



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

Case Number: CSOS 66/WC/17

IN THE MATTER BETWEEN

**STALLION BODY CORPORATE
(Applicant)**

and

**LOUIS KOTZE
(Respondent)**

ADJUDICATION ORDER

PARTIES

1. The applicant is the Stallion Body Corporate Sectional Title Scheme, herein represented by Mr Kieran Crowley in his capacity as trustee of said scheme. Ms M Janjetch in her capacity as trustee and Ms L Harrison as managing agent were also present and attended the hearing in their personal capacity.
2. The respondent is Mr Louis Kotze, owner of unit/section 302 of the Stallion Body Corporate, Grand National Boulevard, Royal Ascot, Milnerton, Cape Town. Unit 302 is however currently occupied by tenants. Mr Kotza also attended the hearing in his personal capacity.
3. Stallion 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

4. 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.

5. This adjudication hearing was set down for 6 February 2018, upon which date the matter was finalised as well. 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.

6. Stallion Body Corporate was established in terms of the then applicable legislation, is governed by a constitution and consists of sixty eight(68) units/sections.

APPLICABLE PROVISIONS OF THE ACT

7. 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".

8. 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.*

9. Section 47 provides that –

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

10. 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

11. Applicant alleges that respondent (owner of unit 302) is liable for damages caused by his tenants, to the common property and unit 202 below as a result of some type of strong chemical product used, whereas respondent alleges that the damages was caused by normal corrosion due to the incorrect installation of the relevant gutter.

APPLICANT’S VERSION

12. Applicant (represented by Mr K Crowley) states that the complex consists of 68 units with three floors built in a Tuscan Style – gutter less in 2004.
13. In October 2015 aluminium gutters were installed at the scheme by A1 Seamless Aluminium Gutters with a fifteen(15) year guarantee incorporated.
14. FPA Underwriting Managers (PTY)Ltd (assessors) accessed the damages at the complex (as per their report dated 1 June 2016) and conclude as follows with regard to damages to unit 202 on 26 March 2016 in their description of damage to property: *“Resident of unit 302 used some type of acid to clean his balcony which dripped down to unit below. Damage to gutters, sealant, grouting, sliding door, walls, light fitting.”*
15. Confirmatory correspondence followed from FPA Underwriting Managers (on behalf of their principal ‘Centriq Insurance Company Ltd’) dated 15 June 2016 rejecting applicant’s insurance claim concluding *inter alia* that: *“The damage caused to the gutter, sliding door and walls was not due to accidental damage nor due to normal domestic cleaning products, but due to a strong chemical product more consistent with acid or a corrosive agent.”*

16. The body corporate informed Mr Kotze (as per letter dated 28 July 2016) after conclusion of their investigation that he as registered owner of unit 302 is liable for the damages caused to unit 202 and the building resulting from the actions of his tenants. Applicant further refuted the allegation by respondent that the incorrect installation and level of the gutters caused the corrosion of 302 gutter and damages with reference to the FPA Report. Respondent was also notified that the body corporate will be proceeding with the repairs and that all costs will be debited to his levy account.

17. Reference was also made to correspondence (from Faircape dated 6 October 2016 in response to Mr Kotze's e-mail of 5 October 2016) to respondent stating *inter alia* the following;
"The gutters were only installed October/November 2015. We would once again reiterate that the gutter between 302 and 202 is the only one in the entire block that has been damaged. In July there were no general repairs carried on the gutters. ...additional downpipes being installed at the rear of the building. The second picture is them assembling and installing additional downpipes between the first floor and the ground floor on the front of the building. No other work was carried out on the front gutters. The notice was sent on the 27th of September as the workmen needed to be on the balconies to gain access to the top floor in order to redirect gutters and downpipes on the top floor only. Again no other work was carried out to any other floor."

18. PG Building Glass Processing has also confirmed (as per correspondence of 13 June 2017) that the damage to the Safety Glazing in doors with regard to unit 202 resulted in permanent damage to the surface of the glass requiring it to be replaced.

19. Photos of the various damages together with two quotes (from A1 Seamless Aluminium Gutters in the amount of R3 876.00 and from JJ Maintenance CT regarding the glasswork, exterior patio wall painting, tiling and light amounting to R22 293.00) were submitted by Mr Crowley in support of their claim. This repair services have been completed and the total amount debited to respondents levy account.

