An Analysis of Sectional Title Dispute Resolution in South Africa

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Abstract

This article aims to explore alternative dispute resolution mechanisms, which are relevant to sectional titles schemes disputes. The alternative dispute resolution mechanisms will be discussed as an innovative trend to resolve disputes, especially in foreign jurisdictions. In South Africa there are challenges that confront South Africa because litigation is in many instances the cause of the break-down of relationships and may cause a rift and hinder development within a particular scheme. This article aims to address, on the one hand, particular pitfalls in sectional title scheme litigation, and on the other hand to address possible solutions through alternative dispute resolution mechanisms.

1. INTRODUCTION

Sectional Titles schemes are known as a lucrative property industry pertinent to investment opportunities and property development. In areas across South Africa and especially in the densely populated areas there are numerous schemes established because property is a scarce commodity due to the huge demand of growing populations and urbanization. This development boom in the industry results in property developers and owners amongst other active role players whom are confronted by disputes. Alternative dispute resolution is a method to resolve the conflict or disputes between the different role players in a scheme. A challenge of approaching the courts to resolve a dispute is that legal fees are costly and resolution of matters can take years for finality. In view of this challenge the legislature has promulgated the Community Schemes Ombud Act, which allows for the dispute to be lodged with the Ombudsman to resolve the dispute timeously.

Currently in South Africa, sectional titles schemes count towards a profitable market, but the daily operations of a scheme, in particular in relation to disputes arising amongst sectional title owners, pose great challenges for legal practitioners. The aim of the article is to explain these challenges and stimulate further debate on the topic through a comparative discussion.

South Africa boasts vast acres of property development across the country namely a cornucopia of sectional schemes, which are lucrative for many role players, namely, the developer of the scheme and subsequent investors concerned.[1] The demand for sectional title ownership in South Africa was to enable affordable property ownership for all.[2]

However, sectional title schemes are accompanied by specific problems[3] and benefits. When one carefully analyses the relationship between the owner and other parties involved in a scheme (body corporate, developer, managing agent and other owners), metaphorical cracks in the relationship become apparent. These cracks include a wide array of disputes between the parties, from non-payment of levies to exclusive use area disputes to non-registration of exclusive use areas to a special levy not being raised properly. These cracks eventually deepen and usually lead to the disintegration of the relationship through litigation. Sectional titles law, including case law on the topic, aims to balance the rights of all parties concerned to ensure a functioning scheme.

Since litigation is in many instances cause the break-down of relationships and the consequences are a rift formed, which hinders development within a particular scheme, this article aims to address, on the one hand, particular pitfalls in sectional title scheme litigation, and to address possible solutions through alternative dispute resolution mechanisms. Alternative dispute resolution is also a method to resolve disputes between parties relevant to the sectional scheme through pre-conciliation,[4] conciliation, mediation, arbitration and negotiation.[5]

2. COMPARATIVE ASPECTS RELEVANT TO A SOUTH AFRICAN CONTEXT

The common feature of all sectional schemes that exist on a global platform is that disputes arise amongst the relevant role players. However, the methods that are available for dispute resolution vary from one jurisdiction to another. A brief historical overview of each country is given below to illustrate the foreign influence on South African dispute resolution mechanisms within a sectional titles scheme. An example of a method of alternative dispute resolution is employing an ombudsman to mediate the matter and ombudsmen to mediate matters across the world.[6]

Foreign schemes play an important role in the schematic formulation of schemes in South Africa, as fragmented schemes have been conceptually imported from foreign systems. The

Sectional Titles Act[7] was introduced in South Africa due to the demand for inexpensive property and a shortage of residential property.[8] The historical foundations of sectional titles law are borrowed from Germany, New South Wales, Israel and France.[9] The term 'sectional titles' is referred to as 'condominium' in the abovementioned jurisdictions.[10] In Germany there is an arbitration court to resolve disputes. It is the most economical dispute resolution mechanism and eases the court roll.[11]

In Australia the aboriginal people had to litigate to obtain property rights, although there were suggestions that dispute resolution was more cost effective to try and remedy any future property disputes amongst the aboriginal people.[12] Australian, Canadian, New Zealand and American courts were the founders of the jurisprudence of the transformation of aboriginal title that set the winds of change to create sectional titles rights for them.[13] The winds of change spread with a domino effect on Southern Africa, Belize and Malaysia who enjoyed the fruits of the transformation.[14] The essence of the nexus between the indigenous title and the sectional title is that historically, the aboriginal title did not allow ownership of property.[15] However the *locus classicus Mabo* decision changed this position by allowing indigenous people sectional titles ownership where a body corporate[16] was formed and the indigenous people governed their sectional titles rights.[17]

