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

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.

SIGNATURE DATE: 21 September 2022

Case No. 17074/2022

In the matter between:

LION RIDGE BODY CORPORATE Applicant

and

PHILANTHEA ALEXANDER Respondent

Case No. 18106/2022

And in the matter between:

LION RIDGE BODY CORPORATE Applicant

and

MAROPENG VALENCIA MORATA Respondent

Case No. 19220/2022

And in the matter between:

LION RIDGE BODY CORPORATE Applicant

and

MULALO TERRANCE MUKONA First Respondent

CINDY SINDISWE MAKHANYA Second Respondent

Summary

Practice – pleadings – application for money judgment for arrear levies alleged to be due and payable to a body corporate constituted under section 2 (1) of the Sectional Titles Schemes Management Act 8 of 2011 – compliance with the applicable Management or Conduct Rules must appear from the body corporate's papers before the money judgment can be granted.

Practice – pleadings – application for an order disconnecting or limiting water and electricity supplied to a body corporate member's unit until judgment debt is satisfied – relief affecting constitutional rights – relief not competent unless authorised by an applicable Management or Conduct Rule or agreed to by the body corporate member - Management Rule, Conduct Rule or agreement must be specifically pleaded, failing which no relief can be granted.

JUDGMENT

WILSON AJ:

1 The applicant in each of these three matters, "Lion Ridge", is a body corporate established under section 1 of the Sectional Titles Act 95 of 1986, read with section 2 (1) of the Sectional Titles Schemes Management Act 8 of 2011 ("the Sectional Titles Act"). Each of the respondents is a member of Lion Ridge, because they own a unit in the scheme out of which Lion Ridge was established.

2 In each application, Lion Ridge asks for judgment in an amount it claims each of the respondents owes in arrear levies, and water and electricity charges. In the case of Ms. Alexander, case number 17074/2022, Lion Ridge seeks payment of R44 141.23. In the case of Ms. Morata, case number 18106/2022, Lion Ridge seeks payment of R195 728.87. In the case of Mr. Mukona and Ms. Makhanya, case number 19220/2022, Lion Ridge seeks payment of R180 186.10.

3 In addition to judgment in these amounts, Lion Ridge asks for an order disconnecting the electricity supplied to each of the respondents' units, and an order limiting the water supplied to each unit to not more than six kilolitres per month, until the judgment amounts are paid in full. Lion Ridge also asks for an order declaring the respondents liable for the cost of disconnecting, limiting, and, if necessary, reconnecting each of the respondents' water and electricity supplies.

4 The case made out for this relief in Lion Ridge's founding affidavit rests on sections 2 (5), 4 (h) and 4 (i) of the Sectional Titles Act. Under section 2 (5) of the Act, Lion Ridge is "responsible for the enforcement of the rules and for the control, administration and management of the common property for the benefit of all owners". The relevant portion of Section 4 (h) of the Act empowers Lion Ridge to "enter into an agreement with any owner or occupier of a section for the provision of amenities or services by the body corporate to such section or to the owner or occupier thereof". Section 4 (i) of the Act allows Lion Ridge "to do all things reasonably necessary for the enforcement of the rules and for the management and administration of the common property".

5 Lion Ridge says that, exercising its powers under section 4 (h) of the Act, it entered into an agreement with the respondents for the provision of amenities and services to the respondents' units. By virtue of its powers under section 4 (i) of the Act, Lion Ridge now claims the right to take judgment against the respondents and to limit or disconnect the utilities supplied to the respondents' units. However, Lion Ridge neither alleges the

terms of the agreement it says it concluded with the respondents, nor sets out the rules of scheme that it seeks to enforce.

6 Lion Ridge is in principle entitled to claim judgment for outstanding levies. The power to do so is an incident of section 4 (i), read with Management Rule 25 in Annexure 1 of the Sectional Titles Schemes Management Regulations, 2016 ("the Regulations"). The Management Rules set out in Annexure 1, together with the Conduct Rules set out in Annexure 2 of the Regulations, will apply to most bodies corporate by operation of law. Section 10 of the Sectional Titles Act, and section 6 of the Regulations, set out the circumstances under which developers and bodies corporate can supplement, amend or repeal the Management or Conduct Rules. But those Rules represent the default position, applicable to all bodies corporate, unless some deviation from them is alleged and proved. In this case, no such deviation has been alleged, and I can accept that Annexure 1 applies to Lion Ridge in its entirety.

7 The disconnection or limitation of the respondents' utilities raises more difficult issues. 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 me.

