreement between the Body Corporate who is represented by the trustees on the one side and the owners of the units on the other side. The Respondent did not attend the hearing, did not file heads of argument and did not seek leave to file a supplementary affidavit. The allegations made by the Body Corporate in relation to the tacit agreement are thus undisputed.

[66] In so far as the source of a body corporate's power to seek an electricity termination order is concerned, I also do not agree with the view expressed in *The Straight* that a body corporate would be entitled to rely on a tacit agreement as affording it such power, whether such tacit agreement was raised in the founding affidavit or not.

[67] I am of the view that a body corporate must, at the very least, be able to identify to the court, in its founding papers, an express and clearly worded rule or resolution adopted or passed by the general membership to this effect.[22] Since the applicable statutory and regulatory regime does not give body corporates such express power, the source for this

[21] *The Straight* (supra) at [27]

[22] My reasons for not accepting that a trustees' resolution will suffice is set out in paragraph [70] below.

power would have to come from internal governing instruments which are regarded as contracts and agreements between the body corporate and its members. I, therefore, on this issue, align myself with the views set out in *Lion Ridge* and, seemingly, in *Ashwood Manor*.

[68] I do, however, agree with Dippenaar J's view that such a rule or resolution would have to pass constitutional muster.[23] This was also expressed by Wilson AJ in *Lion Ridge* in the following terms:

> 15. Thirdly, and probably most importantly, the relief that Lion Ridge claims implicates a delicate web of constitutional rights. These are the right against arbitrary deprivation of property (section 25 (1) of the Constitution, 1996), the right to sufficient water (section 27 (1) (b) of the Constitution, 1996), the public law right to receive electricity from a municipality, even where the electricity is transmitted through an intermediary such as a landlord or a body corporate (see Joseph v City of Johannesburg 2010 (4) SA 55 (CC), para 47), and the right of access to adequate housing (section 26 of the Constitution, 1996).
>
> 16. Relief limiting these constitutional rights is plainly incompetent if it is not authorised by law. The form that law might take depends on the facts of a particular case. In this matter, the very least that would have to be established is a provision of the Sectional Titles Act, a rule of the body corporate, or a term in an agreement that authorises the relief Lion Ridge now claims. Lion Ridge does not allege any of this. The instrument authorising the relief, where it exists, may itself have to conform to constitutional requirements designed to protect the rights implicated. However, since no authorising instrument is alleged in Lion Ridge's founding papers, I need not address that issue.

[69] In my view a rule or members' resolution, which expressly grants a body corporate the right to seek termination of electricity supply, ought to provide for and set out sufficient guardrails which have the effect of giving concrete expression to the constitutional rights afforded to individual members. The enforcement of that rule by a court ought to, in any event, consider constitutional imperatives, by limiting such enforcement in such a way that balances the owner's constitutional rights as against policy considerations in favour of the body corporate and its general membership.

[70] Lastly, I turn to the question as to whether an expressly worded trustees' resolution would suffice. Dippenaar J appears to be of the view that it would not. I agree with this. A body corporate and its members are contractually bound to each other. In the present matter, the agreement between the applicant and its members (including the respondent) is that the applicant pays for all electricity supplied, with members then reimbursing the applicant for their share. The agreement (which is located in Rule 20) entitles the applicant to seek termination of electricity supply to recalcitrant member's units. Thus,

[23] *Balboa Park* (supra) at [52]

the applicant's right to obtain authorisation from a court to terminate electricity supply is housed in an agreement between the applicant and its members. A trustees' resolution to this effect would therefore not suffice, and as previously held such a power does not arise implicitly from a body corporate's general debt collection powers. The same applies to the administrator's resolution since the administrator steps into the shoes of the trustees but not the members.[24]

[71] Whilst, from a statutory and regulatory point of view, a body corporate may only seek to terminate electricity supply if there is an express agreement to this effect, constitutional imperatives ought, in my view, also inform the authorisation of such an order by the court, and, if appropriate, proscribe its limits.

[72] And with that I now turn to discuss the second inquiry: the constitutional rights of the recalcitrant owner as against policy considerations in favour of the body corporate and its general membership.