The sectional titles rights that governed indigenous people was riddled with controversy in relation to aboriginal sectional titles rights in South Wales (Australia).[18] The issue was that the undemocratic government at the time and the laws did not harmonize with the nature of life and livelihood of the aboriginal people. The aboriginals received their sustenance from the land that was state owned property; they were historically in a tribal context bound to the land[19] and were not familiar with the concept of ownership.[20] The relevance of aboriginal property rights is of historical relevance to track the source of sectional title law that had its origin in granting property rights to aboriginal people, which through time had developed into a complex system of strata titles. The development of the strata title took place through legislation and began in New South Wales (Australia) with the Conveyancing (Strata Titles) Act 1961.[21]

Strata title in Australia is a communal form of ownership in the residential and commercial industry. A strata corporation is registered as the proprietor with a minimum of two units, some common property and parts of exclusive use areas. Disputes are referred to Strata Titles Boards, Commissioner, Referees or the Courts. The maintenance of the common

property, insurance of the scheme and enforcement of the obligations of unit holders are the responsibility of the strata corporation. A unit holder is liable for the repairs to the unit and the contributions from unit holders are considered debts for the unit holder, which is also recoverable from successors in title of unit holders.[22] Disputes may also be referred to mediation at the Dispute Settlement Centre of Victoria, which is a free service. It is problematic as mediation is not binding or enforceable.[23] In New South Wales mediation is hosted by Consumer Trader and Tenancy, which is another inexpensive method to resolve disputes between the owner and the owner's corporation.[24]

In New Zealand, the unit title is governed by the Unit Titles Act 1977. Accessory units are designed to be used as principal units with garages, parking spaces and gardens. The common property is owned by all unit proprietors. The unit plan defines the extent of the units in the common property and the participation quota determines the voting rights in the scheme. The valuation of the property is determined at the outset. All the proprietors of the units constitute the members of the body corporate. The body corporate is responsible for insurance, maintenance of the common property and levy contributions of the unit owners towards common expenditure for the scheme.[25] It has been suggested that the alternative dispute resolution mechanism that applies in Victoria (Australia) should be adopted in New Zealand.[26]

In Singapore sectional title is governed by the Land Titles (Strata) Act 1967, which is also known as the regulation of condominiums. A commissioner must approve the relevant building plans and upon registration the necessary certificates are issued. The common property is managed by a management corporation. All the owners of the property are also members of the corporation, which govern the scheme through an elected council. Disputes are referred to the Strata Titles Board, which also hear applications for collective sales. The members of the panel from which the Boards are elected include a wide range of professionals including engineers, lawyers, architects, accountants, quantity surveyors and property consultants.[27] This structure and operation of the scheme is similar to the scheme operation in South Africa.

It is apparent that South Africa drew its structure and dispute resolution mechanisms from the above brief description of various countries' sectional title legislation. Although the Sectional Titles Act of 1986 (second generation Act) aimed to remedy the shortfalls of the

1971 Act (first generation Act),[28] the courts are often approached to deliberate on contentious issues and further elaborate on sectional titles law.[29]

3. LITIGATION AND EXECUTION MECHANISMS ACTIVATED BY THE BODY CORPORATE

Litigation resolves disputes over a lengthy period and are costly, and usually does not maintain any cordial relationship between the parties to the dispute. In practice, the nature of sectional titles litigation can be laborious and a drawn-out battle. Sectional titles litigation usually commences with a letter of demand for the arrear levies, which are due and payable by a sectional title owner. Non-payment is followed by a resolution of the trustees of the body corporate to hand the matter over to the attorneys' recoveries department. Thereafter a summons is issued and if no appearance to defend is entered into by the owner, default judgment is obtained. Should the matter be defended, the plaintiff will apply for summary judgment but if there is a *bona fide* defence to the claim then summary judgment will be avoided.[30] The application for summary judgment will be dismissed and the respondent will be allowed to defend its case and plead to the summons. Depending on the dispute, the matter may either be litigated in a court of law or be arbitrated through an arbitration tribunal. Finally, a judgment or award is made either through the court or the arbitration tribunal.

