



Reference Number: CSOS 35/WC/17

IN THE MATTER BETWEEN:

XOLANI NYALI

(Applicant)

and

NOTTINGHAM SQUARE BODY CORPORATE

& YUSUF SURTEE

(Respondents)

ADJUDICATION ORDER

1. The Applicant is Mr Xolani Nyali, the owner of Unit 122 in the scheme known as Nottingham Square, Grand National Boulevard, Royal Ascot, Milnerton, Western Cape.
2. The Respondents are the Body Corporate of the scheme and Mr Yusuf Surtee, the owner of Unit 311 in the scheme.

3. This matter was set down for adjudication on 27 July 2017 but was postponed until 8 November 2017 due to the Applicant being out of the country during July.
4. On Wednesday, 8 November 2017, only the Applicant attended the adjudication. The Respondents did not attend. I then issued a provisional adjudication order as set out in paragraphs 5 to 14 below.
5. The background to this application is briefly that the developer of the scheme had not properly sealed some of the balconies on the top floor apartments. This led to water seeping down from the upstairs balconies into the units below whenever it rained. The Applicant's unit is one of the downstairs units.
6. Notwithstanding letters of demand by the Managing Agent, on behalf of the trustees of the scheme, Mr Surtee has to date failed and/or refused to waterproof the balcony of his section, being Unit 311.
7. Other owners on the third floor of the building have waterproofed the balconies of their sections at their own cost.
8. The Applicant is of the view that, in terms of section 13(1)(c) of the Sectional Titles Schemes Management Act (8 of 2011), an owner must:

"repair and maintain his or her section in a state of good repair."
9. The relevant parts of Prescribed Management Rule (PMR) 31(2) read as follows:

“31(2) If despite written demand by the body corporate, a member refuses or fails to -

(b) repair or maintain a section owned by that member in a state of good repair as required by section 13(1)(c) of the Act; and that failure threatens the safety of the building or otherwise materially prejudices the interests of the body corporate, its members or the occupiers of sections generally, the body corporate must remedy the member's failure and recover the reasonable cost of doing so from that member.”

10. In my view, the Applicant is correct in expecting the body corporate to remedy the member's failure and to recover the costs of doing so from the member.

11. Section 39(6) of the Community Schemes Ombud Service Act (9 of 2011) (“the CSOS Act”) provides that an adjudicator can make the following orders:

“39(6) In respect of works pertaining to private areas and common areas—

(a) an order requiring the association to have repairs and maintenance carried out;

(b) an order requiring the relevant person—

(i) to carry out specified repairs, or have specified repairs made.”

12. From the history of this case in the file, it is clear that it is the duty of Mr Surtee to have the waterproofing done and he is encouraged to have it done immediately in order to avoid a possible adverse cost order against him.

13. Should Mr Surtee continue with his failure, the body corporate must provide reasons why it should not be ordered to remedy the member's failure and to recover the costs from him.
14. In the result I make the following provisional order:
 - a. The matter is postponed until **Wednesday, 13 December 2017 at 10:00**;
 - b. The Respondents, and/or representatives on their behalf, must attend the hearing on that day and, unless the matter is resolved in full before then, provide reasons why a final order and a costs order should not be made.
15. On 4 December 2017 I received an e-mail from the managing agent, Ms J Schofield, with an invoice attached for the repair work. I acknowledged receipt of the invoice but needed confirmation that the work had in fact been done. I received an e-mail this morning confirming that the work had been done.
16. The Applicant was present again this morning and I confirmed that I would finalise the order.
17. I trust that the repairs have been completed in order to prevent any further leaks into the Applicant's unit and, if not, the repairs will have to be re-done to ensure that there are no further leaks.
18. I make no order as to the costs of this application.

19. In terms of section 57 of the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011) a person who is dissatisfied with an adjudicator's order is entitled to appeal to the High Court, but only on a question of law. The appeal must be lodged within 30 days after delivery of the order.

Signed at Cape Town on this the 13th day of DECEMBER 2017.


Gde Kock

**ADV GPC DE KOCK
CSOS ADJUDICATOR**

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(Applicant)
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AND TO: JODY SCHOFIELD
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AND TO: JUSUF SURTEE
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ADJUDICATION ORDER
DATE: 11/01/2017
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