



The power and effect of the levy clearance certificate: preserved by the SCA

The levy clearance certificate in community scheme law is essential for the transfer of a sectional title property. This cannot be stressed enough. Section 15B(3)(a)(i)(aa) of the Sectional Titles Act¹ ("the STA") provides as follows:

The registrar shall not register a transfer of a unit or of an undivided share therein, unless there is produced to him, a conveyancer's certificate confirming that as at the date of registration, if a body corporate is deemed to be established in terms of s 2(1) of the Sectional Titles Schemes Management Act² ("the STSMA"), that body corporate has certified that all moneys due to the body corporate by the transferor in respect of the said unit have been paid, or that provision has been made to the satisfaction of the body corporate for payment thereof.

Practically, how it works, is that the transferring attorneys for the unit in question request levy clearance figures from the managing agent of the body corporate once they have received instruction to proceed with the transfer (in either a private sale or a forced sale like a public auction). Payment of the levy clearance figures as set out by the managing agent ensures that there are no outstanding amounts still due to the body corporate and the transfer can then be registered at the deeds office in the name of the new owner (the purchaser). The managing agent takes into account the arrear levies, charges and interest, current levies, as well as future levies – the transferring attorneys will request forecasted figures, which will be in line with how long they estimate the transfer will take (usually between two and three months). Payment of the levy clearance figures issued to the transferring attorneys by the body corporate need to be paid in full in order for the levy clearance certificate to be issued by the body corporate.

The issuing of the levy clearance certificate ensures that there are no further funds due to the body corporate when the unit is sold as with other financial intuitions involved in the transfer process such as rates and taxes owing to the municipality, and bond cancellation costs or settlement with the mortgage bondholder, where required.

The recent Supreme Court of Appeal ("SCA") reportable judgment handed down on 2 November 2023 in the matter of *Body Corporate of Marsh Rose v Steinmuller and Others*³ ("*Marsh Rose*"), is testament to the true power and effect of the above provision (the embargo provision). Some commentators frequently refer to this provision as the fabric of sectional title ownership. But such embargo provisions are also used in other types of community scheme ownership structures in South Africa, such as restrictive conditions of title in a Homeowners Association ("HOA") or layered scheme with a Master Property Owners Association.

The SCA's decision in *Marsh Rose* reaffirms the power of the embargo provision, highlighting the complex status of purchasers at sales in execution concerning the body corporate, even when the body corporate is not the judgment

¹ Act 95 of 1986.

² Act 8 of 2011.

³ (149/2022) [2023] ZASCA 143 (2 November 2023), accessible at <https://www.saflii.org/za/cases/ZASCA/2023/143.html>.



creditor initiating the sale in execution (public auction of the unit, following foreclosure by the bank, for example). It is particularly intriguing to note the SCA's remarks regarding the purchaser's lack of a legal interest in the body corporate's claims against the transferor (unit owner) at a sale in execution. The issue was rooted in the contractual duty of the purchaser to settle the agreed-upon amount with the scheme, as stipulated in the conditions of sale entered into with the sheriff performing the public auction prior to calling the winning bid at the auction. Contractually, the purchaser is bound to pay the outstanding levies as required by the sheriff and cannot challenge this amount claimed by the body corporate and cannot dispute whether it is due and payable to the body corporate.

The order of the Full Bench of the Johannesburg High Court, against which the appeal in *Marsh Rose* was prosecuted, had additional shortcomings and was, ultimately, not a competent order.⁴ The order called for security against a potential claim by the body corporate, but the body corporate does not have a claim against the purchaser or any party other than the unit's registered owner.⁵ The body corporate's claim is based on charges and levies on the property, as defined by the STSMA, which do not extend to the purchaser, the registered mortgage bondholder, or the sheriff.⁶ The embargo provision does not establish a statutory claim against a transferee (a purchaser); rather, it acts as a safeguard to ensure payment of amounts due by the unit's owner. It obliges the owner to settle any debts before transferring ownership to a purchaser.⁷ This embargo provision's function remains unchanged in the event of a sale through execution or during the liquidation of an insolvent estate.⁸

The body corporate, however, cannot deny issuing the levy clearance certificate due to outstanding debts owed by the transferor which are unrelated to levy contributions, charges and interest raised by the body corporate against the unit owner in terms of the STSMA. The levy clearance certificate cannot be withheld for reasons other than those stipulated in the embargo provision and should not be used as tool to enforce performance of other things which are not directly linked to the levy clearance certificate.⁹

The levy clearance certificate is crucial for transferring sectional title properties, ensuring no outstanding amounts are due to the body corporate at the time of the sale. It is imperative to maintain the financial health of community schemes and continues to stand the test of time.

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⁴ *Marsh Rose* paras 33 and 36.

⁵ *Marsh Rose* para 36.

⁶ *Marsh Rose* para 36.

⁷ *Marsh Rose* para 36.

⁸ *Marsh Rose* para 36.

⁹ For more information on this, read F Di Palma *Leveraging Levy Clearance Certificates* (2 August 2023), accessible here: <https://www.stsolutions.co.za/leveraging-levy-clearance-certificates/>.