This judgment/award must still be executed upon. An application has to be made to the High Court for the award to be made an order of court.[31] Where a judgment is obtained then execution occurs through the issue of a warrant of execution against movable property by the clerk of the court, and if no goods can be recovered against the judgment debt, the sheriff accordingly issues a *nulla bona* return.[32] Then the next procedure in the Magistrate's Court may be the section 65A[33] proceedings to recover the levies, although in most instances this is not a viable option as it compromises the other owners that pay their levies timeously, and violates the statutory obligation for payment of levies.[34] A viable option would be a section 66[35] application to recover the levies against the execution of the immovable property usually as a measure of last resort[36] and not for frivolous and small judgment debts.[37]*Gundwana v Steko Development CC and others (National Consumer Forum as amicus curiae)*[38] summarizes the execution process against immovable property:[39]

'It must be accepted that execution in itself is not an odious thing. It is part and parcel of normal economic life. It is only when there is disproportionality between the means used in

the execution process to exact payment of the judgment, compared to other available means to attain the same purpose, which alarm bells should start ringing. If there are no other proportionate means to attain the same end, execution may not be avoided.'[40]

It is important to note that the current rules governing execution against immovable property are under review to ensure that immovable property is sold with a reserve at the judicial discretion of the court, to ensure that immovable property is not sold below the market value thereof.[41] Execution is the physical return of an obtained judgment. The ideal scenario would be for the application to be granted and thereafter for the property to be sold at a sale in execution. Should the property be in such an inhabitable condition that no investor would want to purchase it; the next remedy would be to sequestrate the owner to recover a portion of the outstanding levy. The sequestration application is tedious in that one needs to prove a benefit of creditors,[42] which is an onerous hurdle for the body corporate to overcome.[43]

South African case law has illustrated areas of contention, where the Sectional Titles Act[44] and regulations are limited and require further interpretation. The courts have been approached to develop further/interpret the law in relation to disputes between various role players such as owners, the body corporate and the developer, to mention a few. The relevant cases are as follows:

Section 25(4)—interpretation of the right of extension of the developer and its limitations: According to *Savannah Body Corporate v Brainwave Projects 1147 CC*[45] the most important aspect of interpreting the right of extension of the developer is that a developer cannot exploit this right for his own commercial use.[46]

As regards Rule 71 and compulsory arbitration, it was held in *Baumoral Heights No 39 BK v The Trustees of the Time Being of the Baumoral Heights Body Corporate*[47] that arbitration is compulsory, whereas the case of *Body Corporate of Greenacres v Greenacres Unit 17 CC*[48] the court held that a matter is only arbitral in terms of the Act if there is a dispute between the parties. The court further interpreted rule 71 in *Body Corporate of the Pinewood Park Scheme no 202 v Dellis (Pty) Ltd*[49] and held that arbitration was not compulsory, that section 6 of the Arbitration Act[50] applied and that whether the dispute was subject to arbitration was subject to section 6. *Baumoral Heights No 39 BK v Trustees for the Time Being of the Baumoral Heights Body Corporate*[51] 2015 case-In the court a quo, the

defendant filed a special plea on the basis of compulsory arbitration in terms of Rule 71 of the Management Rule in terms of Annexure 8. The court upheld the special plea and dismissed the plaintiff's claim with costs. The plaintiff appealed the decision to the High Court. The High Court replaced the order that the main action stayed until the dispute was heard at arbitration. The special plea was upheld with costs but not the prayer dismissing the main action, in that respect the proceedings stayed until the main action was heard before arbitration. This decision is important as this judgment illustrated that Rule 71 was compulsory arbitration for the parties.

Management Rule 31(6) was interpreted in *Body Corporate Croftdene Mall v Ethekwini Municipality*[52] where the court held that the *in duplum* rule was not proved and accordingly the application was contrived. In *Dlamini v Body Corporate of Frenoleen*[53] it was held that the National Credit Act[54] is not applicable to the charging of interest on arrear levies, which is governed by the Sectional Titles Act[55] and management rules. In *Mitchell v Beheerliggaam RNS Mansions*[56] it was held that according to Management Rule 31(6) a body corporate is entitled to charge compound interest on arrear levies. In *Body Corporate Lynwood Gardens v Yegi*[57] the court held the interest rate that was determined by trustees did not have to be registered at the Deeds office to take effect and was subject to the *in duplum* rule. In *Margo and another v Gardner; Gardner and another v Margo and another*[58] it was held that the *in duplum* rule is suspended while litigation is still pending (*pendente lite*).

