

**SAFLII Note:** Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

**REPUBLIC OF SOUTH AFRICA  
IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

Case Number: 52472/2023

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO OTHER JUDGES: YES/**NO**

(3) REVISED: YES/**NO**

DATE: 3.6.2025

SIGNATURE:

In the matter between:

**BODY CORPORATE OF THE MANHATTAN**

Applicant

and

**ARTHUR GEORGE BLAKE**

Respondent

---

**JUDGMENT**

---

Van Aswegen AJ

**INTRODUCTION:**

- [1] The plaintiff filed an exception against the defendant's plea, stating that it lacks the necessary averments to support a defence. Additionally, the plaintiff claimed that the defendant's counterclaim is *res judicate*.<sup>1</sup>

---

<sup>1</sup> 29.-3

- [2] For purposes of this judgment I will refer to the parties as in the main application.

**MAIN CLAIM:**

- [3] The Plaintiff is *THE BODY CORPORATE OF THE MANHATTAN*, a Body Corporate duly established by virtue of the registration of the Sectional Title Scheme with No. 146/2008, in terms of and as required by the provisions of the Sectional Titles Act No. 95 of 1986.
- [4] The Defendant is the registered owner of the property *UNIT 8[...] (DOOR NO.7[...]) THE MANHATTAN BODY CORPORATE, CORNER BICCARD & SMIT STREET, BRAAMFONTEIN, 2001* in the Sectional Title Scheme Number SS146/2008.<sup>2</sup>
- [5] Pursuant to the provisions of the Sectional Titles Act No 95 of 1986, as amended, and the Sectional Titles Schemes Management Act No. 8 of 2011 (hereinafter referred to as "the Act"), the Plaintiff is authorized to impose and collect monthly contributions along with other associated charges and costs (hereinafter referred to as "levy contributions"). These levy contributions are required to be paid in advance on or before the first day of each month by the registered owners of units within the scheme.

[5.1] Section 3(1) read with 3(1)(f) of the Act states.

*“3(1) A body corporate must perform the functions entrusted to it by or under this Act or the rules, and such functions include—*

*3(1)(f) to raise the amounts so determined by levying contributions on the owners in proportion to the quotas of their respective sections”*

---

<sup>2</sup> Annexure A 25.-11

[6] The Defendant's unit forms part of the *Manhattan Body Corporate*.

[7] According to the Sectional Titles Act, the Plaintiff is governed by Management Rules that regulate the control, management, administration, use, and enjoyment of the sections and common property. Contributions are imposed on all owners through the Act's Regulations. Details regarding these contributions are outlined below:

[7.1] The contributions imposed have been outlined in a levy schedule and were approved at the Plaintiff's annual general meeting following a review of the Plaintiff's budget. The Plaintiff's levy budget and levy schedule are included as Annexures "B1" and "B2".<sup>3</sup>

[7.2] Annexure "C" is a copy of the relevant levy resolution.<sup>4</sup>

[8] According to Rule 21(3)(C) of the Regulations, the Plaintiff is authorized to impose interest. On 15 November 2018, the Plaintiff adopted an interest resolution, deciding to levy interest at a rate of 15.5%.

[8.1] Annexure "D" is a copy of the relevant interest resolution.<sup>5</sup>

[9] The plaintiff's claim against the defendants pertains to outstanding levy contributions amounting to *R96,290.16* for the periods specified in the statement attached as Annexure "E1"<sup>6</sup>

[10] On 4 May 2023, notice as required by Rule 25(2) of the Regulations was sent to the defendants. Annexure "F" includes a copy of the notice along with proof of transmission.<sup>7</sup>

### **DEFENDANT'S PLEA:**

[11] In his defence to the claim, the defendant asserted that he has the right to withhold levies owed to the body corporate due to its failure to fulfil its obligations.<sup>8</sup>

---

<sup>3</sup> 25.-13

<sup>4</sup> 25.-21

<sup>5</sup> 25.-22

<sup>6</sup> 25.-23

<sup>7</sup> 25.-40

[12] In its counterclaim, the defendant seeks the following relief as damages from the plaintiff:<sup>9</sup>

[12.1] the restoration of the property in an amount of *R850 000.00*;

[12.2] loss of income due to not being able to let out the property in an amount of *R180 000.00*;

[12.3] replacement or restoration of the roof in an amount of *R250 000.00*

[12.4] mental stress and negative effect on the health of himself and his wife in an amount of *R1 000 000.00*;

[12.5] abuse of power by the applicant in an amount of *R250 000.00*;

[12.6] contravention of the POPI Act and harassment of the respondent's wife for levies in an amount of *R1 000 000.00*.

