

MAURICE PHILLIPS

ATTORNEYS

WISENBERG

NOTARIES & CONVEYANCERS

20th floor, 2 long street, cape town 8001
po box 522, cape town 8000
tel: 021 419 7115 fax: 086 484 7373 dx: 180 cape town
email: antony@mpw.co.za web: www.mpw.co.za

Date : 10 July 2023
Our Ref. : Antony Arvan/MAT10138
To : Progressive Administration
Attention : Chris Van Zyl
Email : Chris@progressiveadmin.co.za
Cc : Riaan Meintjes
Email : riaan@themis.co.za
Matter : **TRANSFER OF COMMON PROPERTIES – FUNDEALS SIXTEEN (PTY) LTD (IN LIQUIDATION)**

CONFIDENTIALITY NOTICE

This e-mail contains confidential information which is the property of the sender and which is legally privileged. The information is intended only for the use of the addressee. If you are not the intended recipient you are hereby notified that any disclosure, copying or distribution of the contents of this e-mail or the taking of any action in reliance thereon or pursuant thereto is strictly prohibited. Should you have received this e-mail in error please notify us immediately.

Dear Chris

1. We refer to your email dated 5 July 2023.
2. We confirm that we act on behalf of Akarana Master Home Owners' Association ("**Akarana**").
3. We are, to say the least, most astounded by your abovementioned email, in terms of which you have advised that on based on a letter, which you had received earlier that same day from Hayes Incorporated ("**the Hayes letter**"), on behalf of member, Andre van der Westhuizen ("**AVDW**"), that you would instruct attorneys to continue with the transfer of the common property to La Bella Vita Property Owners' Association ("**LBV**"), and without even giving us the opportunity to even comment thereon.
4. First and foremost, AVDW nor Hayes Inc represent or act on behalf of LBV. In the circumstances, you not entitled on the request of AVDW to transfer the common property from Fundeals to LBV. The fact that AVDW is the chairperson of LBV does not detract therefrom or in itself entitle AVDW, in his personal capacity, to request that you transfer the common property from Fundeals to LBV.

Directors: Paul Wisenberg Antony Arvan

Llewellyn de Wet Heinrich Lombaard

Douglas Henney (non-executive)

Associates: Nicole Martin Werner Lotter

Tyla de Leeuw Zelna Swart

Consultants: Leonard Hersch Bertus Preller



MAURICE PHILLIPS WISENBERG INC.
COMPANY REG NO: 2019 / 619 349 / 21



5. Before we comment on the Hayes letter, your decision to proceed further with the transfer to LBV, flies directly in the face of previous undertakings that you had previously given to Akarana that you would not proceed with the transfer. In this regard, we you the following:
 - 5.1 Your letter to Zerlinda Van Der Merwe, who was previously dealing with this matter on behalf of Akarana, dated, **1 February 2023**, wherein you confirmed that there was a dispute amongst "*the various groups*" (which includes our client) and that until there was a declarator saying exactly to whom the property should be transferred "*we are at a stalemate*". It followed therefrom that you would not proceed with the transfer until this declarator had been obtained. To date, no declarator has been obtained and hence the "*stalemate*" still exists.
 - 5.2 On **23 June 2023**, you specifically confirmed in an email to ourselves that a resolution adopted by LBV (in relation to the common property) had to be "*ratified*" by Akarana and that you would thus "*not be giving any instructions to any party to attend to the transfer of the common area until the matter is resolved*" between Akarana and LBV in relation thereto. Notwithstanding the submissions as set out in the Hayes letter, that dispute has not subsequently and suddenly been resolved and you thus remain bound by the undertaking as set out in that email.
6. Furthermore, in terms of the Akarana Constitution, which was duly adopted at SGM on 15 January 2021 (which meeting AVDW failed to attend) and which Constitution the Drakenstein Municipality has duly approved, the common property, vests with Akarana, and is to be transferred to, and registered in the name of a non-profit company, which is to be established for the sole purpose of taking transfer thereof. The Akarana Constitution stipulates furthermore that unless authorised by way of a special resolution, neither the whole nor any portion of the common property shall be sold, let, alienated, otherwise disposed of, subdivided, or transferred.
7. Accordingly in terms of the Akarana Constitution the common property cannot be transferred to LBV.
8. According to the title deeds of all properties within LBV, all the owners, which includes AVDW, are subject to the Constitution of the LBV and the Constitution of Akarana and are thus bound to the the provisions thereof, as set out above.
9. Although AVDW instituted an action to the High Court to have the 2021 constitution set aside (and *all* previous constitutions so that the HOA is left without any Constitution), which action is being

opposed by Akarana and the majority of the owners, and is still pending, until and unless this action is finally determined in his favour and he is granted the relief he is claiming, he remains bound in all respects to the terms thereof.

