

## SUMMARY

The appellant in this case was the owner of Evergreen Broadacres Retirement Lifestyle Village (“the Village”). The Village is a sectional titles scheme and a housing development scheme. The respondent resides in the Village, is a Life Right Owner and falls into the Phase 1 & 2 category of resident.

The respondent’s complaint related to a rates rebate which the applicant received from the City of Johannesburg Metropolitan Municipality. The respondent maintained that this rebate should have been credited to his levy account. The Municipality granted a 50% rebate to the appellant in respect of the rates payable for properties in the Village. The appellant’s stance was that it was not required to refund any rebates to residents in the position of the respondent and that the respondent and residents in the same position benefitted from the rebate in that it resulted in a reduction of the village costs. Furthermore, Phase 3 residents subsidised the Phase 1 & 2 residents by paying higher levies.

The issues to be decided by the Court were, firstly, whether the adjudicator acted within her authority under the Community Schemes Ombud Service Act (“the Act”) in granting the order that she did. Secondly, whether the adjudicator’s conclusion that the purported obligation on the appellant in the 2016 rates policy to pass the rebate granted to it on to the respondent is a statutory obligation which is enforceable by the respondent is correct.

The Court first considered the issue of authority, in other words, jurisdiction. The appellant argued that the adjudicator did not have the authority to make the order that she did because the payment of rates and taxes to a municipality does not form part of the administration of a community scheme due to the fact that rates and taxes is a statutory obligation regulated by the relevant legislation. The Court disagreed and found that clauses 7, 8 and 9 in the respondent’s Life Right Agreement are provisions in respect of the control and administration of the community scheme as envisaged in the definitions in the Act. The payment of rates and taxes in respect of the scheme falls within the ambit of Section 38(1) of the Act and thus falls within the definition of a dispute that may be raised in terms of this section.

The adjudicator relied on paragraph 7(9) of the City of Johannesburg Property Rates Policy 2016/2017 in granting the order for the re-payment of the rates rebate. However, the Court found that this policy does not direct an owner to pay the rebate to the holder of the right to occupy and

therefore the adjudicator could not order re-payment of the rebate amount. The enabling legislation relied on by the adjudicator in ordering that the rates rebate must be re-paid to the respondent did not empower them to make that order. For the same reason, the aspect of the order that stated that all future rebates must be credited to the respondent's levy was also not competent.

The Court held that the rates policy does not specify the manner in which the rates should be passed on to the holder of a right of occupation in the scheme. Furthermore, the municipality has a right of recourse in that it may invoke the penalty in paragraph 7(9)(ii) of the policy if it is not satisfied that the rates rebate is passed on to the occupants of a scheme.

The Court concluded that the adjudicator went beyond the scope of the powers afforded to her as defined in section 39(1) of the Act in issuing the order that she did in this matter. As a result of this finding, the second ground of appeal falls away.

## **HELD**

The appeal in terms of section 57 of the Act is upheld with costs.

The order made by the adjudicator in terms of section 54 of the Act is set aside.

The respondent is ordered to pay the costs of the appeal.

## **VALUE**

It is important when having a matter adjudicated under the Community Schemes Ombud Service Act that one makes sure that the adjudicator's order is one which he or she is lawfully empowered to make, lest it be set aside on appeal.

Written by Jan - Harm Swanepoel and supervised by Gary Boruchowitz, 19 November 2018

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