IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ***NO***
(2) OF INTEREST TO OTHER JUDGES: ***NO***
(3) REVISED:

Date: ***18th September 2018*** Signature:

CASE NO: 2018/32995

In the matter between:

EASTBURY BODY CORPORATE t/a
BODY CORPORATE 399 MARSHALL Applicant

and

CITY OFJOHANNESBURG First Respondent
CITY POWER Second Respondent
MURRAY ROBERTS & HOUSING TVL Third Respondent

JUDGMENT

ADAMS J:

[1]. This is an urgent application by the applicant for interim interdictory relief against the first and second respondents. Some of the relief prayed for by the applicant is also in the form of a *mandamus* in that the applicant seeks declaratory orders. The cause of action of the applicant is based on constant and continuous threats by representatives of the first and second respondents to terminate the supply of electricity and water to the property situated at 399 Marshall Street, Jeppestown, Johannesburg ('the property'). The property, so the applicant alleges in its founding affidavit, is 'managed by the applicant'.

[2]. In its notice of motion the applicant applies for an order *inter alia* in the following terms:

> '2. An order interdicting the first and second respondents from terminating the supply of electricity and water to the applicant's premises situated at 399 Marshall Street, Jeppestown, Johannesburg, pending the resolution of the dispute lodged by the applicant.
>
> 3. An order interdicting the first and second respondents from removing the pre – paid meter boxes on the premises managed by the applicant situated at 399 Marshall Street, Jeppestown, Johannesburg.
>
> 4. An order declaring that the applicant is not liable for the payment of the amount reflected as outstanding under account number 205695353 on the basis that this account does not belong to the applicant, but to Murray Roberts & TVL.
>
> 5. An order directing the first and second respondents to open an account in the name of the applicant and to invoice the applicant under this new account for services and other related charges.

6. An order declaring that the services and other related charges are to the exclusion of charges for electricity as these are pre – paid.'

[3]. The applicant describes itself as a duly registered Sectional Title Scheme in terms of the Sectional Titles Act 95 of 1986 ('the Act'). This description is problematic. I shall however assume in favour of the applicant that what was meant was that the applicant is a Body Corporate as contemplated in the said Act, which would in turn mean that the applicant manages the Sectional Title Scheme, consisting of four residential units, as provided for in the said Act. The applicant itself does not own any of the units, which, again presumably, are owned by other individuals and / or corporations. Some of these facts have to be presumed because the applicant does not deal with them in its application as it is required to do in motion court proceedings.

[4]. Logically, the first and second respondents supply water and electricity to the owners of the individual residential units, and this, according to the applicant, is done through the medium of pre – paid meters in respect of the electricity and, as regards the supply of water, the individual owners get billed directly. The applicant and the individual owners took transfer of the property and the individual units during or about 2006. The details relating to the transfer of the ownership is sorely lacking, and there may very well be merit in the contention on behalf of the first and second respondents that the applicant has failed to demonstrate what its exact relationship to the property is.

[5]. On the 27th of August 2018, the respondents threatened to cut municipal services, including electricity and water to the property. This was done in the form of a pre – termination notice to the third respondent. Also, so the applicant alleges, on previous occasions representatives of the first and second respondents attended on the premises at the property and cut the supply of electricity and water to the property. They did this on the basis that there is an

amount of R156 871.39 due and payable to the first respondent in respect of municipal services payable in respect of the property.

[6]. The applicant and the owners of the property dispute this. The applicant alleges that there is in operation a pre – paid meter or pre – paid meters in respect of the supply of electricity to the property and the individual units and that the applicant and the owners pay for the supply of electricity on the basis of paying in advance for electricity to be consumed. Therefore, so the applicant contends, there cannot possibly be amounts due to the first and second respondents in respect of the supply of electricity. The details relating to these pre – paid meters are scant as are the particulars relating to the payments on these pre – paid meters. As regards the accounts relating to the supply of water and other municipal services, it is the case of the applicant that these services are charged to and paid for by the owners of the individual units. Again the details relating to these payments are scant in the extreme. Additionally, the one solitary invoice produced by the applicant in support of the aforegoing assertion, which is addressed by the first respondent to the owners of one of the units, contradicts this claim by the applicant. On this invoice no debits are raised relative to the supply of water. The only items debited by the first respondent are for property rates and refuse. No mention is made of the supply of water to the property or to the individual units.

[7]. There are two difficulties with the applicant's application.

[8]. The first difficulty relates to the applicant's *locus standi in iudicio*. In terms of section 2(5) of the Sectional Titles Schemes Management Act, 8 of 2011, read with the Sectional Titles Act, 95 of 1986, a body corporate is responsible for the enforcement of the rules and for the control, administration and management of the common property for the benefit of all owners. By definition therefore the applicant's interest in this application would be of a very

limited nature and would relate specifically to the supply of electricity, water and other municipal services in relation to the 'common property' at the premises in question. The bulk of the electricity and other services would be supplied to and at the instance of the owners of the individual units. Any termination or the threat of the termination of the supply of services would then, of necessity, affect and be of interest to the owners of the units and not the applicant itself. This then means that the individual owners are the ones that should have instituted these motion court proceedings and not the applicant, whose interest, as I have indicated, is of a very limited nature.