Circumstances when an administrator may be appointed in terms of section 46 of the sectional titles Act:[59] In *Dempa Investments CC v Body Corporate of Los Angeles*[60] it was held that an administrator was appointed due to the maladministration of the sectional scheme. In *Body Corporate of Palazzo De Marina & Yagambaram Moonsamy NO v Intense Heat Investments 5 (Pty) Limited*[61] it was held that an administrator was appointed by specific functions and provisions for the sectional scheme.

Responsibility for maintenance of managing agents and owners[62] in terms of section 37(1) of the Act: In *Body Corporate of Soteria Scheme v Reality Dynamics 32 (Pty) Ltd*[63] it was held that the managing agent was liable for roofs that were not waterproofed from the onset, which amounted to a latent defect in the building when it was sold to the owners.

Liability for the special levy raised section 37(2); section 37(2A) section 37(2B); interpretation of Management Rule 11 in respect of a passing a valid resolution and

circumstances when owners are excluded from voting in decisions of the body corporate: In *Herald Investments Share Block (Pty) Ltd and others v Dr Unus Ahmed Meer and Others; Unus Ahmed Meer v The Body Corporate of Belmont Arcade Herald Investments Share Block (Pty) Ltd and others*[64] dealt with the abovementioned issues by apportioning the maintenance of the scheme in accordance with the participation quota. The Management Rule 11 was interpreted and it was held that when a resolution was passed which was known to be irregular from the onset, it could not be corrected by Management Rule 11. In these circumstances a new set of trustees were appointed and the majority shareholder's vote was excluded because interest on arrears was outstanding, and it was held that the vote should not have been excluded in the first place, and that Management Rule 11 cannot be used to remedy this incorrect decision, which was known from the onset. As a result, all decisions passed by those trustees were set aside.

Owners that frustrate the operating of the body corporate and legal consequences: In *Body Corporate-Montpark Drakens and Others v Michiel Smuts*[65] an interdict was granted against the respondent from disturbing the daily affairs of the body corporate and the affairs of the annual general meeting with punitive costs against the owner.

This article aims to illustrate that litigation may not always be the most cost-effective method to dispose of disputes and that until the Sectional Titles Management Act[66] and Community Services Act[67] are promulgated, to illustrate alternative remedies for resolution of disputes. This article also aims to explore and illustrate that alternative dispute resolution can lead to effective solutions by cutting out litigation. A possible improvement could be to amend the law accordingly. An example would be that if a levy is not raised properly by the Management Rules, then there should be a remedy to regularize and condone it without prejudice suffered by the owners. Possible new knowledge can be drawn from foreign jurisdictions to illustrate how share blocks can be improved, as it seems that share blocks are registered as a corporate entity. A share block company can be easily registered. However, the investment is risky in that the owner can lose their share when the company is liquidated, and a more secure alternative for the shareholders should be proposed to curb losing the share in their investment easily.

An overview of the Community Schemes Ombud Service Act[68] allows for an Ombud to resolve disputes regarding any scheme. It is a piece of legislation that can avoid the necessity of parties of having to go to court if all the measures to support the Act were in

place and most importantly if the Act were put into operation. If a party is not satisfied with the decision of the Ombud, he or she may appeal to the High Court.[69] The matters heard before the Ombud could potentially reduce the number of sectional titles matters heard by the courts, as well as improve relations between parties to sectional titles disputes, as more often than not, litigation destroys the relationship between them. The board members of the Community Schemes Ombud Service Act have been announced.[70]

It is apparent that alternative dispute resolution plays an impactful role in resolving sectional titles disputes. The new role of the Ombudsman operating from the Community Schemes Ombud Service Act will serve to create new jurisprudence in the resolution of disputes. The discussion relates to the challenges that schemes face regarding fragmented ownership and the role that alternative dispute resolution plays in addressing these challenges.

4. CHALLENGES IN SCHEMES OF FRAGMENTED OWNERSHIP

A particular side issue is the challenges that owners experience in other schemes of fragmented ownership. The abovementioned litigation procedure is also applicable to other types of fragmented ownership, namely, timeshare schemes, retirement villages and share block schemes (hereinafter referred to as schemes), each scheme consists of a set of unique individual problems. The different schemes are briefly discussed below.