10. AVDW thus cannot, while the abovementioned action is pending, simply take the law into his own hands by requiring you to transfer the common property to LBV. In addition, you are also not entitled to simply disregard the terms of the Constitution, which clearly does not entitle LBV to take transfer thereof.
11. Furthermore, even if the 2021 Akarana Constitution were to be set aside, it does not follow therefrom that LBV would be entitled to take transfer of the common property as the competing right of LBV to the common property, would still need to be adjudicated upon.
12. For the purposes of this letter, we do not deem it necessary or appropriate to deal in any detail with basis upon which AVDW has previously contended that LBV is entitled to take transfer of the common property. It is respectfully submitted that you do not have the necessary authority or jurisdiction to determine the validity of AVDW/ LBV's claim to the common property or the dispute in relation thereto, which you purported to do, in terms of your email, dated 5 July 2023. The competing claim of LBV to the property would need to be determined by the court before LBV can request that the property be transferred to it, as you previously specifically confirmed.
13. In terms of the Hayes letter, the request by AVDW that the property now be transferred to LBV appears to be premised on somewhat of an afterthought that the dispute, which they previously acknowledged existed in relation to the common property, had been resolved in September 2022 through some sort of act of default, due to Akarana having failed to furnish you with submissions in response to your email dated 20 September 2022. This is the first time AVDW had alleged the foregoing.
14. Besides the fact that the claim by LBV to the common property has to date not been adjudicated upon or resolved in any way, the competing claim to the common property could not be resolved through some act of default, as suggested in the Hayes letter. In this regard even after the "submission process", you confirmed in your email, dated 1 February 2023, that the common property could not be transferred until the declarator had been obtained.
15. At no stage has Akarana waived its right to take transfer of the common property in respect of which they have been in correspondence with yourselves since early 2021.

16. Akarana has been financing, administering and managing the common property, which includes monitoring and operation of security at the main entrance and in respect of the electric fencing of the perimeter of the property, the maintenance of the gardens, landscaped areas, roads, structures and infrastructure, including water and effluent plant and equipment, as well as the management of the gardening and maintenance staff from levies paid by the members of Akarana and not only from the LBV members. In this regard it is worth noting that all the LBV members, excluding AVDW, which have brought the abovementioned action to have the Akarana Constitution set aside, do not pay their monthly levies. The levies are thus financed by the other LBV members and the Akarana members and more specifically the commercial farmers. In addition, LBV itself does not make any contribution towards the maintenance and upkeep costs of the common property.
17. Furthermore, the reference in the Hayes letter to the dispute, which had previously existed between the members of LBV in relation to the validity of a resolution, which had been adopted at an SGM on 27 January 2023 pertaining to the transfer of the common property to LBV, and which dispute has since been resolved, is somewhat of a "red herring" and is of no relevance whatsoever to Akarana's claim to the common property and LBV's competing claim thereto.
18. In addition, even if a court were to determine that LBV has a valid claim to the common property, as suggested by AVDW (which is denied), it still does not follow therefrom that LBV can automatically take transfer thereof. In terms of the title deeds of the common property, the common property cannot be transferred without the consent of Akarana, as you previously confirmed. In this regard we refer you to the following:
 - 18.1 Your email dated **20 September 2022**, wherein you specifically confirmed that in terms of the title deeds of Portion 39 (the portion which was subdivided to form LBV) the common property could not be transferred without Akarana's consent. You noted further that it would indeed be difficult to proceed further with the transfer if this was opposed by Akarana.
 - 18.2 Your letter dated **1 February 2023**, wherein you confirmed that the common property could not be transferred to any party without the consent of Akarana. No such consent has to date been requested or given.
19. At this stage we deem it necessary to place on record that Akarana does not consent to the transfer of the common property to LBV. In this regard AVDW is of the view that LBV is an autonomous home owners' association from Akarana, notwithstanding the conditions of subdivision, the title deeds of the properties in Akarana and LBV, the terms of constitution of both Akarana and LBV

and the manner in which both home owners associations have been and are financed, managed and administered since the establishments thereof.