[9]. Therefore, the application stands to be dismissed on the basis that the applicant does not have the necessary *locus standi in iudicio*.

[10]. Closely related to the first problem with the applicant's application is the second one, which concerns the requirement that the applicant, who seeks an interim interdict, is required to satisfy the court that it has a *prima facie* right. I deal with this aspect of the matter in the context of the requirements for an interim interdict which are the following: that the applicant has a *prima facie* right; that the applicant is threatened with immediate and irreparable harm; that the applicant does not have available an alternative remedy; and that balance of convenience favours it. In that regard see: *Pietermaritzburg City Council v Local Road Transportation Board*, 195 (2) SA 758 (N) at 772 C-E; *Setlogelo v Setlogelo*, 1914 AD 221 at 227; *Olympic Passenger Services (Pty) Ltd v Ramlagan*, 1957 (2) SA 382 (D) at 383 A-E; *LF Boshoff Investments v Cape Town Municipality*, 1969 (2) SA 256 (C) at 267 B-D.

[11]. The difficulty with the applicant's case is that, at best, it has failed to demonstrate what *prima facie* right it relies on in order for it to obtain the interim interdict. On the papers there appears to be no contractual relationship between the applicant and the first and second respondents. In passing mention is made

that the first respondent has opened an account in the name of the applicant. That is as per advices from the first respondent to the applicant. The applicant does not deal in any way with the detail of this relationship. Questions that remain unanswered are: What are the terms and conditions of the agreement between the applicant and the first and second respondents? What municipal services are rendered by the first and second respondents to the applicant pursuant to the contractual arrangement between them? Has the applicant been paying for these services and is its account with the first and second respondents up to date? What payments, if any, have been made by the applicant to the first and second respondents in respect of the supply of electricity and water, municipal rates and taxes and refuse removal in relation to the common property? These are questions which are not dealt with in any way by the applicant in its founding papers. In the absence of these particulars, the applicant does not even begin to prove a *prima facie* right on which to base an order for an interim interdict.

[12]. Furthermore, the applicant, being the entity responsible for the management of the 'common property' only, is not, as a fact, supplied with water and electricity and other municipal services. Common sense dictates that it is the owners of the individual units who would be supplied with electricity and water. They would therefore be the ones who are entitled as of right, be it on the basis of a contractual relationships or by virtue of the constitution of the Republic and / or legislation, to the supply of electricity and water. The right on which to base interim interdictory relief therefore vests in the owners of the individual units and not in the applicant. The individual owners are also the ones who would possibly suffer harm if the interdict is not granted and not the applicant. In that regard, it is clear that there is a contractual relationship with the owners of at least one of the units, namely B D and K M G Mamatela, in whose name an account has been opened with the first respondent.

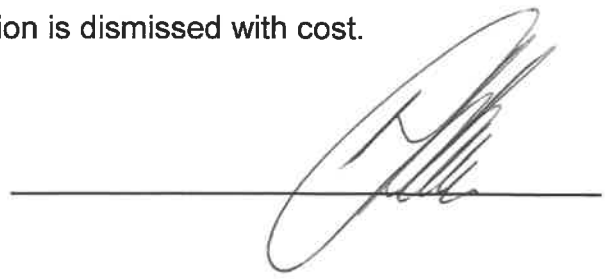
[13]. Therefore, the applicant's urgent application stands to be dismissed on the basis that it has failed to meet the requirement that is has a *prima facie* right on which to found this application for an interdict. The main difficulty with the applicant's application is the fact it deals with issues in a rather superficial manner and it does not make full disclosure to the court. But however one views this matter, the persons who should have approached the Court for the relief claimed are the owners of the units, who should have explained in detail their relationship (if any) with the first and second respondents and the financial history between them arising from that relationship. They should also explain how the supply of water to the property is dealt with and whether the applicant and the owners pay for the supply of water. This important issue is not dealt with at all by the applicant in its papers. The consumption of water at the property is apparently charged to the account of the third respondent, which account is not paid because, so the applicant and the owners contend, the said account is addressed to the third respondent. The fact of the matter is however that, on the version of the applicant, the consumption of water is not paid for.

[14]. The applicant's application therefore stands to be dismissed.

Order

In the result, I make the following order:-

1. The applicant's urgent application is dismissed with cost.



L R ADAMS
Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	14th September 2018
JUDGMENT DATE:	18th September 2018
FOR THE APPLICANT:	Mr Mpho Mamatela
INSTRUCTED BY:	Mamatela Attorneys Inc
FOR THE FIRST & SECOND RESPONDENTS:	Adv L Nyangiwe
INSTRUCTED BY:	Kunene Ramapala Inc