

LIFTS MUST BE SAFE AND FUNCTIONAL

Survey finds more out of action than three years before

THE Organisation for Civic Rights conducted two surveys (2007; 2010) of residential lifts to establish if there were defective lifts and whether buildings previously surveyed showed any improvement. The recent survey found negligible improvements in the intervening three years, with more buildings now having dysfunctional lifts.

A dysfunctional or non-functional lift affects the use and enjoyment of tenants in a multi-tenant building, or tenants, owners and other users in a sectional title or share block scheme.

It affects the quality of life of all residents of a block, having greater impact on the elderly, frail and those who have physical disabilities, particularly persons who are amputees, wheelchair bound or who have heart conditions. At the extreme end, such lifts pose a real threat to a person's life and over the past decade, several people - residents and visitors - have died in lift related accidents.

The OCR has engaged with officials from the Department of Labour to improve the conditions. There are obvious, huge gaps in legislation, with government having no power to compel owners to have functional or operational lifts. Ministers of local government, labour and human settlements must resolve to introduce specific provisions in their respective legislation to show a duty of care for the users of lifts, especially the elderly and the disabled. They have to ensure lifts are not only safe, but also operational at all times.

While government must be engaged into providing practical solutions, lift users can take 'comfort' that the courts will protect them in the event of a lift related injury. Perhaps certain owners of buildings need to be taken to court for specific performance orders compelling them to make the lifts functional. Tenants may also have a claim to have rentals reduced for the diminished use and enjoyment.

Consequences

The question, though, is whether an owner/landlord owes a duty of care to lift users? What are the possible consequences for the owner of a building, and the technician employed to service the lift, when a lift is not safe?

Can a user sue for damages for injury if the owner and the lift technician are not negligent?

These were some of the issues that came before the trial court, and then on appeal to the Natal

division of the High Court before three judges, Galgut, Nicolson and Swain. The case is referred to as *Ruben v Lockpa Investments (Pty) Ltd and another* (2006) (N).

On February 4, 1997, four persons sustained injuries when a goods hoist (lift) at Lockhat building in Queen Street, Durban fell from the second floor to the ground level. Legal action for damages was instituted by Ms. Ruben (the plaintiff / appellant) and three others against the owner Lockpa Investments, and against a second respondent, a technician responsible for the maintenance of the lift.

Ruben's matter was the only one that was heard as a "test" case to determine if the landlord or the technician or both were negligent and therefore liable for her injuries.

Ruben and her co-employee loaded the rolls of material into the lift and sent it to the second floor. They walked up to the second level where they met the lift and removed the rolls.

They discovered a roll that had wedged itself between the door and the wall, preventing the rear door from closing and thus jamming the lift. Two tenants from the third floor, who were impatiently waiting for the lift, realised what had happened upon arriving at the second floor. They then proceeded to assist Ruben and her colleague. As they removed the roll and

while still inside the lift, it plummeted to the ground level, causing all four to sustain injuries.

The lift had several safety features, three of which related to preventing the lift from responding in the event (i) the rope was slack, (ii) any landing door was not closed and (iii) if the lift doors were not closed.

Evidence showed that the lift broke down several times a month and the safety features were overbridged. This compromised the functional safety features. The court was not convinced by the landlord's version that someone had sabotaged the lifts. It found the landlord to be negligent since it failed to show a duty of care.

"The first and second defendants jointly and severally are liable to compensate the plaintiff for such damage as she is able to prove or as are agreed were suffered by the plaintiff consequent upon the incident, which occurred on 4 February 1997."

The parties were: the appellant, Vijaymoney Ruben, who was represented by advocates Gajoo SC and Ramdhani; first respondent, Lockpa Investments (Pty) Ltd was represented by advocate Troskie; second respondent, Schindler Lifts (SA) (Pty) Ltd was represented by advocate Tobias.

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For tenants' rights advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451



Hoist on the second floor, Lockhat building, Queen Street, no longer functioning (November 2010)



Lockhat building, Queen Street, Durban