20. AVDW furthermore does not recognize the rights of the commercial farmers (i.e the owners of the remaining portions of Portion 27, namely portions 36 to 38 and portions 40- 47 of Farm 791), to access to the common property, notwithstanding their access and usage thereof since they all acquired their respective properties and the fact that they pay their monthly levies and special levies towards the maintenance and upkeep thereof. In this regard we refer you to email from Hayes incorporated, dated 12 September 2022, wherefrom it appears that the AVDW and/or LBV do not intend to give the commercial farmers access to the common property in the event of the common property being transferred to LBV.
21. Akarana, which is obliged to look after the communal interest of all its members, cannot permit a state of affairs to exist in terms of which the commercial farmers are suddenly denied access to the common property, which includes the roads providing access to the farms, the studios and the hotel and the access to and use of the dams, which appears to be the objective of AVDW.
22. Accordingly in the event of AVDW establishing the right of LBV to take transfer of the common property, Akarana shall accordingly refuse to consent to the transfer of the common property to LBV, unless the necessary servitudes and right of way, etc, are registered to secure and preserve the current access/usage to the common property and the rights of all its members, including the commercial farmers thereto.
23. For all the reasons as set out above, Akarana thus disputes that AVDW is entitled to request that the common property be transferred from Fundeals to LBV and furthermore that you are in any way obligated or entitled in the circumstances, to instruct attorneys to continue with the transfer of the common property to LBV. Akarana furthermore disputes that all the members of LBV are in agreement of the transfer of the common property to LBV and disputes that Drankenstein Municipality is in favour thereof, as suggested in the Hayes letter.
24. We have accordingly been instructed, to demand from you, as we hereby do that you reverse your decision to proceed with the transfer and confirm, in writing, by no later than close of business on **Thursday, 12 July 2023**, that you shall not proceed with the transfer of the common property from Fundeals to LBV pending the final determination of the dispute in relation thereto, failing which we have been instructed to make application to the High Court to interdict and restrain you from proceeding with the transfer and to hold yourselves liable for all the costs incurred in this regard. We hope and trust that this shall not be necessary.

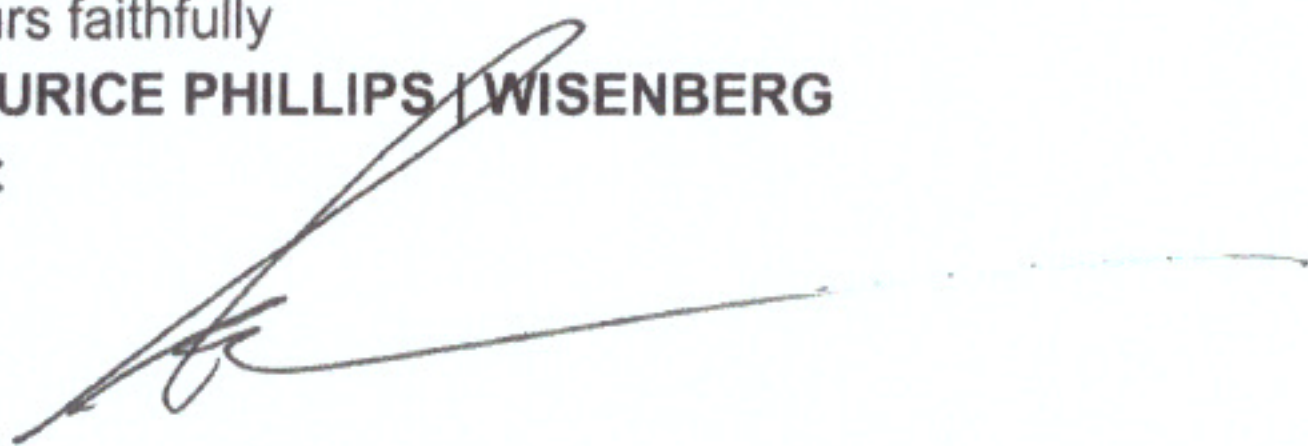
25. To the extent that you comply with Akarana's request as set out above and should AVDW and/or LBV thereafter institute proceedings against yourselves to compel you to transfer the common property to LBV as they have threatened to do, Akarana shall oppose that application. This application, should then result in a proper ventilation and determination of the validity of the right of LBV to take transfer of the common property, as alleged by AVDW, as opposed to his belated attempt to rely on a supposed act of default by Akarana in establishing such right.

We await your urgent reply.

Yours faithfully

MAURICE PHILLIPS | WISENBERG

Per:

A handwritten signature in dark ink, appearing to be 'ANTONY ARVAN', written over a horizontal line.

ANTONY ARVAN