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IS ARBITRATION COMPULSORY IN SECTIONAL TITLE DISPUTES

When a dispute arises between an owner and the Body Corporate in a sectional title scheme, there is often a debate whether the parties are obliged to refer the dispute to arbitration or whether they can approach the courts for relief.

The debate arises due to the wording of Management Rule 71, prescribed in terms of the Sectional Titles Act (the "Act"), which stipulates that "any dispute between the Body Corporate and an Owner ... shall be determined in terms of these rules ... and either of the parties may demand that the dispute or complaint be referred to arbitration".

The leading case on the matter was the Body Corporate of Greenacres v Greenacres Unit 17 CC 2008 (3) SA 167 (SCA) (the "Greenacres Case"). In this case, the Supreme Court of Appeal (the "SCA") held that a matter could only be referred to arbitration if there was a dispute. If there was no dispute, there was no requirement that the matter be referred to arbitration as there was nothing for the arbitrator to decide. The SCA in the Greenacres Case left open the question of whether it is compulsory to arbitrate when there is a dispute.

In Pinewood Park Scheme No. 202 v Dellis (Pty) Limited (498/2011) [2012] ZASCA 105, the SCA was required to consider whether arbitration is compulsory in terms of Management Rule 71 of the Act.

The Body Corporate sued Dellis (Pty) Ltd, the owner of a unit in the scheme, for unpaid levies. Dellis defended the matter, arguing it was not liable for the amount claimed and that, as there was a dispute between the parties, the court could not hear the matter which had to be referred to arbitration in terms of Management Rule 71 of the Act. The High Court agreed and dismissed the Body Corporate's claim on the basis that, in accordance with the Greenacres Case, the matter had to be referred to arbitration.

The Body Corporate took the matter on appeal to the SCA. The SCA held that the Management Rules, set out in the Act, were consensual as they could be amended in part or in their entirety by the Body Corporate. Accordingly, unless a Body Corporate amended its Management Rules to provide that arbitration was compulsory, it could not be concluded that Management Rule 71, prescribed in terms of the Act, provided for compulsory arbitration. The SCA held that the High Court should not have dismissed the original case.

FURTHER ADVICE

The implications of the Pinewood Park case are:

1. The judgment in the Greenacres case that a matter can be referred to arbitration only if there is a dispute, was confirmed.
2. Provided there is a dispute, the provisions of the Arbitration Act apply to sectional title disputes. If a Body Corporate institutes legal action in a Court, the Owner may apply to Court for a stay of the proceedings and request that the matter be referred to arbitration. In accordance with the Arbitration Act, the Court has a discretion to decide whether or not to stay the proceedings pending the outcome of an arbitration or direct that the action proceed.

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