IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

REPORTABLE/NOT REPORTABLE
CASE NO. D8481/2021

In the matter between:

REDEFINE PROPERTIES LTD	**APPLICANT**
and	
INTREPID HEIGHTS (PTY) LTD	**FIRST RESPONDENT**
320 PIXLEY KA SEME BODY CORPORATE	**SECOND RESPONDENT**
MAXPROP HOLDINGS (PTY) LTD	**THIRD RESPONDENT**

ORDER

The following order is granted:

1. The respondents are interdicted and restrained from taking any steps to enforce or to give effect to the resolutions set out in paragraph 3 below.
2. The respondents are directed to reverse all steps already taken in giving effect to those resolutions, including by debiting the applicant's levy account with historical electricity consumption charges that were already incurred and debited to the first respondent's levy account for the period from May 2017 to March 2020.
3. The resolutions passed by the second respondent at its Special General Meeting on 5 March 2021 and which:

(a) Directed the trustees of the second respondent and the third respondent to ensure that the applicant was forthwith charged for electricity consumption as per the monthly meter readings taken in respect of section 1 at the second respondent, with the first respondent to pay the balance; and

(b) Directed the third respondent to immediately process the appropriate adjustments to the owner accounts to the extent that an owner has historically been overcharged/undercharged;

are declared to be invalid and of no force and effect and are set aside.

4. The first respondent is directed to pay the costs of the application.

JUDGMENT

STEYN J

[1] The following relief is sought by the applicant in its notice of motion:

'1.

The Respondents are interdicted and restrained from taking any steps to enforce or give effect to the Resolutions set out in paragraph 3 below.

2.

The Respondents are directed to reverse all steps already taken in giving effect to those Resolutions, including by debiting the Applicant's levy account with historical electricity consumption charges that were already incurred and debited to the First Respondent's levy account for the period May 2017 to March 2020.

3.

The Resolutions passed by the Second Respondent at its Special General Meeting on 5 March 2021 and which:

(i) Directed the trustees of the Second Respondent and the Third Respondent to ensure that the Applicant was forthwith charged for electricity consumption as per the monthly meter readings taken in respect of section 1 at the Second Respondent, with the First Respondent to pay the balance; and

(ii) Directed the Third Respondent to immediately process the appropriate adjustments to the owner accounts to the extent that an owner has historically been overcharged/undercharged;

are declared to be invalid and of no force and effect and are set aside.

4.

The First Respondent is directed to pay the costs of the application, alternatively, the First Respondent and those Respondents who oppose this application are directed to pay the costs of the application, jointly and severally, the one paying the other to be absolved.'

[2] Intrepid opposes the relief sought and submitted that the application should be dismissed. When the opposed motion was heard, Intrepid contended that there are material disputes of fact that warrants a referral of the matter, not to oral evidence but to trial.

Parties

[3] Redefine, the applicant, is a property-owning company. Intrepid, the first respondent, is also a property-owing company. The second respondent, 320 Pixley Ka Seme Body Corporate ("the Body Corporate"), is the body corporate of the sectional title scheme 320 Pixley Ka Seme ("the scheme"), duly established in terms of the Sectional Titles Schemes Management Act 8 of 2011 ("STSMA"). The third respondent, Maxprop Holdings (Pty) Ltd, is the managing agent of the Body Corporate, and has elected to abide the decision of the court.

Preliminary issues

[4] I consider it necessary, firstly, to in short deal with Intrepid's contention that there is a dispute of fact. I was not referred to any specific dispute of fact. I will, however, quote from counsel's written heads of argument since this was the high-water mark of the submission:

'It follows that Intrepid does not agree with Redefines' submission in its heads of argument and practice note that there are no disputes of fact in this matter. There is a read dispute of fact emerging from the minutes of the meetings of the sectional title owners, who were also the trustees, of the body corporate that shows increasing frustration on the part of Intrepid to establish where the truth lay in regard to Redefine's actual consumption. On any objective reading of the minutes there was a marked reticence on the part of Mr Appalsamy to get to the bottom of the question he was asked to investigate. What Intrepid seeks is an opportunity to cross-examine Mr Appalsamy and any other witness to the electricity saga such as the entities in charge of calculating the electricity consumed on a monthly basis as well as the report of PKF which exposed for the first time that Redefine could not hold the honest belief that the fiction employed by the application of the participation quota would reveal a fair and

just division of the expenses of the body corporate in regard to electricity.'

