



Body corporate legal battle over construction defects

In Swahili, “Asante” means “thank you”, a common and heartfelt way to express gratitude in Swahili-speaking regions. It is appropriate in various contexts, from daily interactions to formal occasions. However, on 20 September 2024, it is unlikely that the Body Corporate of Asante used this expression of gratitude.

In the case of *Asante Body Corporate v Portland Beleggings (Pty) Ltd and Another*¹ (“the Asante case”), the Cape Town High Court faced a delictual claim for pure economic loss due to alleged construction defects in a residential sectional title scheme.² The First Defendant, the Developer, raised an exception, arguing that the Plaintiff, the Body Corporate, had failed to plead sufficient facts.³ The Body Corporate sought damages exceeding R3 million for repairs to common property, alleging that the Developer breached a duty of care in the design and construction.⁴

The Body Corporate’s primary allegation was that the Developer negligently failed to prevent defects⁵ However, the Developer contended that the Body Corporate’s pleadings were deficient, merely concluding, without sufficient support, that a legal duty had been owed.⁶ The Developer contended that the existence of such a duty requires specific pleading, particularly in cases of omissions or pure economic loss.⁷ The Court agreed, noting that such claims require detailed pleading, especially when based on omissions or claims for pure economic loss.

In seeking delictual damages equivalent to repair costs, the Body Corporate argued that it did not need to prove actual payment or even intent to pay those costs.⁸ However, the Court disagreed, indicating that the claim required more specific details to substantiate its claim for damages, underscoring the inadequacy of the pleadings.⁹

The Developer further argued that simply alleging wrongfulness and a duty of care, without more, was insufficient.¹⁰ Additionally, the Developer pointed out that many of the complaints applied equally to the Second Defendant, the construction company, against whom the Body Corporate had already withdrawn its action.¹¹ Moreover, the Body Corporate did not provide sufficient factual detail to establish the Developer’s liability for the scheme’s development, design, and construction.¹²

The Developer also highlighted that the Body Corporate’s pleadings lacked the necessary details to quantify damages or justify the repair costs for the alleged defects.¹³ Referring to Rule 18(10) of the Uniform Rules of Court, the Developer argued that the Body Corporate needed to provide enough specificity to allow the Developer to assess the quantum of the claim, potentially enabling an early settlement.¹⁴ The Court agreed with this assessment, finding the Body Corporate’s pleadings inadequate.

¹ (14495/2023) [2024] ZAWCHC 275, accessible at <https://www.saflii.org/za/cases/ZAWCHC/2024/275.html>.

² Para 1.

³ Paras 1 and 4.

⁴ Para 2.

⁵ Para 16.

⁶ Para 16 and 17.

⁷ Para 18.

⁸ Para 19.

⁹ Para 19.

¹⁰ Para 21.

¹¹ Para 22.

¹² Para 22.

¹³ Para 23.

¹⁴ Paras 24 to 26.



In its ruling, the Court held that the Body Corporate had failed to disclose sufficient material facts to extend Aquilian liability for pure economic loss.¹⁵ As a result, the Developer's exception was upheld, and the Body Corporate was given 10 days to amend its particulars of claim.¹⁶ Given the procedural posture of the case, it is likely that this matter will evolve further. Moreover, the Court ordered the Body Corporate to pay the costs of the exception.¹⁷

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¹⁵ Para 27.

¹⁶ Para 31b.

¹⁷ Paras 30 and 31c.