Timeshare schemes: although the definition of the scheme[71] is a broad one it usually includes a scheme that relates to the lease of a holiday resort (or part of it) for a period. Sometimes with holiday resorts that are in demand and there being only limited weeks in the year, the availability of the schemes becomes an issue.[72] Currently the National Consumer Commission has a case against time sharing schemes which contractually prevent consumers from being allowed to exit the contract.[73]

Share block schemes are being replaced by sectional title schemes and there was a reconsideration of whether share block schemes should still exist.[74] However, there is still a demand for it so instead the legislation was amended to align the Act with the needs and demands of the property market. However, a huge drawback of the scheme is that investing in it is still very risky.[75]

Retirement schemes seem to be very successful and problem free. The problems with retirement schemes are that units are very expensive and are only reserved for the upper class.[76]

Perhaps the property market dictates the need for fragmented ownership and until the market determines otherwise, it will continue to exist.

5. ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

According to case law, Rule 71 of the Sectional Titles Act[77] determines that when a dispute exists between the respective parties, the matter is subject to arbitration. Alternative dispute resolution (ADR) mechanisms have become a global phenomenon and a trend in the first world countries to solve their disputes timeously and through cost effective methods.[78] One of the reasons why ADR is so popular is that the disputants feel empowered as they have control over a few aspects of their matter and it is an engaging form of resolving the dispute.[79] A technique that is a method of ADR is a negotiation that solves disputes in an innovative way.[80] A few advantages of ADR are that it is not in the public media and that it involves reduced anxiety than a trial.[81] ADR can also inspire further creative methods of resolving disputes that are not limited to negotiation, mediation, conciliation, arbitration and fact finding for the parties to reach a settlement.[82] The future of dispute resolution is summarized as follows by Mackie:

'In stimulating this new awareness, it has also generated a new confidence for experimentation and action. It has mobilized academics and practitioners to rethink and challenge anachronistic, unsatisfactory and unchallenged dispute resolution processes, to seek new means to extend access to justice and in the process to explore a new definitions and forms of justice.'[83]

This is the impetus of dispute resolution in that it provides access to justice to all people in an expedited matter, cutting through the orthodox manner of accessing the law. In the UK, ADR mechanisms encourage judges to be 'more interventionist and flexible to the point of acting as mediator in such disputes'.[84] CG van der Merwe discusses a self-regulation system that worked well in Columbia, where the owners manage their own internal disputes,[85] which is unlike the litigious environment of South Africa, and another method of

a way forward is to resolve property disputes through alternative dispute resolution mechanisms.

6. CONCLUSION

This article shows that there are a plethora of methods to resolve disputes. However, challenges are born because certain disputes are by their nature only bound to the courts for resolution. This is due to the lack of creation of expert tribunals or Ombuds to deal with the complexity of certain matters. The context and content of a dispute determine the channel of alternative dispute resolution, bearing in mind that private arbitration is always accessible to the parties and there must be a consensus between the parties, although Rule 71 prescribes arbitration to avoid unnecessary litigation before issues are traversed. Although there are still many questions unanswered, sectional titles law is still a developing area in South Africa, in that matters are still required to be brought before the courts for further interpretation and clarity. Furthermore, the face of sectional titles disputes will be changed since an Ombudsman is appointed to hear matters.

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Footnotes

[1]Woudberg, T Basic *Sectional Title* (1994)Butterworths 7.

[2]Seeff, GW *Sectional Titles Made Easy* (1976) 4.Property Publishers See also Rorke,RF *A commentary on the Sectional Titles Act, 1971* (1972) Butterworths and Shrand, D *Shrand on the Sectional Titles Act* (1972) 1. Legal and Financial Pub. Co. (Pty) Ltd

[3]Franzsen,R 'The Valuation and Rating of Sectional-title Property in Terms of the Municipal Property of Rates Act' in Mostert, H and de Waal,MJ (eds), *Essays in Honour of van der Merwe* (2011) LexisNexis 352, discusses the transition from collective responsibility for rates of the scheme to individual responsibility for rates.

[4]Out-law.com, 'Changes to UK laws aim to further curb number of cases going to employment tribunal' (7 April 2014) <http://www.out-law.com/en/articles/2014/april/changes-to-uk-laws-aim-to-further-curb-number-of-cases-going-to-employment-tribunal/> accessed 13 April 2014. In the UK they have introduced an early conciliation meeting to encourage settlement in terms of employment related disputes, which can also be a useful dispute resolution method for sectional title matters. See also Arbitration, conciliation, arbitration

services 'Early Conciliation' (undated) <http://www.acas.org.uk/index.aspx?articleid=4028> accessed 13 April 2014).