Constitutional imperatives and policy considerations

[73] In *Lion Ridge,* Wilson AJ had this to say on constitutional imperatives:

> 15. Thirdly, and probably most importantly, the relief that Lion Ridge claims implicates a delicate web of constitutional rights. These are the right against arbitrary deprivation of property (section 25 (1) of the Constitution, 1996), the right to sufficient water (section 27 (1) (b) of the Constitution, 1996), the public law right to receive electricity from a municipality, even where the electricity is transmitted through an intermediary such as a landlord or a body corporate (see *Joseph v City of Johannesburg* 2010 (4) SA 55 (CC), para 47), and the right of access to adequate housing (section 26 of the Constitution, 1996).[25]
>
> 16. Relief limiting these constitutional rights is plainly incompetent if it is not authorised by law. The form that law might take depends on the facts of a particular case. In this matter, the very least that would have to be established is a provision of the Sectional Titles Act, a rule of the body corporate, or a term in an agreement that authorises the relief Lion Ridge now claims. Lion Ridge does not allege any of this. The instrument authorising the relief, where it exists, may itself have to conform to constitutional requirements designed to protect the rights implicated...

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[24] See section 16 of the STSMA

[25] *Lion Ridge* (supra) at [15]; also see *The Straight* (supra) at [21] to [23] and [35]; *Balboa Park* (supra) at [50] to [54]

[74] In *Balboa Park,* Dippenaar J, approving of the aforesaid dictum from *Lion Ridge*,[26] stated as follows with reference to constitutional imperatives:

> [43] Whilst ancillary and incidental powers may be inferred from express powers and powers may be conferred by implication, as argued by the applicants, and whilst common interests of owners may in certain instances override the interests of individual owners, community ownership does not in all instances enjoy paramountcy. More so, where it would infringe on individual owners' constitutional rights, as it would in the present circumstances. The applicants' reliance on *Fish Eagle* thus does not avail them.
>
> [50] The significant impact on the constitutional rights of a recalcitrant member by the exercise of a termination power, further militates against the construction of such power as being necessary. It is self-evident that no management rules or conduct rules may conflict with the Bill of Rights and the Constitution . It follows that the powers which a body corporate may exercise, must also pass Constitutional muster.
>
> [52] Thus, even if members in a general meeting were to seek the adoption of management rules or conduct rules which agree to the termination of municipal services such as electricity or water supply in the event of non-payment, any such instrument would have to conform to constitutional requirements to protect the implicated rights referred to. Absent adequate protection, any such management or conduct rules may well not bear constitutional scrutiny and be *ultra vires*.
>
> [53] Whilst recognising that the proposed relief would impact on the constitutional rights of the respondents, the applicants relied on the limitation clause in s 36 of the Constitution in arguing that any infringement of the respondents' constitutional rights would be justified in exercising the balancing act which must be performed where fundamental rights compete.
>
> [54] No such case had however been made out in the applicants' founding papers for any such limitation. What is clear from the founding papers, is that the respondents' constitutional rights and the impact of the termination relief sought on those rights, were simply ignored and have not been addressed, despite the cautions expressed in Lion Ridge. The bald argument that the communal interests of the members must override the interests of recalcitrant members is an over simplification and does address the true issue at play.

[75] Issues arising from the constitution, were addressed by Windell J in *The Straight* as follows:

> [23] The Constitutional Court in *Joseph* examined the relationship between the municipality, a service provider, and the ultimate user of the service (tenants), where the service is provided through a third party, such as a landlord. The municipality disconnected the electricity after giving only notice to the landlord and not to the tenants. The tenants, inter alia, claimed that the disconnection without notice to them violated their constitutional right to access to adequate housing (implying a right to electricity) and human dignity (under sections 26 and 10 of the Constitution, respectively), and their contractual rights against the owner of the property. The Court held that the right to electricity was a public law right and that the tenants were entitled to procedural fairness in that they had to receive adequate notice at last 14 days before disconnection.
>
> [38] Lastly, the respondent's reliance on *Joseph* is misplaced, as the facts of that matter are wholly distinguishable from the present matter. The Constitutional Court in *Joseph* appreciated the importance of debt collection by local government in the event of non-payment of electrical charges but held that before the municipality can disconnect the electricity there must be

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[26] *Balboa Park* (supra) at [51]

> procedural fairness in that proper notice must be given to the end-users. In the present matter, the Body Corporate followed due process by sending a letter dated 21 February 2022 to the respondent informing him of the consequences of non-payment of his levies (which included seeking an court order that will made provision for the disconnection of the electricity supply to the respondent's unit until the arears had been settled) and approaching the court to gain the necessary authority to disconnect the electricity supply to the respondent's unit.

[76] There was no need for Manoim J in *Ashwood Manor* to grapple with constitutional imperatives, because the body corporate had not identified the legal power which entitled it to seek an electricity termination order.

[77] As appears from the above, *Lion Ridge, Balboa Park* and *The Straight* all referred to the judgment of the Constitutional Court in *Joseph.*[27]

[78] In *Joseph,* tenants in a building had been paying for electricity charged to them by the landlord, but the landlord had failed to pay over these funds to the municipality. The municipality then disconnected electricity supply to the entire building. The issue in *Joseph* was whether tenants, who had no contractual relationship with the municipality, were nevertheless "*entitled to procedural fairness in the form of notice and an opportunity to make representations to [the municipality] before electricity supply was terminated.*"[28]

[79] The Constitutional Court held that the tenants were entitled to procedural fairness, declared the disconnection unlawful, and ordered the municipality to reconnect the electricity supply.

[80] The facts of the present matter are obviously distinguishable from the facts in *Joseph* (as also noted by Windell J in *The Straight*). It was not substantive law principles which led the Constitutional Court to ordering the electricity supply to be reconnected, but rather administrative justice principles. Administrative justice principles find no application in the present matter. Yet, even in *Joseph,* and as pointed out by Windell J, the Constitutional Court "*appreciated the importance of debt-collection by local government*":[29]

> [51] Nothing in this judgment should be taken to suggest a failure to appreciate the importance of debt collection by local government. The outstanding debts of City Power are staggering. The

[27] *Joseph and Others v City of Johannesburg and Others* 2010 (4) SA 55 (CC)

[28] *Joseph* (supra) at [1]

[29] *The Straight* (supra) at [38]

importance of debt collection by municipalities was emphasised by this court in *Mkontwana*, where Yacoob J stated that it is 'important for unpaid municipal debt to be reduced by all legitimate means'.[30] In a separate concurring judgment, O'Regan J affirmed that '(t)here can be no doubt that municipalities bear an important constitutional obligation and a statutory responsibility to take appropriate steps to ensure the efficient recovery of debt'.[31]

[52] In addition, rights entail responsibilities. Citizens who can, must take responsibility for paying for services provided to them in fulfilment of government's statutory and constitutional obligations. Government is entitled to require this of citizens. Moreover, government regulation is implicit in the notion of providing electricity.

[81] The aforesaid extract from *Joseph* looks very much like the kind of policy considerations which the body corporates, in the judgments referenced above, identified in support of electricity termination orders.[32]

[82] In the present matter, this is addressed by the applicant as follows:

37. As deposed to herein above, the Respondent has continuously failed, neglected and/or refused to pay for the consumption charges relating to the use of electricity on or in the property. The Respondent is currently using services on a daily, weekly and monthly basis that the Respondent is not making payment for and the Applicant, as well as all other paying owners in the scheme, are severely prejudiced by the situation as they are ultimately required to subsidise the Respondent's consumption of electricity.
38. Whilst a failure to pay every amount due to the Applicant is prejudicial to it, a failure to effect payment of electricity consumption charges is most prejudicial. The reason for this is that the Applicant is obligated, on a monthly basis, to effect payment of electricity consumption charges in respect of every section within its scheme, to the local council. If the Applicant does not recover these payments, it will continue to advance monies to the council, on behalf or section owners who do not pay for electricity consumption. This will deplete any savings which the Applicant may have and will ultimately cause the Applicant to have a negative bank balance, risking a disconnection of the electricity supply, by the local municipality, to all of the sections and the Applicant being placed under administration. This would severely prejudice all of the members of the Applicant, who will be left without an electricity supply and will suffer a significant decrease in their property values.
39. The Respondent, as an owner of the property in the Applicant, is liable to pay for the use of consumed electricity on the premises. The Applicant faces severe financial and legal consequences should the above Court not grant this claim….
40. An Order for the disconnection of the supply of electricity to the property will put the Applicant in the position where it will be able to cap its losses, in respect of arrear electricity consumption charges pertaining to the property, whilst it attempts to recover the arrears. At the very least, the Applicant and all of its members will mitigate further losses in this regard and will be able to prevent the situation from becoming worse, by preventing further electricity supply to the property in circumstances where the Respondent refuses to pay *ad infinitum,* and avoiding the

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[30] Footnote 42 in *Joseph:* "*Mkontwana above n25 at para 52.*" *Mkontwana* is *Mkontwana v Nelson Mandela Metropolitan Municipality and Another; Bissett and Others v Buffalo City Municipality and Others; Transfer Rights Action Campaign and Others v MEC, Local Government and Housing, Gauteng, and Others (KwaZulu-Natal Law Society and Msunduzi Municipality as Amici Curiae)* 2005 (1) SA 530 (CC) (2005 (2) BCLR 150; [2004] ZACC 9).

