

Can body corporates reduce levy figures?

Every now and again, we are faced with property transactions unable to proceed due to a shortfall of funds. Over the years, we have come across some creative, and some not-so-creative solutions to this problem. A recent judgment in the KwaZulu-Natal High Court shed some light on this topic as far as it relates to a reduction of levy figures due to the body corporate of a sectional title scheme.

In the case of *Zikalala v Body Corporate of Selma Court*, the court considered the question of whether the trustees of a body corporate had the authority to accept a reduced amount as full and final settlement of an owner's arrear levy figures. In other words, can the seller ask for reduced levy figures, and can the body corporate legally reduce the levy figures?

In the *Zikalala*-case the owner owed about R58 000 in outstanding levies, interest, and legal fees, but only offered R30 000 as full and final settlement.

The court referred to section 3 of the Sectional Titles Schemes Management Act, 8 of 2011 ("the Act") which obliges body corporates to collect levies from owners. The court further referred to Management Rule 25, which also obliges body corporates to collect interest on arrear levies, as well as reasonable legal fees incurred by the body corporate in collecting the arrear levies.

The court held that neither the Act nor the Management Rules permit a body corporate to compromise on its obligation to collect levies or contributions. In other words, a body corporate is not empowered to accept a settlement offer of a lesser amount than what is owed to it.

The court also relied on a 2003 case, *Body Corporate of Fish Eagle v Group Twelve Investments (Pty) Ltd* wherein the High Court decided that a resolution taken by trustees to stop legal action against an owner, and rather settle the matter, was invalid. In the *Fish Eagle*-case, the court also underlined that a body corporate has no power to pass a resolution to the effect that it will not carry out one or more of the duties imposed upon it in the Act.

In summary, the collection of levies is a statutory duty placed on body corporates,

which duty cannot be circumvented. This statutory duty entails collecting the full amount of levies and contributions due, together with interest and legal costs. No latitude is afforded to trustees of a body corporate to deviate from this obligation.

The effect of these judgments is that body corporates are legally not allowed to provide a discount on levy figures or writeback on the interest. If you are, therefore, faced with a transaction with a shortfall on the seller's side, approaching the body corporate to reduce the levy clearance figures will, unfortunately, not help.

You can contact our offices for assistance on any conveyancing matters with shortfalls.

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