[5]Paddocks, 'Options for Resolving Sectional Title Disputes' (January 2009) <http://www.paddocks.co.za/images/PDFs/options_for_resolution_of_sectional_title_disputes.pdf> accessed 13 March 2014.

[6]Jacoby,D 'The Development of the "Ombudsmediator" on a Global Scale' (occasional paper #69 March 1999) <http://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=2&ved=0CCIQFjAB&url=http%3A%2F%2Fwww.theioi.org%2Fdownloads%2F22881%2FIOI%2520Canada_Occasional%2520paper%252069_M.%2520Daniel%2520Jacoby_The%2520Development%2520of%2520the%2520%2522Ombudsmediator%2522%2520on%2520a%2520Global%2520Scale_1999.pdf&ei=2FWqVMHkOMeuUY-Ig4AJ&usg=AFQjCNHFW6IUAO4GZKpqDiDbKds2z4qP_g> accessed on 5 January 2015.

[7]66 of 1971.

[8]Cowen, DV 'The South African Sectional Titles Act in Historical Perspective: An Analysis and Evaluation' (1973) 6 CILSA 1 at 7. See also Seef (n 2) 4, the Act of 1971 came into effect on 30 March 1973.

[9]van der Merwe, CG and others, *Sectional Titles, Share Blocks and Time-sharing* (1985) at 4–5. See also Pienaar,GJ *Sectional Titles and other Fragmented Property Schemes* (2010) Juta at 4–8. See also Cowen, ibid 1 at 37. See also van der Merwe, Z 'Constitutionality of the Rules Governing Sectional Title Schemes' (Unpublished LLM thesis, University of Stellenbosch) 2010 30.

[10]van der Merwe, CG and others, *Sectional Titles, Share Blocks and Time-sharing* (n 9) 4.

[11]Paulsson, J *3D* 'Property Rights-An Analysis of Key Factors Based on International Experience' (Unpublished doctoral thesis, Royal Institute of Technology Stockholm Sweden) 2007 130.

[12]Daly, R and Napoleon, V 'A Dialogue on the Effects of the Aboriginal Rights Litigation and Activism on Aboriginal Communities in Northwestern British Columbia' (2003) 47 International Journal of Social and Cultural Practice 108 at 122.

[13]McHugh, PG *Aboriginal Title* (The Modern Jurisprudence of Tribal Land Rights) (2011) at 3–5. Oxford University Press

[14]ibid.

[15]Klug, H 'Defining the Property Rights of Others: Political Power, Indigenous Tenure and the Construction of Customary Land Law' (1995) 35 Journal of Legal Pluralism 119 at 143.

[16]Butt, P 'The Mabo Case and Its Aftermath: Indigenous Land Title in Australia' in van Maanen, G.E and van der Walt, A.J (eds), *Property Law on the Threshold of the 21st Century* (1995) 506 Antwerpen.

[17]ibid.

[18]Shrand, D *Supplement to Shrand on the Sectional Titles Act* (1978) 7 Legal and Financial Pub. Co (Pty) Ltd regarding that the Strata Titles Act worked so well in Australia and as result South Africa adopted a portion of it in the Sectional Titles Act. See also Xu,L 'The Impact of Apartment-ownership Law: Reforming English and Scots Law' in Mostert, H and de Waal, M.J (eds), *Essays in Honour of CG van der Merwe* (2011) LexisNexis 263.

[19]See IOL News article by AFP, 'PM under fire over Aborigines comment' (11 March 2015) <http://www.iol.co.za/news/world/pm-under-fire-over-aborigines-comment-1.1830367#.VQAhB3yUcQE>

accessed 11 March 2015. The Prime Minister has been reported to have said that 'he supported a plan to close more than 100 remote Aboriginal communities across the vast Western Australia state if essential services could not be provided'. His comment spurred an outcry from various people as it illustrated a lack of understanding of the aboriginal culture. It was stated in the article that 'Aborigines have lived in Australia for at least 40 000 years and the comments drew stinging criticism, with Abbott's key indigenous advisor Warren Mundine saying Aborigines had a cultural connection to their land, and it was not simply a matter of going to "live in the bush"'.

[20]Bradbrook,A.J, Moore,A.P and MacCallum, S.V, *Australian Real Property Law* (3rd edn, 2002)Lawbook Co. at 278–79.

