



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

Case Number: CSOS 544/WC/17

IN THE MATTER BETWEEN

**SEATON THERSWILL CAROLUS
(Applicant)**

and

**TRUSTEES OF THE LA PALMA BODY CORPORATE AND WATCHPROP
MANAGING AGENT
(Respondent)**

ADJUDICATION ORDER

PARTIES

1. The applicant is the owner of Section/Unit number 59 La Palma Sectional Title Development, Kuilsriver, Cape Town.
2. The respondent is the La Palma Body Corporate Sectional Title Scheme, represented by Mr John Moir in his capacity as Trustee and Mr Craig Coetzee in his capacity as Managing Agent from Watchprop Body Corporate Management. La Palma Body Corporate is a "community scheme" as contemplated in the CSOS Act of 2011. The definition of "community scheme" means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings.

INTRODUCTION

3. This is an application for dispute resolution in terms of Section 38 of the Community Schemes Ombud Services Act No.9 of 2011. The Application was made in the prescribed form and lodged with the Western Cape Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.

4. This adjudication hearing took place on 09 January 2018. This application is before me as a result of a referral sent by the Western Cape Provincial Ombud in terms of section 48 of the Act, which 'Notice of Referral' was communicated to both parties.

APPLICABLE PROVISIONS OF THE ACT

5. The application was submitted 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".

6. Section 39 provides that –

"An application made in terms of section 38 must include one or more of the following orders – in this instance:

- (1) In respect of financial issues – (e) an order for the payment or re-payment of a contribution or any other amount.*
- (6) In respect of works pertaining to private areas and common areas-*
- (7) In respect of general and other issues –
(b) any other order proposed by the chief ombud."*

7. 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 DISPUTE

8. Applicant alleges that the Body Corporate is liable for damages to the ceiling of Unit 23 (directly below his Unit 59) resulting from apparent water ingress and that the source of the problem originates from the common area and not from his section (bath and/or shower). Applicant's geyser was further incorrectly installed and/or non-compliant to relevant standards and some levies were incorrectly allocated to his account.

APPLICANT'S VERSION

9. Applicant (owner of Unit 59) is currently renting out his property when Watchprop (Managing Agent) informed him of the damages in Unit 23, directly below his unit, and the apparent leak emanating from his unit.
10. Applicant submitted a report from plumber (Haylin Hillary titled "Report on burst pipe at" dated 13 August 2017) indicating the following upon inspection; "There is no evidence of a burst pipe, leaks or any signs of moisture on bedroom wall or floor. Due to the nature of bricks they absorb any form of moisture much faster than the concrete deck. Thus the damages in the unit below could not be caused by the above mentioned property." Further aspects relating to the installation of the geyser and accessories not fitted in accordance with regulations were also pointed out in the report.
11. Applicant avers that it was agreed to that "The Drain Surgeon" would inspect applicant's property. A report by subcontractors appointed "Plumbros" dated 01 November 2017 found that the shower floor was leaking and recommended that the following repairs be done; "...the shower base to be excavated and waterproofing to be redone. We also recommend for waste line with trap to be replaced in shower cubicle [and] bath to be re silicone." However no leak on the bath sealer detected according to Applicant.
12. Applicant contests that the source of the problem is the shower base as indicated by "The Drain Surgeon" and that he is willing to replace the sealant around the bath and waterproof the shower basin within a week.

13. Applicant also stated that the statements (leak detection and interest) were revised and resolved.

APPLICANT'S PRAYERS

14. Applicant's prayers as per Application for Dispute Resolution Form;
- 14.1 The Body Corporate is responsible for the repairs to Unit 23 below.
 - 14.2 The Body Corporate to rectify the geyser - & water meter installation to the correct standards.
 - 14.3 The Body Corporate to remove all leak detection costs & interest illegally charged from my account.
 - 14.4 The Body Corporate to pay R1500 for the plumber I utilised to conduct an inspection.
 - 14.5 The Body Corporate to apologise for the unfounded accusation and fraudulent act against me.
 - 14.6 The Body Corporate to add the two missing payments unto my account for the water meters and levy.

RESPONDENT'S VERSION

15. Mr Craig Coetzee (Managing Agent from Watchprop and representative of La Palma) submitted an event report indicating the communication between the parties and action taken in this regard, as follows;
- 15.1 Watchprop informed Applicant on 30 June 2017 of the damages to Unit 23 with request to address it.
 - 15.2 Applicant was requested for his tenant's details on 3 July 2017 to access the situation and arrange for a leak detection test to be done.
 - 15.3 A leak detection test was conducted on 5 July 2017 by "Precision Leak Detection" at Units 59 and 23 as requested by Watchprop, the following findings are noted;
 - 15.3.1 Unit 23: "An inspection of the bathroom was carried out, and found mould on the concrete ceiling above the bath and emanating from unit 59 above.
 - 15.3.2 Unit 59: "Electronic leak detection tests were carried out and a leaking cold water connection was located at the bath mixer, that leaks continuously onto the bath and seeps through the

ineffective sealants along the bath perimeter. Dye tests to the bath perimeter proved when in use water leaks through the cracked and ineffective sealants.”

“Conclusion: Leaking bath mixer connection and perimeter sealants at the bath in unit 59.”

“Recommendation: Unit 59: The bath mixer connection to be attended to and bath perimeter to be regouted and sealed.”

- 15.4 Correspondence to Applicant on 6 July 2017 requesting payment of the report and repairs to be done urgently. Watchprop also noted that it is not a body corporate issue, but rather a section to section problem and that La Palma Body corporate would now settle the service provider account where after the costs would be added to Applicant’s levy account.
- 15.5 Respondent conceded that Precision Leaks’ plumber is not a registered plumber, although they are very happy with their service.
- 15.6 Respondent contests that the drip tray for instance was not a requirement when the building was built in 2007 and the regulations changed as well. Insurance further covers only instances of burst geysers.
- 15.7 Respondent wants to know who is responsible for payment of the leak detection account, Drain Surgeon account and damages to section 23 in this instance.

EVALUATION OF EVIDENCE SUBMITTED

16. The report and conclusions made in “The Drain Surgeon” report, as agreed to between the parties during the Conciliation Meeting, which found that the shower floor is leaking, is contrary to Precision Leak Detection’s conclusion - a leaking bath mixer connection and bath perimeter to be regouted and sealed.

17. No conclusive evidence was further presented to proof what the source of the water ingress is and where it originates from.

18. Section 13(1)(c) of the Sectional Titles Schemes Management Act 8 of 2011 obliges an owner to maintain and repair his section in a state of good repair. This means that the owner will be responsible for damages to his unit resulting from the bath mixer and bath perimeter for instance. Therefore if the lack of maintenance to a section or a negligent action of the owner or occupier of that section causes damage to another section, the repair of that damaged section would be the responsibility of the owner of that damaged section. The owner of the damaged section would then have the right to take legal action against the responsible owner to recover any such damages suffered – an issue between the two section owners.

19. The Sectional Titles Schemes Management Act 8 of 2011 (“STSM Act”) makes provision for two exceptions to the principle that an owner is responsible to repair and maintain his section however, where it states that it is the body corporate’s function to;
 - “Maintain all the common property and keep it in a state of good and serviceable repair” – Section 3(1)(l) of the STSM Act, and
 - “Subject to the rights of the local municipality, maintain and repair the pipes, wires, cables and ducts that can be used in connection with the enjoyment of more than one section or of the common property” – Section 3(1)(r) of the STSM Act. The body corporate is obliged to repair and maintain these items, whether they form part of the sections or the common property.

20. Prescribed Management Rule 31(1) regarding a member’s obligation to maintain their water-heating appliances prescribes that if a water-heating device provides hot water to one or more sections, whether it is part of the common property or part of a section, the owners who are served by that appliance is responsible to maintain it.

21. Cognisance if also taken of the provisions of Prescribed Management Rule 31(2) which states that if, despite a written demand by the body corporate, a member refuses or fails to;
- Carry out work that a competent authority has required be done to the section, or
 - Repair or maintain his section in a state of good repair

and that failure threatens the stability of the common property, the safety of the building or otherwise materially prejudices the interests of the body corporate, its members or the occupiers of sections generally, then the body corporate must carry out the required work and recover the reasonable cost from the member.

22. The source of the water ingress and where it originates from (section or common property) remains unclear, after evaluating the relevant evidence and submissions from both parties.
23. The outstanding statements with regard to the leak detection test and interest added were removed from applicant's levy account in the meanwhile pending the outcome hereof.

ADJUDICATION ORDER

24. In the circumstances, the following order is made in terms of Section 54(1)(a), read with Section 39 of the Community Schemes Ombud Service Act No.9 of 2011;

- 24.1 Applicant's relief sought in this instance is refused and his claim is accordingly dismissed.
- 24.2 Applicant to perform the following maintenance to his unit (59) on/before 26 January 2017 - replace the sealant around the bath and waterproof the shower basin as per fair and reasonable standard as determined by La Palma Body Corporate.
- 24.3 Both parties is responsible for The Drain Sugeon's invoice on an equal basis.

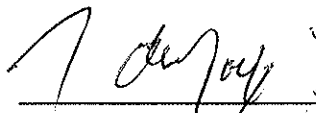
24.4 Respondent is responsible for the Precision Leak Detection invoice.


24.5 No order is made as to costs herein.

RIGHT TO APPEAL

Section 57 of the CSOS Act of 2011, also determines that;

- (1) 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.
- (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.


ADV DRIES DU TOIT
ADJUDICATOR
15 JANUARY 2017


ADJUDICATION ORDER
DATE: 15/1/2018
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