

## A BODY CORPORATE CANNOT TAKE THE LAW INTO ITS OWN HANDS

Bodies Corporate often encounter difficulty in recovering unpaid levies. It is not unheard of for a Body Corporate to disconnect the electricity supply and suspend other services to a unit when the owner of the unit is in arrears with the payment of levies.

If a person is unlawfully deprived of undisturbed possession and use of his or her property, the remedy is to apply to court to prevent the person concerned from infringing that person's rights.

In the recent case in the North Gauteng High Court of Fisher vs Body Corporate Misty Bay 2012 (4) SA 215 (GNP), the members of the Body Corporate passed a rule in terms of which the Body Corporate was purportedly entitled to deactivate the access disks of owners who were in arrears with the payment of their levies. Fisher was in arrears with his levies and accordingly the Body Corporate deactivated his access disk. As a result, Fisher was unable to open the security boom to the complex and could not gain entry to the complex whilst driving his vehicle. He was only able to enter the complex on foot.

Fisher brought an urgent application against the Body Corporate and alleged that the Body Corporate had unlawfully deprived him of possession of his property. He sought an order to compel the Body Corporate to restore possession of and access to his property.

The Body Corporate denied that Fisher as a person was prevented from entering the complex. It was only his vehicle that was prevented from entering, alternatively he was only restricted from entering when he was using his vehicle.

The Body Corporate contended that, in terms of the Conduct Rules, it was entitled to impose the restriction as Fisher was in arrears with his levies.

The court refused to entertain the submissions of the Body Corporate. The Court held that due to the actions of the Body Corporate in restricting Fisher's access through the security boom with his vehicle, Fisher no longer had peaceful and undisturbed possession or use of his property. The Court directed the Body Corporate to reactivate Fisher's access disk thereby restoring his possession of and access to his property.

This decision reaffirms the position that persons cannot take the law into their own hands. If owners are in arrears with their levies, the Body Corporate must use the legal remedies available to it in terms of the Sectional Title Act to recover unpaid levies. The fact that members of a Body Corporate pass a rule purportedly empowering the Body Corporate to impose a sanction which is contrary to law does not change the legal position.

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