
22 September 2022

Dear Sir/Madam,

Background

After an CSOS adjudication earlier this year the trustees were advised by the adjudicator to revise the Kleinbron Estate rules, and to remove any ambiguities that may exist in the rules. The trustees took the opportunity to extensively revise the rules accordingly, where after the said rules were presented to CSOS for Quality control and approval. ***See addendum "HOA Response 01"***

After approval of said rules by CSOS, these rules were distributed to all homeowners and residents.

Further, the HOA herewith do not seek to prohibit Mr. Fitchat the use of cameras for his own security, but merely require compliance and adherence with the rules of Kleinbron Estate as approved by CSOS in relation to the prohibition of certain types of cameras as specifically indicated at Clause 16 under the heading CCTV Installations.

It is further important to note that when all is taken into consideration one gets the impression that Mr. Fitchat wants to apply the Constitution and Rules selectively, neglect to reveal all the facts, and only report on points that suite his narrative and in such a way attempts to justify his non-compliance with the Kleinbron Estate Constitution and Rules.

It is furthermore evident that this is a clear, simple and uncomplicated case of an owner who merely refuses to adhere to the rules, and as a matter of fact challenge the Kleinbron HOA, not once but repeatedly to institute legal action and thereby clearly indicate that he will not comply.

As such and in order to simplify the response of the HOA on Mr. Fitchat's submission, we have elected to respond point for point on his submission in order not to overcomplicate matters and hopefully simultaneously make it easier for the adjudicator to determine the matter without further delay.

THE BOARD OF TRUSTEES RESPONSE TO MR. FITCHAT'S RESPONDING STATEMENT

A - <Fitchat>Dear CSOS,

I started installing CCTV cameras with PTZ or audio capabilities on my property on 15 January 2022. The installation took about a week to complete.

When I installed my cameras there were no HOA Rules regarding CCTV installations, and there were also no rules indicating that I had to obtain permission to install them.

Please see **Addendum 01 - 2015.09.07 Kleinbron Estate HOA Rules**

[Kleinbron Estate] This statement is incorrect.

1. The rules always made allowance for the control of residents' activities.

See addendum "HOA Response 01 and HOA Response 02"

5. USE OF ERVEN / DWELLINGS, OPEN AREA

5.1 No business activity

5.2 No sign boards

5.3 No hobby or **activity which, in the opinion of the Trustees, constitutes an aggravation or nuisance to other Residents** may be conducted within any Erf.

5.4 An Owner or Resident may not contravene or permit the contravention of any law, bylaw, ordinance, proclamation or statutory regulation or the conditions of title of any Erf or terms of any licence relating to the occupation of a building.

5.5 An Owner

The above have always form part of the rules, new and old.

The new rules, as approved by CSOS deals very specifically with CCTV cameras:

See addendum "HOA Response 01"

11. CCTV INSTALLATIONS

CCTV installations are discouraged but will be permitted under the following circumstances:

- 11.1. All installations must be registered with the HOA Office.
- 11.2. Cameras must be installed in a way that they do not cover/view any areas outside the boundaries of the property.
- 11.3. Cameras with PTZ facilities are not permitted.
- 11.4. Cameras with bi-directional communication are not permitted.

2. The Kleinbron Estate Constitution states as follows: See addendum "HOA Response 03"

22. Each Member undertakes to the Association that he shall comply with:

22.1 the provisions of this Constitution;

22.2 any regulations made in terms of paragraph 21.1 and specifically the Architectural Manual referred to herein;

22.3 any agreements referred to in paragraph 21.2 insofar as those agreements may directly or indirectly impose obligations on him.

B - <Fitchat> Despite me not having had to ask for permission, I did inform both the Kleinbron Estate manager and the owner of SJC Security, who manages the estate's security, that I was going to install CCTV cameras, and I also asked them to be present during the installation.

Neither Kleinbron Estate nor SJC Security replied, and they also did not indicate that I needed permission to install the cameras. Neither were present when I installed the cameras.

Please see **Addendum 02 - 2022.01.14 Email with Estate Manager**

Please see **Addendum 03 - 2022.01.20 Whatsapp with SJC Security's Owner**

[Kleinbron Estate] This statement is blatantly false.

Mr. Fitchat is deliberately withholding important information from the adjudicator.