The case made out by Intrepid in its answering affidavit is that it had tabled a resolution in late 2016 directing the Body Corporate to charge for electricity consumption based on actual consumption.[1] The underlying dispute raised by counsel in the quote is therefore in my view irrelevant to the issues before court that require determination.

[5] The test to determine whether there is a real genuine dispute of fact has been authoritatively stated in *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another*:

'[13] A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. . .'[2]

I have considered the facts objectively and carefully analysed the minutes and I am not persuaded that there are *bona fide* or real disputes of fact, and accordingly the matter is not referred to trial.

[6] Another issue raised by Intrepid, in its answering affidavit, was that the relief sought in the application is the same relief that was sought before the adjudicator of the Community Schemes Ombud[3] and that this court does not have the necessary jurisdiction to entertain this matter. Intrepid was the applicant in that matter and applied for the following relief:

'1. In terms of section 39(1):

In respect of financial issues-

(c) an order declaring that a contribution levied on owners or occupiers, or the way it is to be paid is incorrectly determined or unreasonable and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way.'

The adjudicator, however, ruled on 11 October 2021 that the relief sought was not within the ambit of the STSMA and the application was dismissed.[4] I am satisfied that Redefine is correctly before this court, given the relief it seeks.

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[1] See answering affidavit para 28.

[2] *Wightman t/a JW Construction v Headfour (Pty) Ltd and another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) para 13.

[3] See the Community Schemes Ombud Service Act 9 of 2011 for the powers of CSOS, and also *Heathrow Property Holdings No 3 CC and others v Manhattan Place Body Corporate and others* [2021] 3 All SA 527 (WCC) for a discussion of CSOS's jurisdiction.

[4] See annexure 'SD2' at 222.

Background facts

[7] Redefine and Intrepid each own a section in the scheme. Intrepid's share in the scheme is 80,11 percent based on its participation quota whilst Redefine owns 19,89 percent based on its participation quota.

[8] Redefine previously owned the entire building but in 2016, sectionalised the building and formed the scheme, which was then registered and a sectional title register opened. There are two sections within the scheme, section one is owned by Redefine and comprises of a number of retail units which are situated on the ground and first floors. Section two of the building is owned by Intrepid and comprises of a number of commercial units which are situated from the second floor upwards. The sections are divided into various units which Redefine and Intrepid let to commercial tenants.

[9] Pivotal to the dispute between Redefine and Intrepid is the levying of electricity consumption charges. Intrepid, over time, contended that the manner in which electricity consumption has been levied by Redefine, which is calculated on and recovered in terms of the participation quota, has been incorrect, and it has been over-charged.

[10] Intrepid submits that the participation quota system that has applied since the inception of the scheme caused an unfair levy dispensation, especially when it came to the electricity consumption of the two sections. Intrepid is of the view that Redefine uses more electricity and should therefore pay more towards the electricity consumption. As at the middle of June 2021, Intrepid was indebted to the Body Corporate for arrear levies in excess of R10 million.[5]

[11] Redefine conceded that there have been complaints about the manner in which electricity consumption has been charged, but avers that the regime for charging for electricity consumption has not been changed by any agreements or valid resolutions. Redefine claims that from 2016 until 2021, there has only been one lawful method by which both the levies and the consumption charges were raised and that was as per

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[5] See annexure 'L' at 105.

the participation quota.

