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What Counts as a "Dispute" with a Municipality?

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INTRODUCTION

This is part 1 of an "idiots guide" to logging queries, disputes and complaints with the City of Johannesburg Metropolitan Municipality ("COJ"). Although one might question why it is necessary to write an article explaining what appears to be such a simple concept, we regularly receive reports of customers not being able to take their matters forward because of not having been able to log a dispute, logging the wrong type of dispute, or not having proof of the dispute logged. What will become clear from the contents hereof is that logging a dispute is much more complicated than you might imagine at first blush.

WHY SHOULD I CARE ABOUT THIS QUESTION?

Section 102 of the Local Government:
Municipal Systems Act 32 of 2000 ("the Systems Act") provides as follows:

> "Amounts
> 102. (1) A municipality may—
>
> a. consolidate any separate accounts of persons liable for payments to the municipality;
> b. credit a payment by such a person against any account of that person; and
> c. implement any of the debt collection and credit control measures provided for in this Chapter in relation to any arrears on any of the accounts of such a person.
>
> (2) Subsection (1) does not apply where there is a dispute between the municipality and a person referred to in that subsection concerning any specific amount claimed by the municipality from that person."

A customer that raises a 'dispute' that concerns any specific amount claimed by the municipality from that person' is thus insulated from "credit control action" (which could include the termination of services, or the issuing of summons) for so long as that 'dispute' exists.

In the absence of such a 'dispute', however, the municipality is free to take whatever lawful form of credit control action it might see fit against the consumer.

WHAT IS A 'DISPUTE' FOR SECTION 102?

This is a complicated question. There is no definition of 'dispute' in the Systems Act which governs the relationship between municipalities and customers. Section 102(2), however, indicates that such a 'dispute' must be "concerning any specific amount claimed".

Importantly, this means that the customer needs to point to the amount claimed in a specific invoice in order for the query to be "valid" for the purposes of section 102. It does not mean (as some municipalities incorrectly contend) that the customer needs to advise the municipality how much of the total bill the customer thinks he does not owe in rands and cents terms – as this would be impossible for the great majority of customers who do not know how to calculate municipal charges or where the customer does not have the information necessary to do those complex calculations. It is sufficient for a customer to point to the "total amount" owed in any particular invoice and dispute that amount, or to point to the amount owed for a specific section of the invoice (such as rates, electricity, sewerage, etc) – provided that the amount in the invoice is identified. The Supreme Court of Appeal in Croftdene Mall[1] interpreted 1 section 102(2) as follows:

> "[21] Neither the Systems Act nor the policy defines the term 'dispute'. Some of the definitions ascribed to it include 'controversy, disagreement, difference of opinion', etc. This court had occasion to interpret the word in Frank R Thorold (Pty) Ltd v Estate Late Beit and said that a mere claim by one party, that something is or ought to have been the position, does not amount to a dispute: there must exist two or more parties who are in controversy with each other in the sense that they are advancing irreconcilable contentions.

[22] It is, in my view, of importance that s 102(2) of the Systems Act requires that the dispute must relate to a 'specific amount' claimed by the municipality. Quite obviously, its objective must be to prevent a ratepayer from delaying payment of an account by raising a dispute in general terms. The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items and the basis for the ratepayer's objection thereto. If an item is properly identified and a dispute properly raised, debt collection and credit control measures could not be implemented regarding that item because of the provisions of the subsection. But the measures could be implemented regarding the balance in arrears; and they could be implemented in respect of the entire amount if an item is not properly identified and a dispute in relation thereto is not properly raised.

[23] Whether a dispute has been properly raised must be a factual enquiry requiring determination on a case – by – case basis."

In Ackerman[2] the applicant disputed the accuracy of the invoice that was issued by the City. The applicant lodged numerous queries with the City. The City contended that the applicant's queries do not fall within the purview of section 102(2) on the basis that the applicant failed to make reference to "any specific amount", therefore the applicant has failed to satisfy the requirements in section 102(2).

The Court found that the present case was distinguishable from Croftdene since the applicants in that case failed to identify any specific amount which it contested with the municipality, instead, the applicant sought a general reduction or write-off of its debt. This is in contrast to the present case, where the applicant has raised queries and declared dispute in writing with the City in relation to particular invoice. The applicant in the present case continued to make payment of the undisputed charges on the account, unlike in Croftdene where the applicant failed to make any payment on the account. Accordingly, the Court held that the City's reliance in Croftdene was misplaced or ill conceived.

