

Beware when purchasing a property at a sale of execution

In terms of section 15B(3)(a)(i)(aa) of the Sectional Titles Act 95 of 1986 (the Act), the registrar shall not register a transfer of a unit or an undivided share therein, unless there is produced to him:

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(a) a conveyancer's certificate confirming that as at date of registration:

(i)(aa) If a body corporate is deemed to be established in terms of section 2((1) of the Sectional Titles Schemes Management Act, 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 the payment thereof.”

The facts in the high court matter of *The Body Corporate Marsh Rose v Steinmuller and Others* were as follows:

1. The body corporate (the appellant) argued that the Act allowed it to claim all amounts outstanding, including legal costs, and outstanding levies relating to the unit from the transferee (first respondent), before issuing a levy clearance certificate.
2. In terms of the sale agreement, the purchaser was responsible for settling all amounts owing to the body corporate by the current registered owner.
3. The appellant refused to issue a levy clearance certificate until the outstanding amount owed by the current registered owner of the property was paid.
4. The amount included not only judgment debt but also legal costs against the current owner in respect of the property.
5. The first respondent disputed the amount claimed and tendered to give security to the appellant for a lesser amount than the outstanding amount to obtain the levy clearance certificate and proceed with the transaction.

6. The appellant refused to accept the security because it was insufficient in form and amount.
7. The first respondent approached the court a quo for an order directing the appellant to issue the required levy clearance certificate against payment of an amount as security by the first respondent pending the resolution of the dispute regarding the amount owed to the appellant.
8. The court found in favor of the first respondent and ordered the appellant to issue the levy clearance certificate before the dispute between the parties was finalized.
9. The body corporate appealed against the court's decision.

The decision of the appeal court was as follows:

1. When interpreting the Act, it allows the transferrer to, instead of making actual payment of the amount owing to the body corporate on date of registration, make provision for the debt, provided it is to the satisfaction of the body corporate.
2. The Act does not prescribe the required form of security that had to be tendered and accepted as sufficient by the appellant.
3. The appeal court upheld the findings of the court a quo and concluded that the security provided by the first respondent was sufficient and that the body corporate had to issue the levy clearance certificate.

Conclusion:

The judgment caused uncertainty regarding the interpretation of the Act and whether a body corporate can be compelled to issue a levy clearance certificate pending the resolution of a dispute regarding the amount owing to a body corporate.

A thorough due diligence investigation prior to purchasing a property at a sale in execution should be done by prospective buyers. This investigation should at least include a review of the latest municipal accounts and levy statements.

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