

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF THE CITY OF CAPE  
TOWN  
SUB DISTRICT OF KUILSRIVIER  
HELD AT KUILSRIVIER

CASE NO: 7536/23

In the matter between:

**KLEINBRON ESTATE HOMEOWNERS' ASSOCIATION**

Plaintiff

and

**RUBEN THEODOR FITCHAT**  
ID NO. 841228 5132 089

First Defendant

**SONET FITCHAT**  
ID NO. 820625 0125 080

Second Defendant

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**PLAINTIFF'S REPLY TO DEFENDANTS' "REPLY" (PLEA)**

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**BE PLEASED TO TAKE NOTE** that the Plaintiff replies as follows to Defendants' "Reply" (Plea):

1. Ad par 4 & 5

1.1 Plaintiff does not refer to a Title Deed, or Power of Attorney and do not rely on same in these paragraphs. Furthermore, and in any event, this is a matter for evidence.

1.2 The reference to the Constitution in par 4.1 – 4.9 (to which Defendants are bound) correspond with the Constitution, as attached as "A".

2. Ad "Contractual Agreements" (par 6 – 22)

i) Defendants became the registered owners, it follows that all transfer documents were signed to give effect to the transfer. Plaintiff does not rely on these documents, and does not refer to it, consequently does not need to annex same.

ii) Neither the Title Deed, not the Kleinbron Estate HOA, or the Kleinbron Estate Constitution are documents (or agreements) that require a member/owner's (and consequently, the Defendants') signature. The Defendants automatically become members of the HOA by virtue of their

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ownership, and as such are bound by the Terms and Conditions of the Constitution, and the Conduct Rules formulated by the Trustees.

- iii) The Kleinbron Estate is an HOA that was formed in terms of LUPO, and as such governed by a Constitution, Rules, Architectural guidelines ect. As such membership is compulsory.
- iv) Reference is made to par 4.1 and 4.2 of the summons, with reference to par 6.1, 7 and 9 of the Constitution, that a member (the Defendants) may not resign as a member of the HOA, and that membership only cease *ipso facto* when such members are no longer registered owners.
- v) Same corresponds with the Title Deed condition of the Defendants property, which states, inter alia:  
*“Elke eienaar en sy opvolgers in titel sal teen registrasie van oordrag van die eiendom in sy naam, ’n lid word van die Kleinbron Estate Huiseienaarsvereniging en sal as sulks ’n lid bly vir so lank as wat hy eienaar is van die eiendom. Sodanige eienaar sal nie geregtig wees om te bedank as lid van die Huiseienaarsvereniging nie en sal gebonde wees aan die Konstitusie van die gemelde Huiseienaarsvereniging vir solank as wat hy eienaar is van die eiendom.”*

### 3. Ad par 23 - 79

- 3.1 Defendants’ issues raised are irrelevant to the cause of action at hand. Defendants’ have remedies available to them to ventilate these issues via trustees meetings, AGMs or via legal action if they argue that the HOA is not operating as it should.
- 3.2 The same issues and complaints are *sub-judice*, as same have been raised in an action instituted by the First Defendant against the Plaintiff, in this Honourable Court under case number 7/2023.

3.3 The issues raised, even if proven, do not excuse the Defendants from paying of levies as determined; raised and payable by each member of the HOA.

4. Ad par 80 – 83 (Compound Interest)

The Defendants annex a levy statement which is irrelevant to the cause of action, and which differ materially from the one that Plaintiff relies upon. Defendants' statement is for a different period and does not apply to the levies and the period for which Plaintiff is claiming arrear levies from the Defendants.

5. Ad par 84 - 91

5.1 Defendants' allegations are irrelevant to the matter at hand and is not a *bona fide* defence to the claim for arrear levies.

5.2 It is noteworthy that in the last attachment (unmarked) the Defendants' "Reply" (Plea), in a letter to the Plaintiff dated 18 February 2023, Defendants state that they are "*not willing to pay the levy of R995 per month from 1 March 2023, but willing to pay R908.00 per month from 1 June 2023, in line with similar increases from previous years*". It appears that the Defendants' themselves want to determine the applicable levy increases, irrespective of the approved budget and decisions taken at a properly constituted meeting of the members or trustees.

6. Ad par 92 – 135

6.1 Defendants' do not have a right to cancel or repudiate their "*contract*" (which reference to the Constitution, and liability for payment of levies) with the Plaintiff.

6.2 An alleged breach by the Plaintiff to fulfil its functions does not entitle Defendants to withhold levy payment, or to repudiate the "*contract*".

Evidence and legal argument will be presented at the hearing of the matter.

6.3 Furthermore and in any event, Defendants are put to the proof that Plaintiff has failed to provide security and garden services as alleged, and that its failure, legally entitles Defendants to “cancel the contract” with the Plaintiff. Same is denied in both respects.

DATED at **BELLVILLE** this *10<sup>th</sup>* day of **NOVEMBER 2023**.

**DIAAN NEL & GAGIANO INC**

Per: **DJ NEL**  
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Ref: **DJN/DN0670**

TO: **THE CLERK OF THE COURT**  
Magistrates Court  
**KUILS RIVER**

By hand

AND

TO: **RUBEN THEORDOR FITCHAT**  
91 Frangipani Street  
Kleinbron Estate  
BRACKENFELL  
7560  
Tel: 083 925 1545  
Email: [theo@cluedapp.co.za](mailto:theo@cluedapp.co.za)

By email

AND

TO: **SONET FITCHAT**  
91 Frangipani Street  
Kleinbron Estate  
BRACKENFELL  
**7560**  
Tel: 060 340 1315  
Email: [Sonet@cluedapp.co.za](mailto:Sonet@cluedapp.co.za)

By email