### **RULE 23**

[13] A pleading is subject to exception only when it is evident that no conceivable evidence presented based on the pleadings can establish a cause of action or a defence. Causes of action depend on applying legal principles to specific facts. The exception test is whether, under any interpretation of the facts, a cause of action or defence exists.<sup>10</sup>

[14] It is incumbent upon the plaintiff, as the excipient, to convince the Court that the defendant's legal conclusion cannot be upheld under any interpretation of the facts presented.

[15] Unless an exception is raised to address a substantive legal issue that may resolve the dispute between the parties, an excipient must present a clear and compelling case to succeed.<sup>11</sup>

[16] The plaintiff must demonstrate that the defendant's claim is legally untenable, not merely questionable. The plaintiff is required to convince the court that,

---

<sup>8</sup> 27.-1 to 27.-82

<sup>9</sup> 27.-34

<sup>10</sup> Astral Operations Ltd v Nambitha Distributors (Pty) Ltd; Astral Operations Ltd v O'Farrell NO and Others [2013] 4 All SA 598 (KZD).

<sup>11</sup> Francis v Sharp 2004 (3) SA 230 (C) 237.

under every reasonable interpretation of the assertions, no defence can be established.

- [17] In making a determination on an exception, a court is obligated to consider the factual allegations presented in the pleading that is being challenged.<sup>12</sup>

### **EVALUATION OF DEFENCE:**

#### **EXCEPTIO NON ADIMPLETI CONTRACTUS**

- [18] The principle is well-established that the *exceptio* applies to contracts governed by the principle of reciprocity. The defence is available to a defendant when the common intention of the parties, whether explicitly stated or implied, is for one party's obligation under a contract to be performed contingent upon the reciprocal performance of an interdependent obligation by the other party. The Supreme Court of Appeal, in *Grand Mines (Pty) Ltd v Giddey NO*<sup>13</sup>, outlined the principles for determining whether contract obligations are reciprocal and if the *exceptio* may be raised. Smalberger JA delivered the majority judgment, with Schutz JA dissenting on the facts. It was held:

*"Where the common intention of parties to a contract is that there should be a reciprocal performance of all or certain of their respective obligations the exceptio operates as a defence for a defendant sued on a contract by a plaintiff who has not performed, or tendered to perform, such of his obligations as are reciprocal to the performance sought from the defendant. Interdependence of obligations does not necessarily make them reciprocal. The mere non-performance of an obligation would not per se permit of the exceptio; it is only justified where the obligation is reciprocal to the performance required from the other party. The exceptio therefore presupposes the existence of mutual obligations which are intended to be performed reciprocally, the one being the intended exchange for the other. . . ."*

---

<sup>12</sup> Bentel Associates International (Pty) Ltd and Another v Bradford Corner (Pty) Ltd and Another [2013] JOL 30165 (GSJ) at [41]

<sup>13</sup> 1999 1 SA 960 (SCA)

- [19] Pursuant to section 3(1)(f) of the Sectional Titles Schemes Management Act ("Act"), a body corporate is required to collect determined amounts by levying contributions on owners within a scheme. The extent of these obligations is dictated by the participation quota.
- [20] These contributions as provided for under the Act and are not contractual in nature but are instead the product of legislation.
- [21] The Respondent's case is that he is not obligated to tender levies because he believes the Applicant has not fulfilled its obligations. The Respondent relies on the contractual remedy of *exception non adimpleti*.
- [22] In essence, the Respondent maintains that the Applicant has not met its obligations under the Act. Consequently, the Respondent believes he is justified in withholding levy payments. The obligation concerns the roof of a unit owned by the Respondent and the issue of water ingress.
- [23] A body corporate is not authorized to pass a resolution stating that it will not perform one or more of its duties.<sup>14</sup>
- [24] In Body Corporate of *Fish Eagle v Group Twelve Investments (Pty) Ltd 2003 (5) SA 414 (W)* ("*Fish Eagle case*"), the Respondent withheld levies on a similar basis. The respondent in the said case alleged that it was the responsibility of the body corporate to carry out repairs this unit. He attended to these repairs and therefore was entitled to offset amounts owing to the body corporate. The owner also contested the increase in levies and special levies, arguing that they were unnecessary.
- [25] Malan J rejected both justifications presented. He determined that an owner of a unit within a sectional title scheme is not legally permitted to refuse payment of increased levies, even if the owner believes the increase was unnecessary as imposed by the body corporate. Additionally, an owner cannot refuse

---

<sup>14</sup> Body Corporate of *Fish Eagle v Group Twelve investments (Pty) Ltd 2003 (5) SA 414 (W)*

payment of a special levy imposed by the body corporate on grounds of alleged sufficient funds in the body corporate's account at the time of imposition.

