

CSOS ACTION: DOES AUTHORITY EQUATE TO LEGAL CAPACITY TO ACT? The Body Corporate of Duroc Centre v Singh (AR99/18) [2019] ZAKZPHC 29 (13 May 2019)

A valuable lesson in this judgment for trustees, managing agents and property managers. In short, it related to the question whether someone who was appointed as a property manager by a company that owns units in a sectional title scheme has the necessary *locus standi* (legal capacity to act) to lodge an application at the Community Schemes Ombud. The incumbent was authorised to do so by a resolution passed by the company, but the question remained whether this met the requirements of the legislation giving *locus standi* to owners and those materially affected by a dispute.

The Judgment can be viewed [here](#).

FACTS

Dr Singh is the manager of a company, Ashdin Holdings (Pty) Ltd (Ashdin), which owns a number of units in the Durdoc Centre sectional title scheme. He also manages the centre on behalf of the various owners in the scheme, Ashdin included.

The body corporate of Durdoc Centre is represented by trustees and is responsible for raising the levies. The latter includes amounts charged for the consumption of electricity.

A disagreement arose after the units owned by Ashdin were not supplied with electricity. This prompted Singh to make application to the Community Schemes Ombud ('the Ombud') in September 2017, on behalf of Ashdin, to resolve the dispute. In the application he claimed reimbursements for 'the electricity portion of my levy as I have not received electricity.' (Our emphasis). He was authorised by Ashdin in terms of a resolution which read:

"That Dinesh Singh ... in his capacity as Manager, is singly authorised to apply to the CSOS, negotiate the terms and conditions for resolution of the dispute with Durdoc BC with electricity to supply to mezzanine. He must seek to get compensation for the electricity paid ... in the monthly levies and arrange for the supply of the electricity to the mezzanine level of Durdoc Centre. D Singh is authorised to sign any documents and engage in verbal negotiations in this matter that will be considered binding to Ashdin ..." (the authorisation).

The body corporate opposed the application and, subsequently, the dispute was referred for formal adjudication at the Ombud. One of the matters raised by the body corporate related to the *locus standi* (legal standing to bring an action) of Dr Singh. It argued that the authorisation or resolution alone was inadequate.

The adjudicator found in favour of Dr Singh, both on the basis that he had *locus standi* to bring the application to the Ombud and on the merits. (Regarding the merits, the adjudicator found that the body corporate had been enriched by Singh's contribution towards the electricity that was included in the levies paid, and directed the body corporate to reimburse Singh.)

The body corporate appealed to the High Court. It argued amongst other things that authority to act had to be distinguished from *locus standi* and that Dr Singh did not have the necessary *locus standi* to lodge the application at the Ombud, since he was neither owner of the units nor was he an affected party or a party who could lodge a dispute. The whole of the adjudicator's ruling therefore had to be set aside.

HELD

- An appeal from the CSOS is limited to questions of law only.

Did the adjudicator err in allowing Dr Singh to lodge the dispute with the Community Schemes Ombud, i.e. did Dr Singh have sufficient standing to lodge a dispute?

- This is an important preliminary issue: if Dr Singh lacked the necessary standing to lodge the dispute, then there is no need to decide on the other grounds of the statutory appeal.

Equating authority with legal capacity to litigate

- Any determination of a party's standing to institute proceedings (*locus standi*) is determined on facts and the legal framework impacts on the facts. Once Dr Singh's *locus standi* was challenged, the adjudicator ought to have made a finding on this aspect, before the merits were considered. This the adjudicator did not do.
- Our courts have distinguished between *locus standi* and authority as follows: '***Locus standi in iudicio*** is an access mechanism controlled by the court itself. The standing of a person does not depend on authority to act. It depends on whether the litigant is regarded by the court as having a sufficiently close interest in the litigation.'
- The right to lodge a dispute in terms of the Community Schemes Ombud Service Act 9 of 2011 is prescribed by legislation; it is a right that accrues to owners of units who are materially affected by a community scheme related matter. Dr Singh was neither the owner of these units nor did he have a material interest in the existing scheme. He thus lacked the necessary standing to institute the dispute that was adjudicated before the Ombud.

CONCLUSION

Accordingly the appeal was upheld and the order of the adjudicator set aside.