[12] When Intrepid bought into the scheme, the participation quota applied to the levies paid, which includes contributions for electricity charges. I consider it necessary, for the purposes of this judgment, to highlight the purpose of participation quotas in sectional titles schemes. In *Extra Dimensions 121 (Pty) Ltd v Body Corporate of Marine Sands and another;*[6] it was stated by the full court of this division that:

'[16] The most significant purpose of the participation quota in my view is that it determines a sectional owner's contribution to maintenance and administrative expenses and his proportional liability for the debts of the body corporate. Scholars like Silberberg *et al*, define participation quote as:

> "[T]he numerical quantification of a sectional owner's share in common property, and determines the extent of a sectional owner's financial obligations regarding administration and maintenance costs within the scheme, and the influence that the respective sectional owners have in the scheme's management." (Original footnotes omitted.)

From the definition it is evident that the participation quota is pivotal to investors who want to invest in a scheme since it impacts on a number of important rights. The participation quota schedule forms part of any sectional plan and when the scheme is registered, the participation quota schedule must be endorsed on or annexed to the draft sectional plan submitted to the Surveyor-General for approval. In addition to all of the functions fulfilled by the participation quota, it determines the part played by a sectional owner in the administration of the scheme.' (My emphasis, and footnotes omitted.)

[13] In addition to the above, it is necessary to bear in mind that the participation quota also determines inter alia the value of the vote of an owner, the unit owner's undivided share in the common property and the unit owner's contribution to common expenses.[7]

Resolutions

[14] On 5 March 2021 at the special general meeting ("SGM"), Intrepid voted in favour of the resolutions that the applicant contends are invalid. It is therefore

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[6] *Extra Dimensions 121 (Pty) Ltd v Body Corporate of Marine Sands and another* [2018] ZAKZPHC 69 para 16.

[7] See s 11(1)*(a)* to *(c)* of the STSMA.

necessary, in my view for the sake of completeness, to consider the various type of resolutions that may be passed. The STSMA refers to two types. These are defined in s 1 as follows:

'**"special resolution"** means a resolution-

(a) passed by at least 75% calculated both in value and in number, of the votes of the members of a body corporate who are represented at a general meeting; or

(b) agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes.'

The section also defines a unanimous resolution as:

"unanimous resolution" means a resolution—

(*a*) passed unanimously by all the members of the body corporate at a meeting at which—

(i) at least 80% calculated both in value and in number, of the votes of all the members of a body corporate are present or represented; and

(ii) all the members who cast their votes do so in favour of the resolution; or

(*b*) agreed to in writing by all the members of the body corporate.

(2) For the purposes of the definition of owner—

(*a*) if a unit is subject to a lease for a period of 99 years or longer or for the life of the building or buildings concerned and registered in a deeds registry, the holder of such lease is considered to be the owner for the duration of that lease; and

(*b*) if a unit is registered in a deeds registry—

(i) in the names of both spouses in a marriage in community of property; or

(ii) in the name of only one spouse and forms part of the joint estate of both spouses in a marriage in community of property,

either one or both of the spouses are considered to be the owner.'

A third type, although not defined in the STSMA, exists and it is an ordinary resolution. It can be defined as 'those passed by a simple majority of a duly constituted general meeting'.[8]

[15] Redefine concedes that the meeting of 5 March 2021 was validly convened and that resolutions were passed.[9] I shall return to the resolutions adopted on 5 March later in this judgment.

[16] What follows is a brief summary of what was held at the various meetings to

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[8] G Muller et al *Silberberg and Schoeman's: The Law of Property* 6 ed (2019) at 556.

