

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 027545/2023

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

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**SIGNATURE**                      **...30/11/2023.....**  
**DATE**

In the matter between:

**BODY CORPORATE ASHWOOD MANOR**

**Applicant**

and

**ROBERT CLARK MACGREGOR**

**Respondent**

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**LEAVE TO APPEAL REASONS**

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**MANOIM J:**

[1] This is an application for leave to appeal that emerged from a matter I heard on the unopposed motion roll on 31 August 2023.

[2] Briefly, the applicant, a body corporate, sought various different prayers against the respondent, an owner in the relevant scheme; to claim in respect of arrears; more specifically, levies, payments to the Community Schemes Ombud Service, a maintenance levy, sewerage charges and electricity charges. This amount totalled R94 180.18 of which the electricity component was R24 168.26 in respect of arrear electricity consumption charges for the period November 2019 to July 2022. There was also a claim for interest on that sum. I granted this relief, and this does not form part of the leave to appeal.

[3] What does, is that I did not grant a further prayer (number 3 on the draft order) which sought the following relief:

*“In the event that the Respondent does not effect payment as per paragraph 1 and 2 within 10 days of granting of is order, the Applicant is authorised to engage the services of an electrician at a reasonable fee, registered with the Electrical Contractors association of South Africa, in order to disconnect the electricity supply to the Respondent's section being: section 73, Holkam Road, Pauls of, Ext 52, Gauteng. The electricity supply shall remain disconnected until payment of the aforesaid amount has been effected.*

[4] In doing so I followed the only decision that I have been made aware of in this division, of Wilson J in n *Lion Ridge Body Corporate v Alexander and Others*

(17074/2022; 18106/2022; 19220/2022) [2022] ZAGP JHC 666 (21 September 2022)

[5] In that matter Wilson J held:

*“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.”*

[6] There was nothing in the current application which suggested what power the body corporate in this matter sought to act in terms of. However, in the application for leave to appeal, counsel for the applicant, now relies on section 1(i) of Sectional Titles Management Act 8 of 2011, (“the Act”) which states:

*“The body corporate may exercise the powers conferred upon it by or under this Act or the rules, and such powers include the power — ... to do all things reasonably necessary for the enforcement of the rules and for the management and administration of the common property.”*

- [7] This is not alleged in the application papers. However, counsel says paragraphs 8 and 10 of the founding papers can be read to set out the factual basis for this power and it was not necessary for the applicant to specifically plead that it acted in terms of this statutory power. (See *Fundtrust Pty Ltd v Van Deventer* 1997(1) SA 710.)
- [8] Whether this has been sufficiently pleaded *in casu* I express no view on.
- [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 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.

[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 arrears debts ( as was the case *in casu*) or only the arrear electricity debt (a lower amount, in this case of R24 168.26)

[11] For this reason, I would grant leave to appeal but as there are no conflicting written judgments that I have been made aware of I would grant leave to a full court of this division not the SCA. <sup>1</sup>

[12] I have also made the unusual additional order that I appoint counsel to argue an *amicus curiae* brief as well. This is so the full court has the benefit on a matter of public interest to hearing an alternative argument.

**ORDER:-**

[13] In the result the following order is made:

1. Leave to appeal to a full court of this division is granted.
2. The applicant is to approach Manoim J, or failing him the Deputy Judge President, when the registrar has advised it of the date of set down of the appeal, so that counsel can timeously be briefed *amicus curiae* to argue the matter, including to file heads of argument.
3. Costs to be costs in the appeal.

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<sup>1</sup> I was referred to the judgment of Schippers J in the Western Cape in *Anva Properties CC v End Street Entertainment Enterprises CC* (22109/2014) [2015] ZAWCHC 66 (14 April 2015) where an order of disconnection was granted to a landlord. However, that case did not deal with the Sectional Titles Act, nor does it deal with some of the issues Wilson J raises and so I do not consider this in point.

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**N. MANOIM  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION  
JOHANNESBURG**

Date of Hearing: 29 November 2023

Date of Reasons: 30 November 2023

Appearances:

Counsel for the Applicant: M Cajee

Instructed by. Biccari Bollo Mariano Inc