20. Respondent was apparently also willing to accept 50% of the repair costs at the Conciliation Meeting held on 9 June 2017. The trustees of the body corporate however rejected this notion. Applicant is however prepared to wave the interest herein.
21. Mr Crowley also concluded that there is nowhere stagnant water damage in the complex and also presented the relevant perished light fitting in support of his argument. The gutters were only recently installed during October/November 2015, no maintenance was therefore due when the incident occurred and that the gutter between 302 and 202 was the only one damaged in the entire complex.

APPLICANT'S PRAYERS

22. Applicant's prayer in this matter as follows;
 - 22.1 An order for the payment or repayment in respect of damages caused in the amount of R26 169.00 with no interest to be added.

RESPONDENT'S VERSION

23. Mr Louis Kotze confirms that he is the owner of unit 302, currently occupied by Mrs Dearlove (an elderly 78 year old lady suffering from cancer) and her son.
24. Although respondent appreciates the nature of applicant's case, he is not happy with the manner in which this issue was dealt with.
25. Mr Kotze is of the opinion that neither himself nor the tenants of his unit (302) is liable for the damages caused by the gutter based on the findings from two independent contractors ("Slimline Gutters" and "Property Maintenance Services") used in support of his case.
26. Slimline Gutters came to the conclusion in their report (of 5 July 2016) that: *"All the detergents that were used are normal household detergents. The reason why the gutter corroded through is because the water was standing in it all the time"*. Further recommendations were then made to remedy the situation, inter alia to re-level all gutters etc.

27. Property Maintenance came more or less to the same conclusion where they stated that; *"Existing gutters do not have sufficient fall, therefore water remains stagnant"*.
28. Mr Kotze contested (in his correspondence to "Faircape" on 5 October 2016) in response to the fact that his levy account was debited in the amounts of R 3 876.00 and R4 459.00 for repairs and maintenance (as he put it) with regard to the corroded gutter in question. The following was *inter alia* conveyed: *"It is the responsibility of The Stallion Body Corporate to keep all the gutters in the complex in good repair at all times. The corroded gutter between Units 302 and 202 was replaced on 13 July 2016. A notice was sent out by the Body Corporate on 27 September informing owners/residents that A1 Gutters will attend to gutters in the complex on 29 September 2016. The above clearly shows that the gutters in the complex were in serious need of repair in general. As stated in my e-mail of 5 July 2016, the corrosion of the gutter between Units 302 and 202 was due to the incorrect installation thereof. The lack of maintenance after the original installation compounded the problem even further."*
29. Fotos indicating the balcony of unit 302 and relevant gutter and domestic products apparently used, were also submitted in support of respondents case.

EVALUATION OF EVIDENCE SUBMITTED

30. Having considered the submissions and evidence produced by both parties herein I am satisfied that applicant proved (on a balance of probabilities) that respondent is liable for the damages caused to the property in question.
31. The Sectional Titles Schemes Management Act 8 of 2011 obliges the body corporate of a scheme to properly maintain all the common property and to keep it in a state of good and serviceable repair (Section 3(1)(l)). However aside from normal wear and tear resulting from the exercise of lawful rights, if an owner or any other person causes damage to a part of the common property, the body corporate will have the right to recover the damages suffered resulting from that person's actions or negligence.

32. I am further satisfied that the damages was not as a result of a lack of maintenance or repairs (as alleged by respondent), as evident from the recent installation of the gutters in the complex and the fact that the gutter at unit 302 is the only one that is effected to such a severe extent in the circumstances. Respondent's allegation that the incorrect installation and level of the gutters caused the corrosion of 302 gutter and damages is consequently rejected.
33. Lastly no impression or indication was given by the respondent that the repair quotations submitted by applicant and the content thereof were placed in dispute, and is therefore accepted.

ADJUDICATION ORDER

34. 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;

34.1 Applicant's relief sought in this instance is granted - respondent is liable for the payment or re-payment in the amount of R26 169.00 only to Stallion Body Corporate on/before 31 March 2018.

34.2 No order is made as to costs herein.

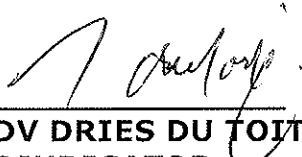
RIGHT TO APPEAL

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.



ADJUDICATION ORDER
DATE: 12/ Feb/ 2018
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ADJUDICATOR
12 FEBRUARY 2018