



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

Case Number: CSOS00569/KZN/17

IN THE MATTER BETWEEN

**LOGANDREN CHINSAMY PONNADU
(Applicant)**

and

**TRUSTEES OF STIRLING COURT BODY CORPORATE
(Respondents)**



ADJUDICATION ORDER
DATE: 20/06/2018
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ADJUDICATION ORDER

PARTIES


1. The Applicant is **LOGANDREN CHINSAMY PONNADU**, hereunder to be referred to simply as “**the Applicant**”, who resides at Flat 91, Stirling Court, situated at 163 Anton Lembede Street, in the Province of KwaZulu-Natal.
2. The Respondents are the **Trustees of Stirling Court Body Corporate**, hereunder to be referred to simply as “**the Respondents**”,

3. **Stirling Court** is a registered community scheme, as per Sectional Plan, in respect of the land and buildings situate in 163 Anton Lembede Street, Durban, in the Province of KwaZulu-Natal.
4. This community scheme is run by Infinite Property Management (Pty) Ltd, who are represented by Tim Van Der Walt, who represented the Respondents at this Adjudication Hearing, but were not cited as a party to the complaint.

INTRODUCTION

5. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011 (**the Act**). The application was made in the prescribed form and lodged with the KwaZulu-Natal Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
6. The dispute dates back many years ago to 2014.
7. The matter was initially set down for Conciliation, in terms of Section 47 of the Act, on 31 January 2018. The Conciliation was however not successful; the matter was thus finally formally referred to adjudication in terms of Section 48 of the Act.
8. The adjudication hearing was set down for 1 June 2018. This application is before me as a result of a referral sent by the KwaZulu-Natal Provincial Ombud in terms of section 48 of the Act.
9. Both parties cited were in attendance at the adjudication hearing, with

9.1 The Applicant representing himself;


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9.2 And The Respondents being represented by Tim Van Der Walt, their property management agent.

APPLICABLE PROVISIONS OF THE ACT

10. 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”.

11. 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”

12. 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’.


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13. 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”.

SUMMARY OF EVIDENCE

14. The Applicant claim that they have continuously had a leaking roof problem.
15. The Respondents have been continuously notified about this problem over time, a number of years, by the Applicant.
16. The Applicant alleges that the Respondents have done nothing to correct the problem, hence she reported the matter to the CSOS.
17. The Respondents assert the problems were attended to.

APPLICANT'S VERSION

18. The Applicant complains that there have been, or there still exists a serious roof water leak that had resulted in serious damage to the Applicant's Flat 91, with the following specific and general allegations made:

- 18.1 The whole was flooded.
- 18.2 Earth leakage broke.
- 18.3 Floors were damaged.
- 18.4 Furniture was damaged.
- 18.5 The Flat walls became damp as a result.



18.6 The roof repairs done by the Respondents were repeatedly only temporarily effective, hence the Applicant was affected in 2014, 2016, and 2017.

18.7 In short, the Applicant was continuously a victim of this leaking roof. ?

18.8 As a result, the Applicant has had to endure losing tenants because of the state of the flat, caused by this leaking roof.

19. The Applicant got a quote, dated 17 March 2017, on the extent of repairs required for this flat, including:

19.1 Removing and replacing all existing floor tiles and skirtings in the entrance passage area, lounge and enclosed area.

19.2 Ceilings and walls in the flat, including those of the bathroom and kitchen, to be repainted.

19.3 Doors and frames needed sandpapering and oil painting.

19.4 Damaged cupboards needed to be removed and replaced.

19.5 Damaged electrical fittings needed to be removed and replaced.

19.6 The total quotation was R31850 as on 17 March 2017.

19.7 The Applicant wanted the Respondents to attend to these repairs as soon as possible, as they (the Applicants) wanted to sell their flat immediately in order to cut their losses.

20. The Applicant also complained that an insurance pay-out of R12000 meant for their Flat 91 had been unfairly withheld by the Respondents.

APPLICANT'S PRAYERS



21. The Applicant seeks an order from CSOS instructing the Respondents to fix the problem of the roof water leaks into Flat 91.

