



**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Case Number: CSOS611/GP/17

IN THE MATTER BETWEEN

VIKASH JAWAHAR
(Applicant)

and

VISTA DEL MONTE BODY CORPORATE
(First Respondent)
MENZI MDLOPANE
(Second Respondent)
PAULA NOGUEIRA
(Third Respondent)
WAYNE RADFORD
(Fourth Respondent)
BRUMEG
(Fifth Respondent)

ADJUDICATION ORDER

PARTIES

1. The applicant is the registered owner of Unit 2 Vista Del Monte which is situated at Vallot Street, Glenvista Extension 4, Johannesburg, Gauteng.
2. The first respondent is the Vista Del Monte Body Corporate. Vista Del Monte Body Corporate is a body corporate as contemplated in Section 2 of the Sectional Title Schemes Management Act No.8 of 2011 and to which it would be convenient to refer as “the body corporate”.
3. The second, third and fourth respondents are members of the Board of Trustees and the fifth respondent is the Managing Agent.

INTRODUCTION

4. The development is a sectional title scheme managed by the Vista Del Monte Body Corporate, a body corporate as contemplated in Section 2 of the Sectional Title Scheme Management Act No.8 of 2011 and to which it would be convenient to refer as “the body corporate”.
5. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Gauteng Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
6. The adjudication hearing took place on 16 April 2018 and subsequently postponed to 13 June 2018 in order to send a notice of setdown to the trustees. This application is before me as a result of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
7. On 13 June 2018, the applicant and all the respondents entered an appearance in terms of the Notice of Set Down which was sent out to them on 24 May 2018 as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011.

APPLICABLE PROVISIONS OF THE ACT

8. The hearing was conducted in terms of section 38 of the CSOS Act No,9 of 2011 which provides that –

“Any person may make an application if such person is a party to or affected materially by a dispute”.

9. Section 45(1) provides that –

“The ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator”

10. Section 47 provides that –

“on acceptance of an application and after receipt of any submissions from affected persons or responses from the applicant, if the ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the ombud must refer the matter to conciliation’.

11. Section 48 provides that –

“If conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator”.

12. Accordingly, this matter proceeded to conciliation on 28 September 2018 and the dispute could not be resolved. Therefore the Ombud issued a certificate of Non

Resolution was issued on 19 February 2018, in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of that Act.

SUMMARY OF EVIDENCE

Applicant's Submissions

The applicant was sworn in and testified as follows –

13. The applicant stated that he is the registered owner of unit 2 Vista Del Monte. He stated that he bought into the complex in 2016. The applicant stated that in March 2017 he started experiencing leaks and damp inside the bedroom, garage and study emanating from the skylight which started to leak.
14. The applicant stated that he reported the maintenance problem to the managing agent and the trustees and a meeting was held at the applicant's unit whereby the three maintenance issues were viewed, however there was no consensus on whether the repairs to the skylight was the responsibility of the body corporate or the applicant.
15. The applicant stated that at conciliation the respondent agreed to call out a damp specialist to give a report on whether or not it is damp and if it is, the body corporate undertook to cure the damp and the applicant will paint the bedroom. The Applicant stated that the body corporate cured the damp.
16. The applicant stated that though the managing agent had undertaken to facilitate the repair of the steel structure for the skylight they have not repaired it stating that it was not part of the original structure and therefore not the responsibility of the body corporate to maintain. The applicant stated that when he bought his unit from the previous owner he was not informed by the seller that the skylight was not on the original plan.
17. The applicant stated that the trustees could not provide him with a special resolution stating that maintenance and repairs of the skylights were the responsibility of owners

and further to that there was no addendum to the rules stating that these structures were the responsibility of the owners.

APPLICANT'S PRAYERS

18. The applicant's prayers were listed as follows:

- An order directing that the body corporate carry out the maintenance and repairs to the skylight because there are no records kept or resolutions taken regarding the responsibility of the maintenance and repairs of the skylights.

Respondent's Submissions

The respondents were all sworn in and testified as follows –

19. The managing agent stated that the skylights was not in the original plan of the units and that owners agreed amongst themselves without a unanimous resolution prior to the promulgation of the CSOS Act No.9 of 2011.

20. The managing agent stated that the trustees are in the process of tabling to the body corporate the proposal to remove all the skylights and return all units to their original plans.

21. Ms Paula Nogueira stated that she took ownership of her unit in 2001 and other owners had already installed skylights in their primary sections. Nogueira stated that, as a former trustee, they have never addressed maintenance of skylights because the understanding was that those owners who have installed the skylights will maintain them themselves and it will not be the responsibility of the body corporate.

22. The managing agent will send a copy of the original development plan that will indicate that the skylights were not in the development plan but owners erected them at their own accord prior to the promulgation of the act. The managing agent further stated that other owners have installed awnings and each and every owner is aware

that the maintenance of structures outside the development plan are the responsibility of the owner.

EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

23. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
24. The general rule is that only evidence, which is relevant, should be considered. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is a balance of probabilities. This means that once all the evidence has been tendered, it must be weighted up as a whole and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
25. Having listened to all the submissions from the parties and also read all written submissions I am persuaded that the erection of the skylights and awnings was done prior to the promulgation of the CSOS Act in October 2016. This Act does not apply retrospective.
26. I have perused the sectional plans as approved by the surveyor general I am persuaded that the skylights do not form part of the sectional plan and is therefore not the responsibility of the body corporate.

POWERS AND JURISDICTION OF THE ADJUDICATOR

27. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the applicant to the CSOS.

ADJUDICATION ORDER

Accordingly, the following order is made –

28. The skylights and awnings erected in the primary sections are not the responsibility of the body corporate.
29. It is not the responsibility of the body corporate to repair and maintain the applicant's skylight.
30. The body corporate must update its conduct rules and ensure that these are in line with the STSMA No.8 of 2011 and its Regulations.

RIGHT OF APPEAL

The parties' attention is drawn to –

31. Section 57(1) of the CSOS Act of 2011 refers –
“An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law”

DOMBOLO MAKGOMO MASILELA
ADJUDICATOR