[9] See at 303 of the papers.

the extent that it is relevant to the dispute:

13 December 2016 -	Was the inaugural meeting. A discussion was held on contracts in relation to service providers and that the issue of meter readings would need to be determined. Discussions were deferred for determination on 19 December 2016. It was also noted that the rules would be amended in the next year.
19 December 2016 -	Feedback was awaited in respect of how readings were done. PEC Utility Management would be required to provide a report on the location of the meters billed by the Municipality.
28 August 2017 -	It was recorded that 'clarity would be required as to whether electricity charges should be recovered from the section owners' and that a meeting was required 'in order that a resolution be obtained in this regard'. The following was also agreed: - That the budget would not reflect a provision for utility recoveries, however when the additional charges are received from PEC Utility Management, same will be recovered from the respective owners. - A meeting was required with PEC Utility Management, Mr Martin Wenhold of Redefine Properties, the Trustees, and the managing agent, for a resolution to be obtained in this regard. V Appalsamy would facilitate the meeting.
4 October 2017 -	In respect of the recovery of utility charges from section owners, a meeting was to be scheduled. The tentative dates for the meeting would be either 25 October 2017 or 26 October 2017.
19 February 2018 -	A representative of Intrepid advised that once the electricity audit was finalised, unit owners would

need to settle electricity charges as per their usage and that 'this is to be discussed further at the SGM to be held on 8 March 2018'.

1 March 2018 - RM of Intrepid reviewed the proposed budget with the Board of Trustees.

Utilities consumption was noted to be incorrectly calculated. RM noted that Section 2 was paying more for utilities than Section 1. For this purpose, EMS was engaged to audit the meters.

Once the audit of the meters was finalised, Maxprop would issue, on a monthly basis, the consumption of each section. The consumption charge would then be raised on the levy statement for settlement.

Trustees were in agreement with this and on presentation of a quote from EMS, the Trustees would approve same via round robin.

8 March 2018 - A representative of Intrepid 'suggested that the electricity expense to be recovered directly from the section holders as per PQ, based on actual billing'.

17 October 2019 - A representative of Intrepid noted that

'the electricity bill recovery is not a hundred percent. Intrepid Heights is paying much more toward electricity usage and the percentage split should not be per participation quota. Intrepid Heights has carried out an inspection of the meters and should it be proven that the current of electricity recovery is not correct, Intrepid Heights would request a reversal of charges from the body corporate at an SGM'.

[17] Redefine submitted that the members at the inaugural general meeting of the Body Corporate adopted the existing prescribed management rules and never changed them. Therefore, the default position, namely the participation quota applied to how levies and consumption charges were to be raised. If there had been a modification of the levy regime, there would have been no reason for requesting a

special general meeting to adopt resolutions that modify it.

[18] Redefine essentially, in my view, based its argument on the fact that the levies were never duly modified. I now turn to section 11(2)*(a)* and *(b)* of the STSMA which reads:

'(2)(*a*) Subject to section 3(1)(*b*), the developer may, when submitting an application for the opening of a sectional title register in terms of the Sectional Titles Act, or the members of the body corporate may by special resolution, make rules under section 10 by which a different value is attached to the vote of the owner of any section, or the liability of the owner of any section to make contributions for the purposes of section 3(1)(*a*) or 14(1) is modified.

(*b*) Where an owner is adversely affected by such a decision of the body corporate, his or her prior written consent must be obtained.' (My emphasis.)

[19] Section 11(2) provides for a body corporate to modify the levy liability of owners by adopting a rule by means of a special resolution. The eminent scholar, Prof C G van der Merwe,[10] argues that modifications may be done by the developer adding a rule to the effect of modifying aspects of the participation quota when the sectional title register is opened, 'or by the members of the body corporate making such a rule by special resolution'. He submits that modification

'of the participation quota by the body corporate is subject to two provisos: first, that where a sectional owner is adversely affected by such resolution, his or her written consent must be obtained; and second, that the modification may not take place before at least 30% of the units in the schemes have been transferred to purchasers into the scheme.'[11]

[20] Redefine, in support of its application, has submitted that the electricity consumption charges could have been changed by either applying the method as per section 11(2)*(a)* of the STSMA or in terms of Management Rule 29(3), which reads:

'a Body Corporate must, if so directed by a resolution of members-

(a) install and maintain separate meters to measure the supply of electricity, water, gas or the supply of any other service to each member's sections and exclusive use areas and to the common property; and

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[10] CG van der Merwe 'Critical perspectives on the allocation of participation quotas to sections in mixed-use sectional title schemes; The adjustment of quotas after extensions to the scheme by the addition of non-residential sections; and the modification of quotas by the body corporate in mixed-use schemes' (2020) 31 *Stell LR* 179 at 181.

