Managing property properly

CSOS – A SERVICE OR COSTLY FRUSTRATION?

As with any new piece of legislation, we can expect teething problems, grey areas and interpretation disputes until future amendment to the Act, Regulations and Case Law, and it will take time to streamline the legislation before it can be implemented effectively. With the CSOS Act, it is no different. However, the problem is aggravated because the administration of the Act is handled by a newly established administration service, which will take time to become appropriately organised to avoid delays.

In our experience (where we merely assisted parties in the process), the turnaround time for applications to be acknowledged and attended to until the conciliation stage is inconsistent. Simple matters are attended to quicker.

From the adjudication orders we have perused, the following aspects are of grave concern and need to be addressed:

i) Where parties to a dispute are not of right entitled to legal representation, there should be adequate measures and protection to ensure that the disputes are handled impartially, that all parties to the dispute receive the opportunity to state their case, and that they receive the necessary guidance as layman as far as these proceedings and legal issues are concerned;

ii) In any court of law, a Magistrate or Judge would be reluctant to grant an order in the absence of one of the parties to the proceedings unless the court is satisfied that the party received notice by way of service by the Sheriff or that satisfactory proof is produced of service and/or an acknowledgment by a party of the existence of the proceedings. Please refer to a separate article on this subject in this Newsletter.

In some of the adjudication orders that we have perused and where we are currently assisting with appeal and review proceedings, certain aspects such as the lack of knowledge, experience, training and/or qualifications of adjudicators, are cause for alarm. For example, in a matter concerning a Homeowners Association ("HOA") dispute where the HOA is a non-profit company, the adjudicator refers to "trustees" (not directors) and applies the provisions of the Sectional Title Schemes Management Act and not the provisions of the Companies Act.

The *audi alteram partem* rule (i.e. each party to a dispute must be given an opportunity to state their case) is simply ignored (see our separate article in this regard in this newsletter).

CSOS is intended to be a cost effective service that affords members of community schemes access to a cost effective judicial dispute resolution process. Unfortunately, this is not the case.

No provision is made in the CSOS Act for a simple cost effective method to vary or rescind an order that was given in the absence of a party. No provision is made for the abandonment of an order or part thereof or for the re-opening, re-view or rehearing of a dispute.

In Section 57, the CSOS Act merely provides for an Appeal to the High Court, but also only on a question of law. Where an order was given in the absence of a party, there is simply no cost effective remedy, and to set aside the adjudication order would require an appeal to the High Court or a review application in terms of Rule 53 of the Uniform Rules of Court issued under the Supreme Court Act, No. 59 of 1959. Both a High Court appeal and a High Court review application is costly, with costs in excess of R 30 000-00.

The problem with an adjudication order made in the absence of a Defendant is that the adjudication order is final and no provision is made in the Act for a rescission, abandonment, review or rehearing of the adjudication order by the Adjudicator or Ombud Service.

The previously mentioned aspects (i.e. notice of proceedings, rescission or abandonment of orders, review or rehearing) should enjoy urgent consideration in order to establish a cost effective service, which CSOS was intended to be.

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