[26] At page 419 G-H of the *Fish Eagle* judgment Malan J stated that:

*"Section 37(2) of the Sectional Titles Act 95 of 1986 provides that any contributions levied in terms of s 37(1) of the Act shall be due and payable on the passing of a resolution to that effect by the trustees of the body corporate, and may be recovered by the body corporate by action in any court of competent jurisdiction from the persons who were owners of units at the time when such contributions became due."*

[27] In *Dolphin Ridge Body Corporate v Express Model Trading* 289 CC 2014 JDR 0520 (WCC) Dolamo J agreed with Malan J in the *Fish Eagle* case that there is nothing in Section 37 of the Sectional Titles Act, Act 95 of 1986 which creates the impression that levies can be withheld on the basis that the trustees of a Sectional Titles Scheme have failed to discharge their duties in terms of the section. He stated that a dissatisfied sectional title holder had remedies available to address any complaint it may have. These were set out by Malan J, in *Body Corporate of Fish Eagle v Group Twelve Investments (Pty) Ltd* 2003 (5) SA 414 (W) at 421 D-G as follows:

*"The remedies available to the respondent are the following: an application to court for a mandatory interdict to compel the trustees to perform the duties imposed upon them by s 39(1) of the Sectional Titles Act, read with the various sections (including, in particular, s 37(1) of Act); an application to court in terms of s 46 of the Sectional Titles Act for the appointment of an administrator to perform the duties imposed upon the body corporate to the exclusion of the body corporate and its trustees; the convening of a special general meeting of the body corporate as contemplated by Rule 13(e) of Annexure 8 to the Sectional Titles Regulations, for the purpose of removing the trustees from office and electing other trustees to perform the duties imposed upon the body corporate by the Sectional Titles Act."*

[28] The remedies available to an owner, in the position of the defendant are therefore the following:

[28.1] An application to court for a mandatory order compelling trustees to act.

[28.2] An application to subject the Applicant to administration;

[28.3] The process of convening a meeting of members for the purpose of removing and appointing new trustees.

[29] The *Fish Eagle* case was adjudicated prior to the enactment of the Act. The defendant now has the additional option of seeking recourse through the ombud established under the Community Schemes Ombud Service Act, Act 9 of 2011.

[30] The defendant's defence is predicated not on contract, but upon the Body Corporate's obligations under the Act. Consequently, the plaintiff's objection is substantiated. It therefore follows that the plaintiff's exception to the defendant's plea must be upheld.

*EXCEPTION TO THE DEFENDANT'S COUNTERCLAIM:*

[31] The plaintiff objects to the defendant's counterclaim and invoked *res judicata*.

[32] The requirements for a plea of *res judicata* are in essence that there must have been a previous judgment involving the same parties, addressing the same issue, and based on the same grounds.

[33] A matter once adjudged is accepted as the truth<sup>15</sup> in other words, it is presumed that the judgment upon any claim submitted to a competent court is correct. The presumption is generally irrebuttable (*iuris et de iure*), excluding proof to the contrary. (The use of the term "*presumption*" in this context is unfortunate because an irrebuttable presumption is not a presumption but a rule of law.) The principle originates from public policy concerns that emphasize

---

<sup>15</sup> *Liley v Johannesburg Turf Club* 1983 4 All SA 211 (W);



the need for finality in legal proceedings, and the requirements of good faith, which prohibit multiple demands for the same matter.<sup>16</sup>

[34] The defendant has filed the above-mentioned claims in the Johannesburg Magistrates Court, under case number 9034/2020. Annexure "A"<sup>17</sup> is a copy of the Defendant's counter claim in the Magistrates Court wherein he claimed similar relief. Magistrate Viana<sup>18</sup> in his judgment dismissed the defendant's counterclaim.

[35] The defendant is attempting to advance a counterclaim despite being aware that a court has already adjudicated his claim. If the defendant was dissatisfied with the outcome of the magistrate's court case, the appropriate course of action would have been to pursue an appeal or seek a review.

[36] It is evident that the defendant's counterclaim remains the same, with only some of the amounts being amended.

[37] The defence of *res judicata* is valid, and this exception should also be upheld.

#### Order

[1] The plaintiff's exception to the defendant's plea is upheld;

[2] The plaintiff's exception to the defendant's counterclaim is upheld;

[3] The defendant is given leave to amend its plea and counterclaim within 20 days of the date of this judgment;

[4] The defendant is ordered to pay the costs of the exception inclusive of costs of counsel on scale A.

**S VAN ASWEGEN**  
**ACTING JUDGE OF THE HIGH COURT**  
**PRETORIA**

---

<sup>16</sup> Custom Credit Corp (Pty) Ltd v Shembe 1972 3 All SA 489 (A);

<sup>17</sup> 29.-7

<sup>18</sup> 29.-18

For the Plaintiff:

Adv C van der Merwe instructed by  
Jukes Malekjee and Associates  
In person

For the Defendant: