



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

Case Number: CSOS 00919/KZN/17

IN THE MATTER BETWEEN

**ANDRIES JORDAAN
CHANTAL JORDAAN**

**1st APPLICANT
2nd APPLICANT**

And

TRUSTEES OF MAXI MEWS BODY CORPORATE

RESPONDENT

ADJUDICATION ORDER

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The above matter was set down for adjudication hearing on the 28th March 2018.

PARTIES

- [1] The Applicants are Mr. Andries and Chantel Jordaan, the registered owners of Unit 9 Maxi Mews in Durban.
- [2] The Respondents are the Trustees of Maxi Mews Body Corporate, being a community scheme as defined by the Community Scheme Ombud Service Act No 9 of 2011.

SUMMARY OF EVIDENCE

- [3] The dispute in this matter is whether the insurance should cover the damages to Applicant's awning, the awning damaged by the fallen roof tiles due to heavy storm.
- [4] The Applicants seek the following order:
- That the damage to their awning be fixed.
 - That excess be paid by the body corporate as per resolution taken by members at the AGM held on the 1st October 2017.
- [5] The Applicants contend that a resolution was taken in that all common property areas will be covered by the insurance. Further that the body corporate will pay excess as per the resolution taken on the 1st October 2017.

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[6] The Applicants further contend that the claim was approved by the insurance but the Respondents are refusing to sign the documents.

[7] The Respondents responded by submitting the following;

7.1 that the insurance had approved the claim initially not knowing that the awning is not an approved extension to unit 9;

7.2 that the awning was not part of the building insured by the body corporate as it is an illegal structure;

7.3 that as a consequence, the insurance claim was repudiated.

[8] **Section 3 (1) of Sectional Title Schemes Management Act, 2011** states that - A body corporate must perform the functions entrusted to it by or under this Act or rules, and such functions include-

(h) *to insure the building or buildings and keep it or them insured to the replacement value thereof against fire and such other risks as may be prescribed;*

(i) *to insure against such other risks as the owner may by special resolution determine;*

[9] **Section 24 (3) of the Sectional Titles Act** provide thus;

If an owner of a section proposes to extend the boundary of floor area of his or her section, he or she shall if authorized in terms of section 5(1) (h) of the Sectional Title Scheme Management Act, cause the land surveyor or architect concerned to submit a draft sectional plan of the extension to the Surveyor General for approval.

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EVALUATION OF EVIDENCE

- [10] It should be pointed out that insurance by the body corporate should cover all existing buildings and all other improvements on the common property for the full replacement value. Further the trustees should ensure that all buildings are validly covered by the insurance.
- [11] A schedule of the covered buildings with estimate must be tabled at the first AGM meeting and such schedule must reflect estimate of the replacement value of the buildings and all improvements.
- [12] **Section 24 of the Sectional Titles Act** sets out the steps that an owner must follow should he/she extend his or her unit. The owner must obtain approval from the body corporate, authorized by way of special resolution with an approval of building plans from the planning authority.
- [13] When all the requirements in terms of Section 24 have been complied with, the registrar will then register the extension plan of extension with an appropriate endorsement.
- [14] Anything contrary to the provisions of Section 24 regarding extensions and alterations to an existing unit will be illegal.
- [15] The aforesaid is important to note as the Respondents reason not to sign the insurance documents relating to the awning is that it is an illegal structure, hence it was not part of the insured buildings and/or improvements.
- [16] The Respondents further stated that upon realizing that the insurance had initially approved the claim, the Trustees then alerted the insurance of the schedule of insured buildings and improvements in the scheme. It was then understood that the Applicants awning was not part of the insured building as it was an illegal structure

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- [17] The fact that the awning was an illegal structure was not disputed by the Applicants. Save to say that the Applicants requested that they be afforded an opportunity to comply with Section 24 of the Act, to have plans and to submit same for approval so that the extension be included as part of their unit.
- [18] With regard to insurance policy, full disclosure is paramount as it assists in assessing the risk profile thus the insurer in this instance relied on the body corporate to make a full disclosure with regard to the buildings and extensions to be insured for full replacement value in terms of the law.
- [19] Further it is required on the first AGM that insurance schedule of all buildings and improvements be discussed. The said schedule must therefore reflect the estimated replacement value of the buildings and all improvements to common property and to each unit. The said schedule must be compared from the list of what the trustees have and that of each owner in relation to what he owns in the scheme.
- [20] In view of the aforesaid, it is obvious that the schedule of the insured buildings did not include the awning, if it was so the Applicants could have said so.
- [21] As it is clear that the awning was not covered, what is left to consider is whether was there any act or failure to act on the part of the Trustees that caused loss or damage to the Applicants.
- [22] The damages in question were caused by the heavy storm and for such damages the owner will always be liable. Thus the owner must take insurance for damages caused by "vis major" as such are outside human control.
- [23] It is for that reason that no fault can be attributed to the Respondents in respect of the damages to the Applicants awning.
- [24] In conclusion, having considered all the provisions of relevant legislations as aforementioned. Further the schedule from the insurance reflecting the buildings and improvements, it is clear that the awning as an extension was not covered as it was an illegal structure. The general principle in terms of the

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Act being that the buildings and improvements should be covered for loss against risks such as storms and floods this in essence excludes illegal buildings.

[25] In the circumstances the following order is made;

1. The Application by the Applicants is dismissed.
2. No order to costs.

RIGHT OF APPEAL (SEC 57)


MS Z. P. TENZA-ZONDI
ADJUDICATOR


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