1. ***"Addendum 02 (Fitchat) - 2022.01.14 Email with Estate Manager"*** shows that Mr Fitchat arranged and requested permission from Charl du Toit from SJC to install cameras. SJC is merely a security service provider to the Kleinbron Estate HOA and have no legal standing in the affairs of the HOA. This email was clearly a cursory note to the HOA manager informing him what actions were taken by Mr Fitchat.
2. *The Chairman of the HOA, the Estate Manager, and a CCTV specialist from SJC all visited Mr. Fitchat while he was doing the camera installation. Mr. Fitchat conveniently withheld this fact from CSOS too. See addendum "HOA Response 04" as proof of said meeting.*

On 28 January 2022, after the initial 2 weeks period as agreed on, a second email was sent to Mr. Fitchat, again requesting him to acknowledge the first email with agreement as set out before.

3. *On 30 January 2022 Mr. Fitchat acknowledged this meeting and the emails from the HOA. See addendum "HOA Response 05"*

The following is an extract from his reply to the HOA:

"the fact that our cameras have a PTZ function will form a part of our lawsuit against the relevant parties, so we will wait for the court's ruling before we make any adjustments to our cameras. When we receive the verdict, we will act in accordance with the court's decision."

He also made the following statement in his reply:

"We also welcome legal action from Klein Bron Estate in order to resolve this matter, if you feel it is necessary."

4. *During this visit and in the subsequent emails Mr. Fitchat was informed of the concerns that the HOA have with his camera installation and requested him to make certain amendments, i.e. removing the bi-directional communication function, ability of the camera to swirl, etc.*
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C - <Fitchat> After apparently numerous complaints to the Kleinbron Estate manager from various residents regarding my cameras, Kleinbron Estate held a trustee meeting on 14 February 2022. After having consulted with various municipal departments, law enforcement and legal advisors, they found that I was not transgressing any of the estate's rules.

Please see **Addendum 04 - 2022.03.23 CSOS Mr. Johnson & Estate Manager Email**

[Kleinbron Estate] This statement is irrelevant, quoted out of context and/or intentionally misrepresented or misunderstood by Mr. Fitchat.

Please refer to the Minutes of the Trustee Meeting of 14 February 2022, point 11.1 and 11.2 for context. See addendum "HOA Response 06"

Also refer to the complete email send to Mr. Fitchat. See "Addendum 04 (Fitchat) - 2022.03.23 CSOS M. Johnson Estate Manager Email"

"11.1 Mr. Fitchat (owner 91 Frangipani) was referred to a neutral party being CSOS since he made various accusations against the HOA management being bias."

These accusations are contained in email received from Mr. Fitchat. "See addendum "HOA Response 05"

"11.2 After a long in-depth discussion the Trustees decided that there was no concrete evidence of Mr Fitchat transgressing any rules of the Estate."

This point relates to specific complaints that were received from various residents. "See addendum "HOA Response 07"

The complaints received from the neighbours specifically related to allegations that the cameras of Mr. Fitchat infringes on their privacy, has the ability to record conversation they have in their backyard, the possibility that one of the cameras facing the bedroom of their 9 year old daughter and theirs can do recordings, as well as the possibility that it can do recordings of children playing at the playpark opposite their house.

Due to the absence or lack of evidence presented to the HOA to supplement the allegations made by the neighbours, the trustees felt that there is no breach of a rule which "constitutes an aggravation or nuisance to other Residents" and as such the HOA could not act on said allegations.

This cannot be construed as to mean that the HOA or management approved the actions or transgression of Mr. Fitchat in relation to the rule, specifically dealing with PTZ Cameras, cameras with bi-directional communication functions or those that are able to view areas outside the boundaries of his property. In either event, those incidents in relation to complaints by neighbours pre-date this application by almost 8 months.

As a further cursory, Mr. Fitchat in his own words as contained in "HOA response 5" at paragraph 7 indicated "We are not going to allow Klein Bron Estate to be involved any further or to intervene in our private matters. We were initially open to making a concession to you, but we have now decided against it. As you have also indicated, this matter falls outside the scope of our contract with Klein Bron Estate."

He thus concedes that the application by his neighbours is a private matter which falls outside the scope of their contract with Kleinbron Estate. Meaning that the HOA has no jurisdiction to intervene in private neighbourly matters. The current application however differs substantially from the applications of his neighbours and is not relevant to the current facts and non-compliance by Mr. Fitchat of the Estate Rules.

D - <Fitchat> The new HOA Rules which do not permit PTZ cameras with audio were put into effect on 20 May 2022, which was four months after I installed my cameras.