[31] Footnote 43 in *Joseph*: "*Id in para 124.*"

[32] See for example: *Lion Ridge* (supra) at [18], *Balboa Park* (supra) at [15]

risk of the local council disconnecting the electricity supply to every section in the Applicant's scheme.

41. Accordingly the Applicant has followed the appropriate legal process without taking the law into its own hands, and has no other alternative but to approach the above Honourable Court for the relief set out herein.

[83] The respondent accepts that she is liable for the use of electricity consumed in her unit, and that she has not paid the applicant for such usage. The respondent denies, however, that the applicant faces severe financial and legal consequences if a termination order is not granted. According to the respondent this is because the applicant has not proposed and exhausted alternative measures such as installing prepaid meters. In the respondent's view these would mitigate the applicant's future damages. For this reason, the respondent seeks dismissal of the electricity termination order sought and asks the court to direct the applicant to explore other available alternative measures.

[84] In its heads of argument, the applicant provides for the possibility of the court ordering the installation of a prepaid electricity meter as an alternative measure for mitigating future harm and loss to the applicant. The applicant submits that the costs consequent on such installation (should it be ordered) must be paid by the respondent.

[85] During the hearing I expressed concern with making such an order as I had no information as to the applicant's electricity infrastructural set up, whether the infrastructure could reasonably accommodate such an alternative measure, and if so at what cost. I also expressed reservations about the respondent's ability to pay for the installation.

[86] Installation of a prepaid electricity meter may, in certain circumstances, be preferrable to disconnection of electricity supply. But if this is so, then, in my view, it would be for the recalcitrant owner to make out a proper case for this, not the body corporate. In the present case I am not prepared to make such an order.

[87] In the present matter, the applicant relies on a conduct rule (an agreement between the applicant and its members) which entitles the applicant to terminate electricity supply in the event of non-payment of all arrear amounts, and for resumption of electricity supply once all arrear amounts have been paid. In my view this conduct rule provides sufficient basis for the assertion by the applicant of a right to seek termination of electricity supply

to Unit 7[...]. On the other hand, termination of electricity supply with reference to all arrear amounts, not just arrear electricity charges (The arrear electricity charges claimed by the applicant, which is a component of the R77 713.91, is R11 954.61.), and resumption of supply upon payment of all arrear amounts, again not just arrear electricity charges, is in my view both constitutionally problematic and extends beyond the applicant's immediate policy concern being its contractual obligation to pay the municipality for electricity usage and obtain reimbursement for that amount from its members. This issue was in fact noted by Manoim J in his leave to appeal reasons of *Ashwood Manor*:

> [10] What this case also raises, and was not argued in the leave to appeal, and I have only considered belatedly, is that even if there is such a power to disconnect, does that power extend to the recovery of all the arrear debts…or only the arrear electricity debt.[33]

The appropriate relief

[88] Having regard to the facts in this case as well as constitutional imperatives, I am prepared to authorise termination of electricity supply to Unit 7[...], but subject to various limitations and conditions. In doing so I am also mindful of the fact that the applicant is under administration, and that it is already heavily indebted to the municipality. The respondent's conduct in not paying her share exacerbates the situation.

[89] Since I have declined to authorise the electricity termination order on the basis of the administrator's resolution, the respondent's contention that the administrator's resolution breaches Regulation 25(1) is moot. In any event, Regulation 25(1) is, in my view, irrelevant.

[90] I have considered the possibility that someone other than the respondent might presently reside at Unit 7[...]. The order I propose to make caters for this possibility through service of said order as well as a notice, affording the respondent 14 calendar days to pay the arrear electricity charges prior to termination taking place, at Unit 7[...] on the persons in occupation thereof as well as at the respondent's stated residence.

CLAIM FOR LIMITATION OF WATER SUPPLY

[91] The applicant seeks an order authorising it to limit water supply to the respondent's unit in the following terms (hereafter: the water limitation order):

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[33] *Ashwood Manor* (leave to appeal) (supra) at [10]

2.1 Authorising the Applicant to limit the supply of water to the premises to the amount of 6000 L (six thousand litres) per month and installing a prepaid water meter in the premises, unless and/or until the Respondent makes payment of the full arrear amounts;

2.2 The Sheriff of the Honourable Court is authorised to grant a contractor appointed by the Applicant, access to the premises in order to limit the water supply to the premises and install the prepaid water meter.