[21]Fetherstonehaugh,G., Sefton, M & Peters, E , *Commonhold* (2004) 14 Oxford University Press..

[22]ibid 14–15.

[23]Paulsson (n 11) 284.

[24]ibid 229.

[25]ibid 15.

[26]Leshinsky, R and Mouat,C 'New Way to Think about Conflict Resolution for more Harmonious Strata Living' (undated) <http://www.planning.org.au/documents/item/3722> accessed 6 January 2015.

[27]ibid.

[28]van der Merwe, C.G 'The South African Sectional Titles Act Compared with Singapore Land Titles (Strata) Act' (1999) 3 Singapore Journal of International and Comparative Law 134.

[29]Pienaar (n 9) at 154, confirms the difficult distinction between luxury and non-luxury improvements to the sectional scheme.

[30]Rule 14 of Magistrates' Courts Rules, promulgated in Government Notice R1108 published in *Regulation Gazette* 980 of 21 June 1968.

[31]Annexure 8 Management Rules 71(7).

[32]s 66(1)(a) Magistrates' Courts Act 32 of 1944.

[33]Magistrates' Act 32 of 1944.

[34]s 37(1); s 37(2); s 37(2A) and s 37(2B) of Sectional Titles Act 95 of 1986.

[35]Magistrates' Courts Act 32 of 1944.

[36]*Nedbank Ltd v Fraser and another and other cases* 2011 JOL 27423 (GSJ) at para 43.

[37]*Jaftha v Schoeman and Others; Van Rooyen v Stoltz and Others* 2005 (2) SA 140 CC at para 67.

Courts [38]*Gundwana v Steko Development CC and others (National Consumer Forum as amicus curiae)* 2011 JOL 26971 (

CC).

[39]Steyn, L 'Statutory Regulation of Forced Sale of the Home in South Africa' (unpublished LLD thesis, University of Pretoria) 2012 255–63 discussed this case in the instance that execution against primary residence will only be declared executable when all relevant circumstances are taken into consideration. See also Brits, R *Mortgage Foreclosure under the Constitution: Property, Housing and the National Credit Act* (unpublished LLD thesis, University of Stellenbosch) 2012 83 who states that the *Gundwana* case put forth many arguments

regarding that judicial oversight is not necessary regarding the execution against immovable property in mortgage cases.

[40]*Gundwana v Steko Development CC and others (National Consumer Forum as amicus curiae)* 2011 JOL 26971 (CC) at para 54.

[41]Rules Board for Courts of Law Republic of South Africa 'Proposed Amendment to Uniform Rule 46 and Magistrates' Court 4' (undated) <www.justice.gov.za/rules…./201401-UNIFORM-RULE46-MAGISTRATE-COURTS-RULE43.PDF> accessed 9 May 2014.

[42]s 10(1) Insolvency Act 24 of 1936.

[43]*The Body Corporate of the Peaks Sectional Title Scheme No230/2002 v Prinsloo N.O*. 2012 JDR 2253 (WCC).

[44]Act 95 of 1986 as amended.

[45]*Savannah Body Corporate v Brainwave Projects 1147 CC* (735/2010) 2011 ZASCA 239 (1 December 2011).

[46]ibid at paras 13–15.

[47]*Baumoral Heights No 39 BK v The Trustees of the Time Being of the Baumoral Heights Body Corporate* (A698/2001) CPD (4 October 2002) (RSA) at para 15.

[48]*Body Corporate of Greenacres v Greenacres Unit 17 CC* 2007 SCA 152 (RSA) at para 11.

[49]*Body Corporate of the Pinewood Park Scheme no 202 v Dellis (Pty) Ltd* (498/11) 2012 ZASCA 105 (1 June 2012) at paras 20–21.

[50]42 of 1965.

[51]*Baumoral Heights Body Corporate* [2015] JOL 33187 (C).

[52]*Body Corporate Croftdene Mall v Ethekwini* Municipality (603/2010) 2011 ZASCA 188 (10 October 2011) at paras 28 and 30.

[53]*Dlamini v Body Corporate of Frenoleen* 2010 JOL 25145 (KZD) at para 11.

[54]34 of 2005.

[55]Act 95 of 1986.

[56]*Mitchell v Beheerliggaam RNS Mansions* 2010 5 SA 75 (GNP) at paras 14–15.

[57]*Body Corporate Lynwood Gardens v Yegi* 2012 JDR 2116 (WCC) at para 10.

