



**ADJUDICATION ORDER IN TERMS OF SECTIONS 53 AND 54 OF THE
COMMUNITY SCHEMES OMBUD SERVICE ACT 9/2011**

Reference Number: CSOS 634/GP/17

In the matter between:

ANGELA WIERUSZOWSKI

Applicant

And

ROYAL ASCOTT BODY CORPORATE

Respondent

ADJUDICATION ORDER

THE PARTIES

- 1 The Applicant is an owner of Unit 11, Royal Ascott, Ravenswood, Boksburg, Gauteng.

- 2 The Respondent is the Royal Ascott Body Corporate. The complex is managed by Triskyl Property Management ("the Managing Agent"). The Managing Agent is the one cited as a Respondent in the Application Form. Having heard the matter, I am of the view that the correct Respondent is the Body Corporate.

PROCESS FOLLOWED

- 3 The Applicant lodged her Application Form for dispute resolution dated 20 June 2017 with the Community Schemes Ombud Service ("**CSOS**") in terms of Section 38 of the CSOS Act ("**the Act**")¹ in the prescribed manner.
- 4 The relief sought in the Application Form falls within the ambit of relief contemplated in Section 39 of the Act.
- 5 On 17 August 2017 the Applicant's Application Form was forwarded to the Respondent, with a request to the Respondent to make its submissions to CSOS by 25 August 2017. The Respondent filed its submissions on time.
- 6 The matter was thereafter setdown for a conciliation hearing for 24 October 2017.
- 7 The parties reached a settlement agreement in terms of which the Respondent gave a guarantee that the balcony of the unit above the Applicant's unit (Unit 12) has been waterproofed to ensure that no further damage will occur with water seeping into the Applicant's walls and that if damage does occur, and the Applicant can prove that the problem stems from the unit above, then the body corporate will be liable for repair costs.
- 8 On 3 May 2018, the Ombud issued a certificate of non-resolution and referred the matter to Adjudication in terms of Section 48 of the Act. I conclude that this was done because the settlement agreement only dealt with the source of the damp plaguing the Applicant's unit, to wit, the balcony of unit 12, and not the damage suffered by the Applicant herself.
- 9 The notice of set down was duly issued and served on the Applicant and the Respondent, and the fee prescribed in terms of Section 49 read with Regulation 3(2) was duly paid by the Applicant.
- 10 The matter was accordingly setdown for adjudication for 4 June 2018 at 14h30. The Respondent was represented by Mr Kobus van Tonder of the Scheme ("the sole Trustee").

¹ The Community Schemes Ombud Service Act No. 9 of 2011

RELIEF SOUGHT

- 11 In her application form for dispute resolution dated 20 June 2017, the Applicant prays for relief in the following terms:

"Triskyl Property Management has to get a proper contractor to fix my walls, especially on the inside as my tenant is threatening to move out, which means that I will have a loss of income."

THE APPLICANT'S CASE

- 12 In her application form, the Applicant described the dispute as follows:

"I sent an email to Triskyl Property Management about the damp in the walls of my main bedroom walls, which is clearly stemming from the unit above mine. They said they would send out a plumber to inspect the walls in the unit above mine to ensure that there were no pipes leaking.

...

According to the report received from the assessors, the problem stems from the unit above mine, that currently belongs to Triskyl Property Management. When I spoke to Mr Carl Koekemoer from the Bodycorp Maintenance at Triskyl Property Management, he agreed that the Bodycorp is responsible for repairing the damage. He has appointed the caretaker of the complex to give a quote to fix the problem. To my knowledge the caretaker is not a professional and the work done will be sub-standard. This will just mean problems for me in the future. In the meantime my tenant is threatening to move out, which means that I am now also facing loss of income."

RESPONDENT'S CASE

- 13 In its submission dated 25 August 2017, the Respondent alleges that:

"The Owner had knowledge of the problems with the building needing to be sealed and painted on the outside, and she knew the damp was caused by a problem from the outside, and yet she carried on with the repairs by an unqualified person.

Triskyl Property Management obtained quotes on behalf of the owner even though it is not our work to get involved on the inside of the units as we only manage the Body Corporate affairs and common property on behalf of the owners and submitted to the Trustees. (sic)

After a discussion amongst the Trustees they made the decision that the owner should pay for the repairs herself, especially after the insurer rejected a claim for resulting damage, since the owner did the repairs knowing that the problem originated from the outside, and knowing that the cause was not treated, and that the damp will re-occur, and she used a person that is unqualified to such damp sealing work.

There are other Owners are in a similar position as far as damp is concerned on the inside, caused by the state of the building outside, and they have done or are in the process of doing their own repairs.

The Body Corporate have recently appointed a Contractor after selling the two units as mentioned before, and the Contractor is currently in the process of doing the required repairs and painting of the building on the outside."

- 14 The Minutes of the AGM held on 7 May 2016 record as follows:

"Plans for ensuing year:

Painting of complex – Two quotes (R300 000/R473 000);

Fixing all the damp – Quote (R94 000.00)

The above waiting for the monies to be paid over to the Body Corporate upon registration of unit 12 and 17. Currently MMR Attorneys have appointed a consultant to deal with Standard Bank to enable the BC to move forward and register the two units."

- 15 In response to the Respondent's version, the Applicant stated that:

"... the caretaker did offer to assist me with damp in my wall. At that stage I was not aware of the fact that the problem was caused by the balcony on the upstairs unit ... All the caretaker did was to wash the mould off the walls and he put fans on the walls to try and dry them out. I cannot see how this would make the problem worse.

...

I have subsequently lost my tenant due to this problem, and I have no other option but to get somebody in to fix the problem, ..."

FINDINGS

- 16 From the statements made by the Respondent above (specifically in paragraph 13 above), it appears that the Trustees:
- 16.1 knew that the damp in the Applicant's unit was caused by the state of the building outside;
- 16.2 took a decision that the Applicant should effect the repairs herself because she had already attempted to do so:
- 16.2.1 using unskilled labour; and
- 16.2.2 knowing that the cause of the problem was not resolved.
- 17 The AGM minutes do not deal with who should pay the costs of repairs to the inside of the affected units.
- 18 During the hearing, it became clear that the Trustees were advised by the Managing Agent of their duty to maintain the common property and that this responsibility is not denied.
- 19 The sole Trustee also acknowledged having inspected the Applicant's unit and witnessed rainwater seeping through from the balcony of the unit on top of the Applicant's unit.
- 20 Although it is trite that owners in a sectional title schemes are responsible for the maintenance and repairs to the inside of their respective units, where damage to the inside of the unit is caused by common property, the unit owners have a right to recover from the Body Corporate in respect of such damage.
- 21 In the present matter, it is common cause that the damp issues experienced by the Applicant are directly as a result of water ingress from the upstairs balcony which is exclusive use, and

thus common property. The Body Corporate is accordingly liable to effect repairs on the inside of the Applicant's unit. This was also conceded to the Applicant by the Managing Agent.

22 During the Adjudication proceedings, it transpired that the Scheme has only 1 (one) Trustee. The said Trustee testified that:

22.1 the last AGM was held in April 2018;

22.2 thereat, 3 trustees were elected;

22.3 two of these trustees had already resigned by the time this matter was heard in June 2018;

22.4 an attempt to call a general meeting to replace the Trustees was unsuccessful; and

22.5 one other owner was co-opted by the remaining Trustee to assist in the interim.

23 The Trustees' decision that the Applicant should carry the costs of the repairs, in spite of the advice the Trustees received is unfair to the Applicant.

24 The Applicant explained that her tenant could not stay with mould on the walls in the bedroom, hence she had to do something in the interim.

25 Rule 7(5)² provides that in the event of a trustee ceasing to hold office, the remaining trustees or the members in a general meeting may appoint a replacement trustee.

26 A replacement Trustee holds office until the next AGM.

27 It is therefore recommended that the co-optee be appointed by the sole Trustee to hold office and that a resolution in this regard be taken by the remaining Trustee. A further Trustee can thereafter be appointed by the two Trustees acting jointly. Should no one be willing to join

² Annexure 1 to the Management Rules promulgated in the Sectional Titles Schemes Management Regulation No. N.R. 1231 of 7 October 2016

the sole Trustee in the Board, the Scheme should appoint persons who are non-owners to be Trustees and remunerate such persons.

28 Although 5 (five) quotations were requested from the sole Trustee, I was provided with 3 (three) quotations from:

28.1.1 Dampcon for R23 730.25 in respect of both units, excluding tiling, with a 5 (five) year guarantee on unit 11 and a 3 (three) year guarantee on the balcony;

28.1.2 Masterproof SA for R30 600.00 in respect of the balcony with a 2 (two) year guarantee;

28.1.3 TRT Group for R23 769.60 in respect of the work to the balcony, and R27 763.60 in respect of the Applicant's inside wall. The latter quote seems to be in respect of a wall affected by rising damp, which requires more extensive work than the work envisaged to the Applicant's wall.

I THEREFORE ORDER AS FOLLOWS:

- 1 The co-opted Trustee must be appointed as a Trustee by the remaining Trustee by way of a Trustee's resolution;
- 2 Dampcon be appointed to effect repairs on the balcony above the Applicant's unit as well as effect repairs on the inside of the Applicant's unit;
- 3 All works should be commenced with within 30 (thirty) days from date of this order;
- 4 Each party is to bear its own costs in relation to these adjudication proceedings; and
- 5 This order shall take effect immediately on the date on which it is served on the parties by CSOS electronically.

KINDLY TAKE NOTE that any party who is dissatisfied with this order has a right to lodge an Appeal on a question of law with the High Court within 30 (thirty) days after the date of delivery of this order.

K MABASO
ADJUDICATOR
07 August 2018