

### PARTICULARS OF CLAIM

1. The Parties are as referred to on the face of the summons.
2. On or about 2 August 2019, the First and Second Defendants (the Defendants) became the registered owners of a unit Erf 1512 Kleinbron Estate, situate at 91 Frangipani Street, Kleinbron Estate, Brackenfell.
3. As such, and in terms of the title deed condition the Defendants, in their capacity as owners of a unit erven in Kleinbron Estate, became bound to the terms and conditions of the Constitution applicable to the Estate, and became members of the Kleinbron Estate Homeowners Association (the Plaintiff).
4. In terms of the said Constitution, *inter alia*:
  - 4.1 membership of the Association is compulsory for every registered owner of a unit erven, which membership shall commence simultaneously and automatically with the transfer of the unit into the name of the registered owners (the Defendants), and shall *ipso facto* cease when such members are no longer registered owners (par 6.1 and 7);
  - 4.2 a registered owner of a unit erven may not resign as member of the Association, (implied herein, that their duties and responsibilities towards the Association (the Plaintiff) may not, and cannot be cancelled (par 9);
  - 4.3 every member shall to the best of his/her ability further the objects and interest of the Association and observe all by-laws and regulation made by the Association or the Trustee Committee, and be jointly liable with all other members for all expenditure incurred in good faith in connection with the Association (par 11);
  - 4.4 the Trustee Committee shall from time to time impose levies upon the members for the purpose of meeting all expenses which the Association has incurred, or anticipates for the maintenance, repair, improvement, upkeep, rates & taxes and all other charges payable by the Association, and for payment of all expenses necessary or reasonably incurred in connection with the management of the Association, the mutual area and affairs (par 12);
  - 4.5 the Trustee Committee may include in such levies an amount to be held in reserve (the statutory required reserve fund) to meet anticipated future expenditure not of an annual nature (par 14), and may also make special levies upon the members if required (par 15);
  - 4.6 levies are payable by equal monthly instalments due in advance on the first day of each and every month of such year (par14);

- 4.7 each member undertakes to the Association that he/she shall comply with the the provisions of the Constitution (par 22.1);
- 4.8 in the event of a breach, ie a failure to pay on the due date any amount due by that member/s in terms of the constitution and remaining in default for more than 7 (seven) days after being notified in writing by the Trustee Committee, the Trustee Committee, on behalf of the Association may cause legal action proceedings to be instituted against such member/s for payment of such overdue amounts (par 23.1);
- 4.9 in such event (par 4.8 supra), the member shall be liable for all legal costs incurred on attorney-client scale (par 23.1).

The Constitution is attached as "A".

5.

- 5.1 In terms of the Rules formulated and imposed by the Trustee Committee in terms of clause 40 of the Constitution, it was (again) confirmed that membership is compulsory and automatic for all registered owners, commencing on registration of an erf in his/her name, and as such an owner cannot resign as member of the Association (Plaintiff) (par 2.1);
- 5.2 Interest is payable on all arrear accounts at a rate determined by the trustees calculated from the due date until date of payment (par 3.2) and will be imposed on members/owners with accounts in arrears for 30 (thirty) days or longer (par 3.1).

The Rules are attached as "B".

6. At a trustee meeting held on 20 September 2021, it was decided that interest be charged on arrear accounts @ 15% per annum. The Minutes of the meeting is attached as "C1", (refer to par 8.2) and the Trustee Resolution confirming same, as "C2".
7. At a trustee meeting held on 13 February 2023, it was decided to increase the levies by 15% , the Minutes are attached as "D1", (par 9.4, page 4).
8. At a trustee meeting held on 18 April 2023, the levy increase of 15% was confirmed, as per the proposed budget, with effect 1 March 2023. The Minutes are attached as "D2", (par 5).
9. The levy increase was communicated to all owners, including the Defendants, by way of a Circular dated 15 February 2023, and emailed to the Defendants on 17 February 2023. The Circular is attached as "E1", and confirmation of email transmission as "E2".



10. The Defendants as owners and members of the Plaintiff are bound by the Constitution and by the regulations and decisions of the Trustee Committee, as pleaded above, have failed to pay the levies plus interest due since 1 March 2023, consequently the Defendants are indebted to the Plaintiff in the sum of R3130.53, comprising of interest plus levies due since 1 March 2023. The levy statement is annexed as "F", payable R3130.53 as on 1 June 2023.
11. Notwithstanding demands for payment, the First and Second Defendants have failed and neglected to settle the levies plus the interest due. The demands, with proof of transmission are annexed as "G1" and "G2".

**WHEREFORE** the Plaintiff prays for judgment against First and Second Defendant jointly and severally for:

- a) Payment of R3 130.53;
- b) Interest @ 15% p.a from 2 June 2023 to date of payment;
- c) Costs on attorney-client scale to be taxed;
- d) Further and/or alternative relief.

Dated at **BELLVILLE** this <sup>25<sup>th</sup></sup> day of **JUNE 2023**.

**DIAAN NEL & GAGIANO INC**  
**t/a DNG ATTORNEYS**

Per: \_\_\_\_\_

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