[58]*Margo and another v Gardner; Gardner and another v Margo and another* 2010 JOL 26137 (SCA) at paras 12–13.

[59]Act 95 of 1986.

[60]*Dempa Investments CC v Body Corporate of Los Angeles* (07/16617 & 07/18122) (WLD).

[61]*Body Corporate of Palazzo De Marina & Yagambaram Moonsamy NO v Intense Heat Investments 5 (Pty) Limited* (6047/2010) (DCLD).

[62]Paddock, G.J *The Sectional Title Handbook* (1990) Juta 38.

[63]*Body Corporate of Soteria Scheme v Reality Dynamics 32 (Pty) Ltd* (10965/2010) (CPD).

[64]*Herald Investments Share Block (Pty) Ltd and others v Dr Unus Ahmed Meer and Others; Unus Ahmed Meer v The Body Corporate of Belmont Arcade Herald Investments Share Block (Pty) Ltd and others* (2907/10 & 9708/10) [DCLD] [14 September 2010].

[65]*Body Corporate-Montpark Drakens and Others v Michiel Smuts* (22380/05) (WLD).

[66]Sectional Titles Schemes Management Act 8 of 2011.

[67]Act 9 of 2011.

[68]Act 9 of 2011.

[69]s 57 of Act 9 of 2011.

[70]Notice 152 of 2013 Department of Human Settlements, Board Members of the Community Schemes Ombud Service, The Minister of Human Settlements appointed Board members of the Community Schemes Ombud Service in terms of s 6 of the Community Schemes Ombud Act, 2011 (Act 9, 2011).

[71]Property Time-Sharing Control Act 75 of 1983 s 1 'property time-sharing scheme' means—(*a*) any scheme, arrangement or undertaking in terms of which time-sharing interests are offered for alienation or are alienated and the utilization of such interests is regulated and controlled, whether such scheme, arrangement or undertaking is operated pursuant to a share block scheme, any scheme under which time-sharing interests connected with rights to membership of or participation in any club are granted, any time-sharing development scheme based on the alienation of undivided shares in a unit as defined in s 1 of the Sectional Titles Act, 1971 (Act No 66 of 1971), or otherwise; or(*b*) any scheme, arrangement or undertaking declared a property time-sharing scheme by the Minister by notice in the *Gazette* for the purposes of this Act, in terms of which interests in the use or occupation of immovable property, or any portion or part thereof, defined in the notice, are sold or leased.

[72]Pienaar (n 9) at 412.

[73]Legal Brief, 'NCC Seeking Relief for all Timeshare Owners' <legalbrief@legalbrief.co.za> accessed 18 September 2014.

[74]Pienaar (n 9) in *Chapter 6 Share block schemes* at 292: 'This led to an investigation by the Commission of Inquiry into the development Schemes Bill during 1978 to determine whether share block schemes should be outlawed. The commission decided to retain the concept of share blocks but to regulate it through legislation because there was a proven need for the existence of share block schemes alongside sectional title schemes.'

[75]Pienaar (n 9) at 287–94.

[76]ibid at 463.

[77]Act 95 of 1986.

[78]Blake, S.H Browne, J and Sime,S *A Practical Approach to Alternative Dispute Resolution* (OUP 2011) 76.

[79]Brown, H.J and Marriott,A.L *ADR Principles and Practice* (Sweet & Maxwell 1993) 10.

[80]Sander, F 'Alternative Methods of Dispute Resolution: An Overview' University of Florida Law Review XXXVII Winter 1985 1 in Freeman,M.D.A (eds), *Alternative Dispute Resolution* (1995) at 97.Dartmouth.

[81]Davis, S 'ADR: What is it and What are the Pros and Cons' in R Caller (ed), *ADR and Commercial Disputes* (2002) Sweet & Maxwell 3.

[82]Fine, E.S and Plapinger,E.S, 'Overview of Private ADR' in Fine,E.S and Plapinger,E.S (eds), *ADR and the Courts A Manual for Judges and Lawyers (*1987)Butterworths Legal Publishers 18.

[83]Mackie K.J, 'Conclusion: Dispute Resolution Futures' in Mackie,K.J (ed), *A Handbook of Dispute Resolution* (1991) Routledge & Sweet & Maxwell 279.

[84]Brown and Marriott (n 79) 85.

[85]van der Merwe, C.G 'The Various Policy Options For the Settlement of Disputes in Residential Community Schemes' (2014) 2 Stellenbosch Law Review 385 at 386.