2.3 The Respondent is prohibited from tampering with any installation or removal by the contractor for any reason whatsoever, including, but not limited to, reconnecting an unlimited water supply to the premises.

[92] According to the applicant, its entitlement to the water limitation order arises from paragraph 4 and paragraph 4.2 of the administrator's resolution. There is no conduct rule similar to Rule 20 which authorises the applicant to limit water supply.

[93] Paragraph 4 and 4.2 of the administrator's resolution reads as follows:

4. Whereas it was agreed and resolved by the administrator that, should any member forming part of the [applicant] accrue arrear levy contributions exceeding R20 000.00, the [applicant] will be entitled, but not limited, to the following relief:

4.1 Applying to court to have such a member's water supply limited in accordance with the relevant Laws / By Laws of South Africa;

[94] The same general legal factors and facts applicable to the electricity termination order, apply to an assessment of the applicant's right to seek an order limiting water supply.

[95] In the present instance there is in no members' resolution or rule which authorises the applicant to limit water supply. I have already held in the context of the electricity termination order, that such a resolution or rule is required. All that the applicant can point to is the administrator's resolution.

[96] It is also significant to me, that, in none of the letters of demand which the applicant sent to the respondent, did the applicant record its intention to limit water supply to Unit 7[...].

[97] I therefore hold that the applicant is not entitled to a water limitation order.

THE ORDER

[98] In the circumstances, I make the following order:

1. The respondent is ordered to pay the applicant the amount of R44 034.00;

2. The respondent is ordered to pay interest on the amount of R44 034.00 at the rate of 15.5% per annum, compounded monthly, calculated from 1 September 2024 to date of payment;

3. In respect of the electricity supply to Unit 7[…], S[...], 2[…] P[…] S[…] Road, R[…], Boksburg (hereafter: Unit 7[...]):

3.1 The applicant is authorised to terminate electricity supply to Unit 7[...] only once the following conditions have been met:

3.1.1 The applicant has given the respondent 14 calendar days written notice to settle the outstanding electricity charge of R11 954.61 plus interest at 15.5% per annum, compounded monthly, from 1 September 2024 to date of payment (hereafter: the written notice);

3.1.2 A copy of this order has been served by the Deputy-Sheriff as follows:

3.1.2.1 Service at 3[…] K[…] Street, W[…] P[…], Extension 12, Boksburg; and

3.1.2.2 Service at Unit 7[...] on the person(s) occupying Unit 7[...];

3.1.3 The written notice is served by the Deputy-Sheriff as follows:

3.1.3.1 Service at 3[…] Unit 7[...] Street, W[…] P[…], Extension 12, Boksburg; and

3.1.3.2 Service at Unit 7[...] on the person(s) occupying Unit 7[...];

3.1.4 A copy of this order as well as the written notice are emailed to:

3.1.4.1 The respondent at m[…] ; and

3.1.4.2 The respondent's attorneys at i[…];

3.1.5 Fourteen calendar days have lapsed from the last service and emailing of this order and the written notice, and the respondent has not settled the outstanding electricity charge and interest as set out in paragraph 3.1.1 above;

3.2 Termination of electricity supply to Unit 7[...] may only be carried out by an electrician registered with the Electrical Contractors Association of South Africa Electricity, and who has been engaged by the applicant for this purpose.

3.3 The respondent and any other person in occupation of Unit 7[...], is directed to afford the aforesaid electrician access to Unit 7[...] for any purpose which relates to the termination of electricity supply to Unit 7[...], failing which the Sheriff of the Court is directed to afford the aforesaid electrician such access.

3.4 Other than an electrician engaged by the applicant, all persons are prohibited from tampering with the electricity supply to Unit 7[...], which includes reconnecting electricity supply to Unit 7[...].

3.5 The applicant will be required to reconnect electricity supply to Unit 7[...] within 48 hours of the respondent paying the applicant the outstanding electricity charge and interest, as set out in paragraph 3.1.1 above.

4. The respondent is ordered to pay the costs of this application, including the costs of counsel on Scale A.

T. OSSIN
Acting Judge of the High Court of South Africa
Gauteng Local Division, Johannesburg

APPLICANT'S COUNSEL:	R. Smith
APPLICANT'S ATTORNEYS:	Heerschop Pienaar Attorneys
RESPONDENT'S COUNSEL:	No appearance
RESPONDENT'S ATTORNEYS:	Mathada and Associates Inc
DATE OF HEARING:	24 November 2025
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