In Van Der Merwe Street[3] the Court summarised the requirements from Croftdene as follows: "[27] Croftdene Mall thus imposes the following requirements before a consumer of municipal services may rely on the protection from disconnection afforded by section 102(2) of the Systems Act:

27.1 there must be a dispute, in the sense of a consumer, on the one hand, and the municipality, on the other, advancing irreconcilable contentions;

27.2 the dispute must be properly raised, which would require, at least, that it be properly communicated to the appropriate authorities at the municipality and and that this be done in accordance with any mechanism and appeal procedure provided in terms of section 95(f) of the Systems Act for the querying of accounts;

27.3 the dispute must relate to a specific amount or amounts or a specific item or items on an account or accounts, with the corollary that it is insufficient to raise a dispute in general terms;

27.4 the consumer must put up enough facts to enable the municipality to identify the disputed item or items and the basis for the ratepayer's objection to them;

27.5 it must be apparent from the founding affidavit that the foregoing requirements have been satisfied."

Van Der Merwe Street appears to indicate a slight departure from the reasoning in Croftdene, in which the Court referred to a specific amount claimed by a municipality. This suggested that this was a reference to a single amount being disputed. In Ackerman, the Court found that this on a sensible interpretation cannot be what the Court in Croftdene intended. In arriving to this decision, the Court referenced paragraph 22 of Croftdene where that Court stated that "The ratepayer is required to furnish facts that would adequately enable the municipality to ascertain or identify the disputed item or items…". Against this backdrop, the Court in Ackerman held that the applicant's queries and demands constituted a dispute within the of section 102(2).

A "TRUE" OR "BONA FIDE" QUERY

If one looks to the decisions of courts made in the context of what a 'dispute' is for the purpose of sectional title management, we find that a pure refusal or failure to pay levies does not count as a dispute[4]. Applying this reasoning in the municipal context makes sense, because it would be unjust if a customer were able to avoid payment of a "disputed" amount or credit control action being taken against him in relation to a "disputed" amount purely because the consumer raises a "query" or "dispute" that is not connected to the amount owing – such as the incorrect billing address, not receiving invoices or an incorrect property description or size.

Furthermore a query logged to the extent that the charges are "too high" would not qualify as a bona fide query unless the reason for them being too high was disclosed. To simply say that you "dispute" a charge without disclosing a reason therefore, is not a bona fide dispute.

In Herbst and Another v City of Tshwane[5] the Court held that the customer had not raised a 'dispute' because its 'problem' was that the municipality was charging it for rates based on a categorisation of non-permitted use when the permitted use did, at the time, prevent that particular use. The defence raised was that the customer had applied for a rezoning, which had not yet been granted. The court found that there was no 'dispute' as the application for rezoning had not yet been granted and the customer admitted that it was using the property in contravention of its permitted use.

Moreover, a "general dissatisfaction" with the municipality's service delivery or response rate, does not qualify in law as a 'dispute' that will entitle a person to withhold the payment of rates/service charges[6], nor will a "civil protest" (as confirmed by our Constitutional Court in Rademan)[7].

COJ'S OWN BY-LAWS AND POLICIES

If life were simple and COJ operated based on clear and logical documents, we would probably not be writing this article. Sadly COJ's various documents use various terms such as 'compliant', 'query' and 'dispute' seemingly interchangeably in a number of instances and do not contain definitions. This makes their interpretation rather complex. It must be understood, however, that COJ is only lawfully empowered to create its own rules/laws insofar as they comply with national laws (such as the Systems Act). To the extent that there is a conflict, the municipality's rules/laws would be unenforceable in law.

In terms of the COJ's Credit Control Bylaws ("by-laws") a dispute is couched as a 'query' or 'complaint' in relation to the accuracy of any amount due and payable in terms of any invoice rendered. This is a very narrow concept of query, which doesn't include reference to faulty infrastructure (such as meters, streetlights or pot holes), amounts not billed to an invoice, not receiving invoices or invoices not being available, incorrect addressee or contact information or anything relating to a property's size, description, valuation or categorisation.

There are no actual definitions of 'query' or 'dispute' in this document that might guide us further. It might be argued by the municipality that the words 'query' and 'complaint' were specially utilized to refer to 'problems' that are not 'disputes' within the true meaning of the term. If this is the case, then it would mean that 'problems' that are not 'disputes' must be raised and dealt with in terms of these by-laws, whereas 'disputes' must be dealt with in terms of the policy referred to below. It is more likely, however, that the drafters of the by-laws simply used loose language and that queries and complaints are meant to count as disputes. In COJ's 2015 Credit Control and Debt Collection Policy ("policy") COJ seems to distinguish between a 'query', which is logged initially through the Call Centre, and a 'dispute', which is logged in writing with the City if the 'query' is not resolved in 21 days. The words query / dispute are mostly used interchangeably to refer 'the correctness of an account or any entry thereon'. Again, this is a very limited concept and excludes several crucial issues that a consumer might want to take issue with. It is likely that COJ only refers to disputes/ queries/complaints which relate to the amount owed in terms of a specific invoice because section 102(2) which provides that liability for payment of an amount is only deferred if a "dispute" in relation to "any specific amount" owing has been raised.

