This article discusses what type of “internal remedies” might apply in relation to a consumer’s dispute with the municipality about municipal debt, and how and when these internal remedies need to be exercised before approaching a court for assistance in resolving the dispute.

What are Internal Remedies?

In most municipal jurisdictions, the municipality has created bylaws and/or policies pertaining to the manner in which it collects debt and manages its debtors. In these policy documents you will ordinarily find a section (or sometimes several sections) setting out how disputes arising between a municipality and a consumer need to be handled.

What is the Purpose of Internal Remedies?

The idea is to provide mechanisms for the resolution of the dispute/query in an amicable manner, so that the courts aren’t flooded with litigation.

Typical Internal Remedies

The typical dispute resolution process prescribed by a municipality will start off with the consumer lodging some sort of query or dispute, and giving the municipality a limited period to investigate and resolve this dispute. If that fails, a consumer is normally permitted to appeal the municipalities decision during the query/dispute process, In many cases a consumer is also permitted to appeal the municipality’s failure to have investigated or resolved the dispute/complaint. After an appeal process has been finalized, there is normally provision for the consumer to approach a court or the Ombud (where there is a Ombud for that particular municipality).

Appeal in Terms of the Section 62 of the Local Government: Municipal System Act 2000

Quite apart from anything prescribed in any municipal bylaws or policies in relation to the resolution of disputes, there is a section in the Local Government: Municipal System Act, Section (62)(1) which provides that a consumer can appeal a municipality's decision, or a municipality's failure to have taken any decision, to the municipal manager, who will then be responsible for providing the consumer with an outcome in relation to the appeal filed.

What this means is that even where a municipality's policies or bylaws themselves do not contain any internal remedies, a consumer who is unhappy with the decision of the municipality (or the failure of the municipality to take a decision) in relation to any query/dispute must first file an appeal with the municipal manager in terms of section 62 and let this appeal run its course before approaching court to resolve the dispute.

How does PAJA Affect the Situation?

The Promotion of Administrative Justice Act 3 of 2000 ("PAJA") is a piece of legislation enacted to create a framework for parties affected by decisions taken by government (and certain limited private organisations or individuals) to review the decisions in court.

One of the requirements of this act is that a consumer must have exhausted any prescribed internal remedies before approaching a court for assistance in reviewing the decision.

What this means for the consumer in relation to municipal debt, is that where a municipality has prescribed dispute resolution mechanisms, these (and the appeal procedure provided for in section 62 of the Local Government: Municipal Systems Act) must be followed before a court will be permitted to grant the consumer any relief.

However, section 7(2)(c) of PAJA provides a mechanism for a consumer who has not followed a prescribed dispute resolution mechanism to apply to the court for condonation of its failure to have done so. The court has a wide discretion to grant this kind of condonation but will not normally do so unless the consumer has good reason for having failed to exhaust internal remedies.

So, is it Mandatory to use Internal Remedies?

The answer to this depends on what the consumer is trying to achieve. If the consumer wants to ensure that ultimately he/she/it will be entitled to approach a court for assistance and to obtain relief from that court in relation to the dispute, then the answer is yes – it is mandatory for a consumer to first make use of the internal remedies to attempt to resolve the dispute before approaching court for assistance.

However, if the consumer merely wants to liaise with the municipality in relation to the dispute (and has no intention of taking the matter to court or to the Ombud) then although it is recommended that a consumer follow the prescribed dispute resolution procedures in order to ensure that the dispute is formally recognised and attended to by the municipality, it is not absolutely mandatory to follow the prescribed process.

For instance, a consumer who a billing dispute might not want to log a query and then wait 21 days for the City to investigate and resolve the query, and then file an appeal 21 days thereafter if nothing has happened. That consumer might chose to rather set up a meeting with the appropriate person at the municipality's offices, or send emails to the municipality's customer service address, or speak to the ward councillor about the issue.

Although one would expect all municipal staff members to know the prescribed procedures for dispute resolution and stick to them, and to advise consumers who are acting outside of those procedures of the 'proper channels', none of these 'outside attempts' to resolve the billing issue are 'wrong' or irrelevant – every attempt may result in a resolution of the dispute. It's just that you cannot rely on them in court if you have not also followed the prescribed dispute resolution process (ie if you have not exhausted internal remedies).

The Ferox Case

In an unreported judgement of the Johannesburg High Court (Gauteng Local Division)[1] the court decided that a consumer was not entitled to the relief sought (which in this particular case happened to be a reconciliation of the municipal account) because the consumer had not followed the prescribed dispute resolution mechanisms ("internal remedies") set out by that particular

municipality.

This is a particularly interesting decision because the court was not asked to review the decision of the municipality in terms of PAJA, but was rather asked to order the municipality to reconcile the municipal account based on the common law remedy of statement and debatement. Statement and debatement is basically a process in terms of which the creditor and debtor sit down and go through the invoice in question and 'debate' their issues in relation to it. This remedy has, up until now, been used often to compel municipalities to investigate and resolve problems with municipal billing.

Because there is no requirement in terms of our common law for internal remedies to be exhausted before statement and debatement can be ordered by the court, the court appears to have set a precedent to the affect that the common law remedy to statement and debatement is only available after the consumer has exhausted internal remedies.

There is room, however, for an alternative interpretation of the judgement. The court explained that the application before it was for statement and debatement in terms of the common law but that in this case, the relationship between the consumer and the municipality was governed not only by common law but also by specific legislation. Part of that legislation (ie the bylaws/policies providing for dispute resolution and section 62 of the Local Government: Municipal Systems Act) specifically provided for mechanisms to be used by a consumer when raising and resolving a dispute with the municipality.

It is thus also possible to interpret the judgement as holding that where a consumer in relation to *municipal debts specifically* applies to the court based on the prevailing legislation for a reconciliation of the account (i.e. statement and debatement), that the consumer must first have exhausted all applicable internal remedies before approaching the court for relief. The later interpretation is the more favourable one seeing that it does not make inroads into the rights of the common law remedy of statement and debatement.

The authors would like to thank Bertus Boshoff of Vining & Camerer Inc. for bringing this judgment to their attention and for his contributions in developing the law in this case.

Conclusion

However this judgement is interpreted, its impact is essentially the same – that a consumer needs to follow the prescribed dispute resolution mechanisms before approaching a court for assistance in relation to disputes pertaining to municipal debt, or must apply to the court for condonation for not having done so. Failure to follow internal remedies or ask for condonation for not having done so may result in the case being dismissed.

1- City of Johannesburg v Ferox Investments (Pty) Ltd A5053/2016) [2017] ZAGPJHC 58 (10 March 2017)

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