BODY CORPORATE NEGLECTS SCHEME UPKEEP: COSTS TO FIX ESCALATE AFTER INJURY

Eze v Adderley Body Corporate and Another (1484/2019) [2024] ZAWCHC 7 (22 January 2024)

A piece of rotten wood which dislodged from an overhanging balcony of a sectional title building and injured a passerby, will cost the body corporate much more than anticipated, after the court found that the owners (as body corporate) were negligent in not maintaining the building. This is a wake-up call for trustees to properly deal with their responsibility to keep the buildings in the scheme in good repair. Failure to do so can be found to be negligent and saddle the scheme with unexpected additional expenses.

The Judgment can be viewed here

FACTS

Mr Eze brought an action for damages arising from a personal injury he sustained in March 2016. The injury arose when he was walking on the pavement in Adderley Street, Cape Town. It occurred as he was passing under a balcony's ceiling (forming part of The Adderley, a sectional title scheme) that overhangs the sidewalk. A piece of wood apparently dislodged and fell through an open hole in the ceiling, onto his left shoulder. (The thickness of the wood was 7.5 cm, and its width was 12 cm.)
He did not see the wood fall from the balcony overhang, but all indications were that this was the case. The building supervisor was called after the incident, took pictures, and suggested that Eze go to the hospital. The former also formed the opinion that the wood had dislodged from the overhanging balcony. According to Eze and the building supervisor, that area of the ceiling was always damp and had become a space where birds nested. (The body corporate and managing agent did not provide evidence to the contrary.)

The claim was instituted against the body corporate and its managing agent as they, Eze argued, are responsible for keeping the building in a state of proper repair, a task they negligently failed to do.

In its papers before the court, Eze argued that negligence could be proved on the facts and, in any event, that it was a case of *res ipsa loquitur* (the facts speak for themselves; that negligence could be inferred without more). Nonetheless he argued, negligence was established from the following: the body corporate as owner of the building has the responsibility to maintain the building and do such repairs as may be reasonably necessary to avoid harm to users of the building and the public passing it; that they failed to do so and thereby failed in the duty of care owed by a building owner to the public. Their failure rendered them negligent and accordingly liable for resulting damages sustained by third parties.

HELD

Duty of care

- The sectional title building, in particular the ceiling of the balcony which overhangs the public pavement on Adderley Street, poses a potential safety risk. A duty of care is reasonably owed to the members of the public, in particular Eze, who walks on the public pavement below the balcony.

Causal negligence

- On the evidence, there was nothing to refute that they body corporate or its managing agent was aware of the state of disrepair and did not attend to repairs. This was negligent in the circumstances and caused the injury. Thus a causal nexus has been established.

Duty of care

- In terms of the law, a defendant who is in control or managing a building or premises is expected to keep it in a reasonably safe condition. This is so to prevent the occurrence of foreseeable injuries. The body corporate and the managing agent was in control of and managing the building. Therefore, there was no question that there was a duty of care to maintain the building in a reasonably safe condition. This duty extended to the overhang on the public pavement, more so where such an area (balcony) overhangs a public pavement, an area that is used by the public.

Negligence and/or res ipsa loquitur

- "While it is undeniable that, there is nothing extraordinary about a person being injured by a fruit falling down from a tree, it is equally undeniable that it is unusual for a person to be injured by an object falling down from the ceiling. Planks do not ordinarily fall from a ceiling if proper care has been taken to see that the ceiling is safe." Therefore, the court continued, it was obvious that "falling of an object from a ceiling ordinarily does not occur in the absence of someone's negligence. Put differently, in the ordinary course of thing; the presence of a hole in the ceiling and fall of rotten planks from the same hole do not occur in the absence of negligence." The body corporate and managing agent also did not provide evidence to the contrary.

CONCLUSION

The claim therefore had to succeed, the Court explaining: "The condition of the relevant ceiling at the time of the accident are more likely to produce situations where accidents similar to the instant case do occur. There is no question that the conditions of the ceiling increased the risk of an accident. The incident would not have happened if reasonable care had been taken by the defendants."