This is rather short sighted, however, because the purpose of allowing consumers to raise a dispute is not simply to protect them from credit control taken for non-payment until the dispute is determined. The purpose is to give the municipality notice of something that is incorrect such that it can be corrected. If a municipality only deals with or recognises queries that relate to amounts owed, and does not address or recognise others such as those dealing with incorrect billing data, addresses, property descriptions, etc, this is going to result in a situation where the municipality's billing data has little integrity, invoices might not be delivered to the right place or at all, and customers become dissatisfied with the municipality's ability to render them a proper invoice. This may lead to a reduction in collections for the municipality because the correlation between the diminution in a trust relationship and the diminution of the regularity and extent of payments made in terms of that relationship is well documented.

THE FORM OF THE DISPUTE

Note further that the form in which the law allows the dispute to be raised is just as critical as its content. If the law provides that the dispute must be raised in writing, then raising it telephonically will not assist the customer in arguing that it is entitled to withhold payment in terms of section 102. In this regard it is worth noting that COJ allows a customer to 'log a query' on its website – but that its by-laws and credit control policy do not provide for this, and the policy requires "disputes" to be lodged in writing, meaning that it is possible that COJ could argue that a "query" or "dispute" lodged through the website or over the phone does not defer payment of the disputed amount.

PAYMENT OF THE UNDISPUTED CHARGES

Note lastly that in terms of COJ's by-laws a "query" or "complaint" must be accompanied by payment of certain amounts (i.e. the undisputed charges for services not in issue, and the undisputed average over a particular period for the service in issue). However, one must question whether this is lawful because this requires payment of an average amount towards the service disputed each month, where section 102 does not provide for same.

A full discussion of this issue, however, is beyond the scope of this article.

It is recommended that a customer disputing any particular charge should make payment of a reasonable amount for that charge – if appropriate calculated based on an average of prior periods – because not doing so could land the customer with a very large bill at the end of the day which he is liable to settle and might have difficulty doing so for cash flow purposes. This, however, is just a practical recommendation and not an endorsement by the authors that the amounts set out in section 11 of the bylaws are lawfully due and payable when a query or complaint (which constitutes a dispute) is logged. Please take legal advice from your attorney in this regard on the facts of each case.

CONCLUSION

To qualify as a dispute for the purposes of delaying payment, the customer must:

- raise his/her/its 'problem' with the Municipality.
- in the prescribed form
- by specifying which amount in which invoice is disputed,
- and for what bona fide reason.
- That reason must explain why the amount charged is wrong.
- Civil protest or general dissatisfaction or a claim that the charges are "too high" are inadequate.
- Payment of the 'average' in terms of section 11 of the COJ's by-laws might be payable in order to 'preserve' the effect of the dispute/ query/complaint.
- A query logged telephonically with the COJ in terms of section 16 of its policy does not appear to suspend payment, because it is not a dispute. Only when a dispute is lodged, will the protection contained in section 102 of the Systems Act kick in.
- For safety's sake and to avoid the chance that COJ might argue that you have lodged a query or complaint rather than a dispute, specifically refer to a "dispute" in terms of the policy when raising same.

CAVEAT

This article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case by case basis and you should consult an attorney before taking any action contemplated herein.

[1]Body Corporate Croftdene Mall v Ethekwini Municipality (603/2010) [2011] ZASCA 188; [2012] 1 All SA 1 (SCA); 2012 (4) SA 169 (SCA).

[2]Ackerman v City Of Johannesburg (20229392) [2024] ZAGPJHC 334

[3]Van der Merwe Street Hillbrow CC v City of Johannesburg Metropolitan Municipality and another

[4]Body Corporate of Via Quinta v Van der Westhuizen N.O. and Another (A196/2017) [2017] ZAFSHC 215 (16 November 2017) at paras 16 - 17

[5][2016] ZAGPPHC 497 (27 May 2016)

[6]Annette May, The Witholding of Rates in Five Municipalities, published at http://www.ggln.org.za/media/k2/attachments/SoLG.2011-Community-Law Centre.pdf, accessed 2 November 2018.

[7]Rademan v Moqhaka Local Municipality and Others (CCT 41/12) [2013] ZACC 11; 2013 (4) SA 225 (CC); 2013 (7) BCLR 791 (CC) (26 April 2013).

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