Please see **Addendum 05 - 2022.05.20 Kleinbron Estate HOA Rules**

[Kleinbron Estate] *This statement is irrelevant, but at least Mr. Fitchat concedes that a rule not permitting PTZ cameras is currently in place.*

When Mr. Fitchat bought into the estate he undertook to abide by the Constitution and rules. The Kleinbron Estate Constitution states as follows: See addendum "HOA Response 01"

22. Each Member undertakes to the Association that he shall comply with:
- 22.1 the provisions of this Constitution;
 - 22.2 any regulations made in terms of paragraph 21.1 and specifically the Architectural Manual referred to herein;
 - 22.3 any agreements referred to in paragraph 21.2 insofar as those agreements may directly or indirectly impose obligations on him.
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E - <Fitchat> The Kleinbron Estate Constitution indicates that new HOA Rules are not retroactively enforceable, so their new rule that my kind of cameras are not permitted is not applicable to me.

36. "...no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made."

Kleinbron Estate Constitution, pg. 18

Please see **Addendum 06 - Kleinbron Estate Constitution**

[Kleinbron Estate] *This statement is blatantly false and/or selectively applied and/or completely misunderstood and/or interpreted.*

Mr. Fitchat either elected to quote one line out of context or is misinterpreting the Constitution at.

36. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE, which reads as follows:

See addendum "HOA Response 03"

36. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

Subject to the express provisions of these presents, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in these presents, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and which are not by these presents required to be exercised or done by the Association in general meeting, subject nevertheless to such regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made. The Trustee Committee shall specifically be empowered to enforce the provisions hereof (in litigation or otherwise) and generally to sue in a Court of Justice to enforce the provisions hereof or rules and/or regulations issued in terms hereof.

This part of the Constitution quoted by Mr. Fitchat deals with rules and decisions made at an AGM and not amendments to a rule. This has no bearing whatsoever on this case, since the rules may be amended by the Trustee committee, as stipulated in the Constitution point 40, It reads as follows: See addendum "HOA Response 03". Said rules being approved by CSOS.

40 The Trustee Committee may make regulations and by-laws, not inconsistent with this Constitution, or any regulations or by-laws prescribed in the Association in general meeting;

- 40.1 as to disputes generally;
 - 40.2 for the furtherance and promotion of any of the objects of the Association;
 - 40.3 for the better management of the affairs of the Association;
 - 40.4 for the advancement of the interests of Members;
 - 40.5 for the conduct of Trustee Committee meetings and general meetings; and
 - 40.6 to assist it in administering and governing its activities generally;
- and shall be entitled to cancel, vary or modify any of the same from time to time.

RE: RESPONDENT'S ELECTRONIC LETTER DATED 19 SEPTEMBER 2022

See addendum "HOA Response 08"

Para 1:

The contents are noted, safe to say that Applicant has to respond on or before 22 September 2022, and as such Applicant is not out of time.

Para 2:

The contents are noted, safe to add that mediation might or might not be an option in the current matter, it being reliant on the CSOS adjudicator, as well as the fact that this application is the remedy available to Applicant since Respondent has challenged Applicant to refer the matter to CSOS on previous occasions, i.e. Respondent has clearly stated in his submission that the Kleinbron Estate rules does not apply to him, Respondent has repeatedly challenged the Kleinbron Estate HOA to take legal action against him, Respondent indicated he will only abide by a court order, to name but a few.

Para 3:

*The contents are denied, safe to add that the ruling in the **CSOS8440/WC/21** matter, as referred to by Respondent, pertains to the infringement of privacy between neighbours, and is not related to the current matter which deals with non-compliance of an Estate Rule.*

Para 4:

The contents are denied, as Applicant has never been a party to any previous cases against or involving Respondent, and neither has Applicant ever withdrew from cases against Respondent. The fact that Applicant might have lacked jurisdiction to be involved with matters of a private nature, should not be construed as a withdrawal or the like.

Para 5:

The contents are denied, as there are no inconsistencies as explained above.

Para 6:

The contents are denied, safe to say that Respondent is firstly not a law unto himself, and secondly has failed to even make out a proper case, let alone requesting dismissal of the case.

Para 7:

The contents are noted, safe to add that CSOS can deal with this in their adjudication ruling should they wish to.

Respondent is ingenious in his submissions, responses and communications in an attempt to intimidate CSOS, but also attempts to direct CSOS away from the real reason for this application, which is one of non-compliance with an Estate Rule.

As such, and taking all of the above into consideration, Applicant herewith request CSOS to move this matter direct for adjudication or ruling on the papers, as there is no reasonable expectation to resolve this matter in an amicable manner, where Respondent will abide by the rules of the Estate other than a ruling and enforcement by the Estate.