[11] Ibid at 181.

(b) recover from members the cost of such supplies to sections and exclusive use areas and to the common property.'

[21] In my view, a plain reading of Management Rule 29(3) means that the Body Corporate can amend the method by which it charges contributions for electricity, provided that:

(a) there is a direction from the members; and

(b) such took place by a resolution of the members at a general meeting.

Whether s 11(2)*(a)* of the STSMA or Management Rule 29(3) is used, it will still require resolutions of members to be adopted. The discussions of issues at the trustee meetings, even if some agreement is reached among the trustees are not resolutions adopted by members of the Body Corporate. The prescribed Management Rules distinguish between trustee meetings and how motions or resolutions are adopted at those meetings[12] and owner meetings and how resolutions are passed by owners.[13] The SGM is, however, pivotal to the relief sought and will now be considered.

Special General Meeting of 320 Pixley Ka Seme Sectional Scheme of 5 March 2021

[22] I consider it necessary to quote from the minutes of the meeting in full:

'A. It was agreed between the 320 Pixley Body Corporate, Intrepid Heights (Pty) Ltd and Redefine Properties Limited ("**Redefine**"), and resolved by the members of the 320 Pixley Body Corporate at, inter alia, the meetings listed in paragraph 1 below, that each section owner would be responsible for the costs of its actual monthly usage of electricity, calculated as the cumulative consumption readings taken from the individual meters within these units.

B. Redefine engages the services of PEC Utility Management to measure the usage of electricity for the retail units in its section.

C. Despite the above resolutions / agreement, Maxprop, as managing agents, persist in charging section owners on a participation quota (PQ) basis.

NOW WHEREFORE

Intrepid Heights (Pty) Ltd ("**Intrepid**") hereby requests that the trustees call a special general meeting to be held at a time convenient to the trustees (interim suggested date for this is

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[12] See Management Rules 13 and 14.

[13] See Management Rules 15 to 20.

Tuesday, 9th February 2021 at 09:00), to table the below resolutions to be voted upon by the section owners.

1. That, as regards the manner in which electricity charges for the building are apportioned and charged to the owners, the trustees and/or Maxprop (as managing agents) be directed to immediately implement the agreement concluded between the owners in connection herewith as well as implement the resolutions adopted by the owners and trustees at, inter alia, the following meetings:
   a. Inaugural Annual General Meeting (13 December 2016)
   b. Trustees' meeting 16 December 2016
   c. Trustees' meeting 28 August 2017
   d. Trustees' meeting 4 October 2017
   e. Trustees' meeting 19 February 2018
   f. Trustees' meeting 1 March 2018
   g. Special General Meeting 8 March 2018
   h. Annual General Meeting 17 October 2019,

   such that Redefine is forthwith charged as per the meter readings taken monthly in respect of section 1, with Intrepid to pay the balance.
2. That Maxprop, as managing agents, be directed to immediately process the appropriate adjustments to the owner accounts to the extent that an owner has historically been overcharged/undercharged with reference to the abovementioned resolutions/agreement that section owner would be responsible for the costs of its actual monthly usage of electricity, calculated as the cumulative consumption readings taken from the individual meters within these units, which adjustments may be reversed to the extent that the Community Schemes Ombud arrives at an contrary determination as to the parties' respective liability in connection with the building's electricity charges.'[14]

[23] It is apparent from the minutes that no distinction is made between the decisions that were made by unit owners and the trustees of the Body Corporate. An analysis of the meetings listed under paragraph 1 shows that (b) to (f) were meetings of the trustees and not meetings of the owners. Even if representatives of the two owners who are elected to serve as trustees agreed amongst themselves that modifications to the participation quota should be made, those agreements cannot result in valid resolutions as contemplated in the STSMA or the Management Rules.

