

## Property Owner and Body Corporate Liable After Child's Electrocution?

Property owners (separate title holders as well as those in community schemes), bodies corporate and building contractors should all understand their risk of being sued if a dangerous situation exists or develops on a property or in a complex.

We discuss these risks, and how to address them, with reference to a High Court claim for R3m brought by a mother on behalf of her young son who was electrocuted when he tried to turn on a tap.

The tap had been electrified through the negligence of several contractors, and this dangerous situation had been compounded by the negligence of others. The court's assessment of which of the various parties involved must pay damages, and why, provides valuable lessons for all role-players.

A recent High Court decision saw both a sectional title unit owner and his cupboard contractor held liable for damages suffered by an 11-year-old boy electrocuted by a communal tap. The complex's body corporate and an electrician were also sued but escaped liability.

The reasons given by the Court for these contrasting outcomes provide valuable lessons for property owners, contractors, and bodies corporate.

### ***Electrocuted when he turned on a tap***

- You don't expect to be electrocuted when you turn on a tap, but that is what happened to an unfortunate boy, aged 11, who had offered to wash his mother's car in a residential complex.
- When he touched a communal tap to fill up a bucket of water he was electrocuted and unable to remove his hand for 1 to 2 minutes. Fortunately, the tenant of the unit which was the source of the electric current arrived home in time to switch off the electricity so that the boy could be rescued.
- He was rushed to hospital with serious injuries and his mother sued all the role-players for more than R3m in damages on his behalf.
- To simplify as much as possible some very complicated facts, a cupboard contractor had been brought in to do work in the unit by the owner's agent/employee at the request of a tenant. The contractor employed two workers who caused the initial problem by drilling through a wall and damaging the electrical insulation.

- The owner's agent then contracted an electrician to fix the problem, but he only compounded the danger by bungling the repair job and leaving the plumbing live.
- The tenant, shocked (electrically, presumably also figuratively) when she turned on taps in the unit, switched off the electricity and reported the danger to the agent. Unfortunately, the two workers, in her absence the next day, switched it on again – thus creating anew the dangerous situation that later that day led to the boy's electrocution.

Let's have a look at some of the legal principles that led the Court to its decision in regard to each of the role-players –

***Your agent or employee doesn't tell you of a dangerous situation – are you liable?***

There was a dispute over whether the owner's "agent" was legally an agent or an employee, and whether or not he had told the owner of the dangerous situation. But it made no difference, held the Court – the "agent's" knowledge of the dangerous situation in the unit was attributed to the owner because (1) he had acquired that knowledge in the course of his employment, and (2) in the circumstances he had a duty to report it to the owner.

Make sure your agents and employees are trustworthy enough to tell you about any dangerous situations in your property!

***Are you liable for your contractor's negligence?***

Clearly the workers employed by the contractor had caused the dangerous situation, firstly by damaging the electrical insulation and secondly by turning the electricity back on knowing of the danger. The contractor was accordingly liable, but what about the property owner who had employed him?

Our law is that you are not automatically liable for your contractor's negligence, but you must "exercise that degree of care that the circumstances demand". On the basis that **"It is the principal, who selects his agent and represents him as a trustworthy person, and not the other party to a contract who has no say in the selection, who bears the risk....."** (emphasis supplied), the Court found both the contractor and the unit's owner liable for "the negligent omissions and/or acts on the part of their agents/employees."

In any event both the "agent's" inaction and the actions of the two workers "jointly contributed to the cause of the electrocution of the minor. Had either acted as they ought to have, the minor would not have been electrocuted."

You are at risk for the conduct of any contractors and employees on your property, so again make sure they are trustworthy!

***When is a body corporate liable?***

A body corporate is as much at risk of being sued as any individual owner in a case such as this – it was presumably sued in this matter on the basis that the tap in question was a “communal” one and therefore under its control.

Its security officers had become aware of the situation when they queried the presence of the workers in the complex. However, the claim against it failed as the evidence was that the child’s electrocution “was unforeseeable as far as it [the body corporate] was concerned. It had no duty to do anything while it was unaware of the danger posed. There had never been any problem with the electrical installation, and it follows that what occurred was not reasonably foreseeable to it. Immediately the dangerous situation was brought to its attention it acted immediately.”

As a body corporate, take all reasonable steps to prevent dangerous situations arising in the complex in the first place, and take immediate action to rectify any that come to your notice!

***What about the negligent electrician and the “chain of causation”?***

Our law is that you are only liable if there is a “chain of causation” between your negligence and the damage resulting. So, you can sometimes escape liability if there is a new “intervening cause” that interrupts that chain of causation.

In this case, the electrician’s failure to do the repairs properly was held to have been a “direct cause” of the incident. But his bacon was saved by the fact that the two workers, in switching the electricity back on, knew they were creating a dangerous situation anew. This made it sufficiently “unusual”, “unexpected” and not “reasonably foreseeable” for there to be – from the electrician’s point of view – a new “intervening cause” which interrupted the “chain of causation” between his negligence and the electrocution. The claim against him failed accordingly.

Any break in the “chain of causation” may come to your rescue if you are sued. But don’t count on it!