- 21.1 The Applicant had submitted a quote, dated 17 March 2017, of R31 850 for the appropriate repairs to his Flat 91.
- 21.2 The Applicant wanted the Respondents to attend to this matter as soon as possible.
- 21.3 The Applicant wanted to be compensated for loss of potential rental income losses due to these unattended water leaks and their consequential damage.
- 21.4 The Applicant also wanted the Respondents to hand over to them (the Applicant) an insurance pay-out amount of R12 000 which was an approved pay-out for Flat 91 by an insurance company for damage caused in 2017.

THE RESPONDENTS'S RESPONSE



22. The Trustees' submissions on this matter were mainly handled by their Infinite Property Management Agents.
23. Their responses to the Applicant's complaints were as follows:
- 23.1 The initial leaking roof problem in 2014 was attended to.
- 23.2 There were heavy rains in March 2017, which affected eight units on top floor, including the Applicant's flat, and flats 92, 93, 94, amongst others.
- 23.2.1 The Respondents claim that all the roof leaks in those flats, especially the four flats mentioned here.
- 23.2.2 The Respondents maintained that their building supervisor thoroughly checked if there were still any water leaks into those flats after the repairs had been done, and that no such further leaks were found.

24. On the issue of the R12 000 insurance pay-out for Flat 91, the Respondents stated that they were not unfairly withholding the R12 000 from the Applicant. They said the Applicant was expected to submit valid receipts for approved expenses covered by the insurance; and that the Applicant had, however, not provided such receipts.
25. As to why the insurance company paid out only R12 000 instead of the R31850 quotation submitted by the Applicant, the Respondent stated that the accessor reduced the claim down to R12 000, and that was no fault of the Respondent, adding that the calculation of such a claimable value was somehow linked to a particular “CSOS Directive”.
26. On the issue of the extent of damage suffered during the heavy rains, the Respondents raised a further defence that there was no negligence on their part as the Trustees, as these rains were “Vis Majors”, an act of God; and that it was the duty of the flat owners to mitigate their losses, adding that 7 of the 8 flat owners who had been affected had already sorted out their own damage.
27. On the issue of compensating the Applicant for potential loss of income, the Respondents made the following submissions:
- 27.1 Potential loss of income was, as a matter of general principle, not a responsibility of the body corporate.
- 27.2 The limited insurance the Respondents have for loss of tenants’ income was only payable where there were existing lease agreements in place, that were directly negatively affected by an adverse situation that took place whilst such a lease agreement was in force. They claimed that at the time the material times the Applicant was trying to claim for

potential loss of income, he actually had no tenant with an existing lease agreement. Hence, he was not entitled to any such payments.

EVALUATION OF EVIDENCE SUBMITTED

28. It is common cause that there were heavy rains that affected some top floor flats, including the Applicant's Flat 91.
29. The Respondents made submissions that all of the water leaks caused by the heavy rains were effectively attended to, with some flat owners choosing to fix their own flats without involving the Respondents.
30. The Applicants made submissions of a quotation of R31850 for fixing of damage linked to the roof leakage; the insurance accessor only approved an insurance claim of R12000, which was withheld by the Respondents on grounds that the Applicant submitted valid receipts for work actually done.
31. The Applicant did not have a tenant with a valid lease agreement at the time he wanted to claim for potential loss of rental income.

POWERS AND JURISDICTION OF THE ADJUDICATOR

32. 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.



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33. Having considered the written and oral submissions of the Applicant; it is clear that the Applicant has a right to be granted an Order that grants him some appropriate redress under the circumstances.

ADJUDICATION ORDER

34. The Applicant's prayer for redress is granted in terms of Section 54 of the Act, in the following manner:

34.1 The Applicant is entitled to the R12 000 insurance pay-out, provided he provides valid receipts, as requested by the Respondent, to prove that such repairs were actually done.

34.2 The Respondents are to pay this R12 000 to the Applicant within 30 days of such valid receipts having been received by the Respondents

34.3 No payment for potential loss of rental income, as the Applicant was not entitled to such through any applicable legislative provisions in the area of community schemes.

RIGHT OF APPEAL (SEC 57)

35. All parties are hereby informed about their Right of Appeal in terms of Section 57 of the Act, which says –

“(1) An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to High Court, but only on question of law.


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(2) An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator.

(3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.”

36. All parties are warned of the legal consequences that may follow in case any of them, consciously and/ or unconsciously, do not adhere to the spirit and letter of this adjudication order.



Prof BONKE DUMISA
ADJUDICATOR
CSOS Durban, KwaZulu-Natal

Dated 10 June 2018



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