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[14] See annexure 'J' attached to the founding affidavit.

Intrepid's reliance, therefore, on the minutes constituting agreements or valid resolutions regarding the levying of electricity charges is misplaced and not in accordance with what was noted in the minutes. Moreover, if valid resolutions were passed as contended by Intrepid, then there would have been no need for them to request that a special general meeting be convened to pass resolutions that modify the levying of electricity charges.

[24] Section 3 of the STSMA sets out the functions of a body corporate which, in terms of s 7(1) of the STSMA, must be performed by the trustees. Section 7(1) reads:
'(1) The functions and powers of the body corporate must, subject to the provisions of this Act, the rules and any restriction imposed or direction given at a general meeting of the owners of sections, be performed and exercised by the trustees of the body corporate holding office in terms of the rules.' (My emphasis.)
It follows that the trustees may only exercise those powers granted to them by the STSMA. Any act that falls outside the powers given to a body corporate in terms of STSMA and the exercise thereof would be *ultra vires.*

[25] It is evident that the rationale for Resolution 1 made on 5 March 2021 is to increase the amount that Redefine must pay for electricity used, which effectively results in Redefine being adversely affected by Resolution 1. The resolution does not comply with the STSMA or the Management Rules.

[26] Resolution 2, which was passed at the SGM, is challenged by Redefine on the basis that the managing agent, the third respondent, could only have been directed to amend its accounts from the date of the SGM and in accordance with the resolution reached, yet the resolution operates retrospectively. On the issue of retrospectivity, I align myself with the sentiments expressed by Nugent AJA, albeit in dealing with the retrospective operation of a statute, in *National Director of Public Prosecutions v Basson:*

'[11] There is a natural resistance to creating legal consequences for conduct only after the conduct has occurred. As stated by Justice Scalia, concurring with the majority in *Kaiser Aluminium and Chemical Corporation et al v Bonjorno et al* 494 US 827 (1990) at 855:

> "The principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and

> universal human appeal. It was recognised by the Greeks . . . by the Romans . . . by English common law . . . and by the Code Napoleon. It has long been a solid foundation of American Law. . .'"[15]

[27] The method that was in existence to charge for electricity consumption was by way of participation quota. This method was a lawful method in terms of the STSMA. When it is compared to the method as per Resolution 2, then Resolution 2 has the effect of reversing charges that were lawfully raised. The method, as prescribed by Resolution 2, did not lawfully exist between 2016 and 2021 and is not in accordance with the participation quota that existed in the scheme during that period. Giving a refund in instances where the levies were lawfully raised would have the effect of contravening the obligations imposed on the Body Corporate in terms of the Management Rules. In this regard, Management Rule 21(2) reads as follows:

'(2) The body corporate must not-

(a) make loans from body corporate funds without the authority of a unanimous resolution;

(b) refund to any member a contribution lawfully levied and paid;

(c) distribute to a member or any other person any portion of the body corporate's profits or gains except-

(i) upon destruction or deemed destruction of the buildings, or

(ii) where such profit or gain is of a capital nature.' (My emphasis.)

[28] I align myself with the interpretation of section 3 in the STSMA as stated by Chetty J in *Zikalala v Body Corporate, Selma Court and another*:

'[36] It was not argued by either of the counsel before us that the body corporate or the trustees had the implied power to compromise a claim for levies and contributions which were outstanding. Applying the test in *Lekhari*, I am unable to find any basis to infer the existence of an implied power given to the body corporate to compromise a claim for levies due, or that such power to compromise could be construed as ancillary to the express powers to collect levies and contributions, or that this exists as a reasonable consequence of the express powers (see *Road Accident Appeal Tribunal and Others v Gouws and Another* 2018 (3) SA 413 (SCA) ([2018] 1 All SA 701; [2017] ZASCA 188) para 27). On the contrary, the language used in s 3(1)*(c)* of the STSMA imposes a positive obligation on the body corporate to collect levies and contributions — the legislature sought, through the use of the word "*must*" in the section, to couch these functions in mandatory terms. Admittedly ss (4)*(i)* appears to be

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[15] *National Director of Public Prosecutions v Basson* 2002 (1) SA 419 (SCA) para 11.

couched in permissive language through the use of the word "may", but a distinction between the two sections is that the obligation for collection of levies, as a function and not a power, only appears in s 3.'[16]

[29] In *Zikalala*, the court also highlighted the statutory obligation of a body corporate, with the following being most relevant:

'The statutory obligation imposed on the body corporate is to collect the full amount of levies and contributions due, together with interest and legal costs. No latitude is afforded to trustees to deviate from this obligation. The fact that the trustees or their attorney may have "failed to do their homework" before accepting the offer does not come to the assistance of the appellant in having his offer declared valid and enforceable. To do otherwise would be to foist an agreement on the body corporate in circumstances where an errant or non-compliant owner is allowed a reduction or compromise on the amount of his levies in circumstances where this is plainly not permitted or contemplated by the legislative framework governing the affairs of sectional title developments. It would undermine the uniformity for the common burden that must be shared by all sectional owners to pay their levies, based on their participation quota.'[17]

[30] In my view, the retroactive operation of Resolution 2 cannot be justified given the aforesaid statutory provisions and should be set aside. Resolution 1 suffers the same fate since the modification of the participation quota was never done in accordance with the provisions of the STSMA.

[31] This brings me to the interdictory relief sought by Redefine, and whether it has met the requirements for a final interdict.[18] Any 'refund' would be unlawful and would have the effect of levies being raised that do not comply with the statutory scheme, nor were the levies due by Redefine. Redefine has demonstrated that it has a clear right to an order directing the Body Corporate and Maxprop to reverse all steps taken in giving effect to the said resolutions.

[32] Accordingly, I am satisfied that Redefine is entitled to the orders sought in the notice of motion. The resolutions passed on 5 March 2021 are not valid nor are they in compliance with the STSMA and the Management Rules for the reasons given

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[16] *Zikalala v Body Corporate, Selma Court and another* 2022 (2) SA 305 (KZP) para 36.
[17] Ibid para 26.
[18] See *Setlogelo v Setlogelo* 1914 AD 221 at 227.

above.

Costs

[33] The applicant has been successful in its application and there is no reason to deviate from the general rule that costs follow the result.

Order

[34] The following order is accordingly granted:

1. The respondents are interdicted and restrained from taking any steps to enforce or to give effect to the resolutions set out in paragraph 3 below.
2. The respondents are directed to reverse all steps already taken in giving effect to those resolutions, including by debiting the applicant's levy account with historical electricity consumption charges that were already incurred and debited to the first respondent's levy account for the period from May 2017 to March 2020.
3. The resolutions passed by the second respondent at its Special General Meeting on 5 March 2021 and which:
   (a) Directed the trustees of the second respondent and the third respondent to ensure that the applicant was forthwith charged for electricity consumption as per the monthly meter readings taken in respect of section 1 at the second respondent, with the first respondent to pay the balance; and
   (b) Directed the third respondent to immediately process the appropriate adjustments to the owner accounts to the extent that an owner has historically been overcharged/undercharged;

   are declared to be invalid and of no force and effect and are set aside.
4. The first respondent is directed to pay the costs of the application.

STEYN J

Case Information

Date of Hearing	:	13 March 2023
Date of Judgment	:	14 June 2023

Appearances

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Instructed by		
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