Monday Contemplation No 30
<u>Do I really need to pay levies</u>?

Continuing the theme of sectional title and community living issues that we have been discussing the last few weeks, in this week's post, as strange as it seems, **an owner in a community scheme, must pay levies** due and payable.

The facts of the CSOS ruling in the matter between **Pioneer Valley HOA (Applicant) and Aphiwe Ntloko (Respondent) CSOS3165/WC/22** are as follows:

1. The Applicant, being the Pioneer Valley Homeowners Association, claimed that the Respondent was liable for arrear levies in the sum of R2,326.06 owing to the HOA.

2. Section 39(1)(e) of the CSOS Act makes provision for the following competent order to be handed down by a CSOS Adjudicator, "an order for the payment or re-payment of a contribution or any other amount."

3. **Article 8 of the HOA's Constitution** provided as follows, "8.1 The Board shall from time to time impose Levies and Special Levies upon the Owners for the purpose of meeting all the expenses in connection with the Development, and for the payment of all expenses necessarily or reasonably incurred in connection with the management of the Development, the Association and its affairs. In calculating the amount of the Levies and the Special Levies the Board shall take into account income from other sources if any, earned by the Association. It is recorded that **each and every Owner of a Land Unit in the Development, including the Developer, will be liable for the payment of Levies and Special Levies,** as may be imposed by the Association and/or the Board in terms of this Constitution."

4. **Article 8.1** needs to be read <u>in conjunction with</u> **articles 8.5. and 8.6** of the HOA's constitution which provided, "**8.5** All Levies shall be paid monthly in advance by bank debit order on the first day of each and every month to the bank account of the Association or by any other method as determined by the Managing Agent, from time to time. **8.6** Every Owner, must, during his membership of the Association ensure and is obligated to ensure that the balance on his Levy account in the financial records of the Association, is at all times equal to the amount determined in terms of Clause 8.5 of this Constitution.

5. The CSOS Adjudicator said that by virtue of being a member of the Association, the Respondent is bound to comply with the obligations of the members of the association.

6. The Adjudicator also said that the members' obligation to pay levies was confirmed by the court in **Sable Hills Waterfront Estate v Sable Hills Waterfront Estate Homeowners' Association (199/2016) 2016 ZASCA 170** which held, "The liability of members of the Association <u>to pay levies arises under its articles of association</u>."

7. Furthermore, the Adjudicator also made the following points:

a. It is evident from the Association's governance regulatory framework, that the Applicant is entitled to recover all outstanding levies from the Respondent.

b. The HOA cannot perform its functions and duties in the absence of funds from the owners.

8.The Adjudicator agreed with the HOA and accordingly granted the relief sought in terms of section 39(1) of the CSOS Act.

9. The HOA had also asked for the Adjudicator to grant an order directing the Respondent to pay future monthly contributions. The Adjudicator refused to hand down such an order and said that "it is my considered view that the Respondent's obligation to pay monthly levies is embedded in the association's governance rules and as such the prayer by the Applicant falls outside the scope of section 39 of the CSOS Act.

<u>Important lessons to learn from this adjudication order</u>:

1. An owner in a sectional title scheme or Home Owner's Association needs to be aware that **they are responsible for all required contributions to the body corporate**, (in a sectional title scheme) or **Homeowner's Association** (HOA), in a cluster development.

2. It is also **important for the Property Practitioner to clearly explain to any buyer, what the total cost of ownership is**. Buyers need to understand that there are <u>ongoing monthly costs</u> and that payment of the purchase price is merely the starting point when buying a property.