8 Mr. Bava, who appeared before me for Lion Ridge, argued that there is a tacit agreement permitting Lion Ridge to disconnect the respondents' utilities to collect outstanding levies. He submitted that the agreement came into existence as soon as the respondents became members of the body corporate. However, as he readily and very fairly conceded, the relevant terms of that agreement have not been pleaded in Lion Ridge's founding papers. It barely needs stating that a tacit term – especially a tacit term authorising the sort of remedy Lion Ridge seeks in these applications – must be formulated, pleaded and proved before it can be relied upon. Lion Ridge's failure to do this in its founding papers is fatal to its reliance on a tacit agreement.

9 All of this may seem excessively formalistic. 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.

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 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.

13 Secondly, Management Rule 25 sets out the procedure to be followed by a body corporate that wishes to collect a debt owing by its members. The Rule requires written notice to be given, not later than 14 days after the adoption of a body corporate's budget, of the contributions and charges due by each member, the due payment date, the rate of interest, if any, payable on arrear amounts, and the details of a dispute resolution process the member can engage if they wish to challenge the charges sought to be levied (Management Rule 25 (1)). A body corporate may not "debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act" or the Management Rules, unless the member consents to the charge, or judgment has been given for it (Management Rule 25 (5)).

14 Lion Ridge does not address these requirements in its founding papers. It does not allege that Management Rule 25, or some other valid procedure, has been followed, or that the debts for which it seeks judgment are debts that have been validly incurred in terms of the Act or the applicable Management or Conduct Rules. I prefer to leave open the question of the lengths to which Lion Ridge would have to go to allege and prove compliance with the Act or the applicable Management or Conduct Rules, but judgment for outstanding levies – let alone an order authorising coercive action to enforce the judgment, such as the disconnection of utilities – will rarely, if ever, be granted unless it can be deduced from a body corporate's founding papers that the Act and the applicable Management and Conduct Rules have been complied with.

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.

17 I have given some thought to whether Lion Ridge can clothe itself in the authority of a "service provider" in terms of the Electricity Regulation Act 4 of 2006 or a "water services intermediary" in terms of the Water Services Act 108 of 1997. But neither of these enactments applies comfortably to a body corporate that distributes water and electricity to its members' units. Even if

they did, a case would have to be made out that the termination of water and electricity services to the relevant units was authorised by a specific condition in a licence or service delivery agreement (sections 14 (1) (n) and 28 (3) of the Electricity Regulation Act), or by contract (section 1 of the Water Services Act). That case has not been made out.

18 Mr. Bava argued that the rights of the respondents to continue to receive water and electricity must be balanced against the rights of all the other members of the body corporate to have the respondents pay their fair share of the costs of running the sectional title scheme, and their rights to a body corporate that is functional and free of excess debt. The problem with this submission is that it begs the question of what Lion Ridge's rules say about the extent to which individual members of the body corporate have agreed to carry outstanding levies, and what procedures they have put in place, if any, for enforcing the payment of levies through disconnecting utilities for non-payment. On this issue, Lion Ridge's papers are silent.

19 It is for all these reasons that none of the relief Lion Ridge claims can be granted. Neither the debt Lion Ridge alleges, nor the right to disconnect or limit the respondents' water and electricity supplies to enforce payment of that debt, have been established on its founding papers. I will dismiss the applications, but I emphasise that nothing in this judgment should be understood as preventing Lion Ridge from returning to court on the same facts with papers that adequately address the shortcomings in its founding affidavit that I have identified.

20 These applications were moved in my unopposed court on 30 August 2022. While accepting the seriousness of the problems with Lion Ridge's papers that I have set out above, Mr. Bava submitted that Judges in this Division regularly do grant, on an unopposed basis, orders of the nature Lion Ridge seeks. I find it difficult to accept that this is a frequent occurrence on papers as sparsely pleaded as Lion Ridge's founding affidavit. However, if there is a judicial practice of granting bodies corporate the right to disconnect utilities to their members' units without a Management Rule, a Conduct Rule, a contractual term or some other legal basis having been alleged and proved in the body corporate's founding papers, then I think that practice requires urgent and thorough review.

21 These applications are dismissed, with each party paying their own costs.

S D J WILSON
Acting Judge of the High Court

This judgment was prepared and authored by Acting Judge Wilson. It is handed down electronically by circulation to the parties or their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 21 September 2022.

HEARD ON:	30 August 2022
FURTHER SUBMISSIONS ON:	9 September 2022
DECIDED ON:	21 September 2022
For the Applicant:	WA Bava Instructed by Bam Attorneys

For the Respondents: No appearance