

# Mutual Heights

14 Darling Street, Cape Town

<http://www.mutualheights.net>

## News from your Trustees

Edition 26

November 2013

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Dear Fellow Owner,

Winter is done at last, and once again we look anxiously at our windows and walls to see whether the damp is coming in. This newsletter is to bring you up to date, and is solely concerned with the damp problems and the litigation that we are involved in.

### Background

Occupancy of the apartments in Mutual Heights began in 2005, and the building was handed over by the contractor (Murray & Roberts) to the developer (Old Mutual Properties). Critical work on damp-proofing the exterior of the building was undertaken by a range of sub-contractors, much of it by the "Rigging Corporation", a small business that is now in receivership.

It was clear from the start that there were still residual problems and that the promise to purchasers<sup>1</sup> that:

*"building remedial works provides for the removal and replacement of all existing joint sealants between granite cladding blocks" and*

*"all junctions between existing windows and granite cladding to be resealed"*

had not been fulfilled. Hence we initiated legal action claiming what was then estimated to be the cost of properly undertaking this work. Since then the costs have escalated and we have discovered other problems, for example with the storm water pipes that run within the structure of the building and are, it seems, corroded to the extent that they are liable to leak. Further, it is clear that the steel mullions to which our famous prismatic (triangular) windows are fitted are liable to corrosion, and that there is rain water within them that can escape and cause damage to paintwork, block floors and carpets.

The legal process proceeds, but is confused by the defendants repeated efforts to shift the blame, which in itself causes us more expenditure and seriously delays the process. The next event in this saga is that an attempt by Murray & Roberts to "join" the consulting engineers, KFD Wilkinson, will be heard in the high court on 2 December (I will be there, with our attorney, but only as observers).

### Some good news

As I have previously reported, we have had good advice and some remedial work has been undertaken on an as-needed basis. We have had good reserves with which to cover the costs of the legal process and also the cost of what have been seen as essential remedial works.

### And now the bad news

The recent failure of the plumbing system, high in the roof of the tower, caused very extensive damage to the upper areas and to the main lifts. It is tempting yet again to blame "the developers", but in this case I think we cannot do that. Insurance seems to be covering much of the consequential cost of repairs, which includes major works on the main lifts as well as complete redecoration of the upper (privately owned) areas, but there is an inevitable impact on our own costs. In particular, external areas of the tower walls need re-waterproofing and we must initiate that work without delay so that the recent internal repairs are not jeopardised. Hence, we now need to consider a special levy (and/or the negotiation of a loan) in order to permit both the legal process and the remedial works to proceed. We have done well so far, but we are now at the limits of what we can do with our reserves.

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<sup>1</sup> In a document entitled "DARLING STREET APARTMENTS: Project Specifications", dated 2 June 2003

## The legal process

We are confident that we can win our case. I have personally reviewed over one thousand documents that evidence the history of the project (they sit under my desk at home), and I have met several times with our own attorney and with senior counsel. We also have a damp-building-expert assisting us who – literally – wrote the book on damp in South African buildings. The shenanigans between the defendants are worrying, but at the end of the day it is simple: we expected a weather-proof building and it was not delivered.

We are now waiting for presentation of the “expert reports”. We (as plaintiff) and each of the defendants have commissioned experts to review the state of the building and to report on what they think has happened. These reports will be submitted only three months *before* our “trial date” in the high court, a date that we will only get when the shenanigans are done. At this time, our lawyers have done all that they can and there will be no further major legal activity until the expert reports are available – we will in some sense be “ticking over”, waiting for the defendants to conclude their arguments. However, the trial (if it actually happens) will probably take at least two weeks and will cost us in the region of R1,000,000, or more (we have asked for estimates of the costs, they are not yet available). Hence we need to be thinking of raising a seven-figure sum that will cover those costs. If we do this by special levy then the cost to owners would normally be spread over two or three years. In order to “soften the blow” (but at some additional cost in interest charges) we can borrow from the money markets in order to cover these costs and maintain cash flow.

However, when the expert reports come in, there may be enough clarity that we can negotiate with the defendants to go to arbitration, or to simply sit around a table and talk this through. Hence, although we will (one way or the other) get a high court date, we will have the option to take a different route.

Finally, in regard to the legal process, please remember that if we win (as we fully expect to do so) then we will not only win the many millions of Rand that will get the work done, we will get our legal costs back as well.

## The damp works

Trustees will meet early in December (after the high court hearing of the KFD Wilkinson Joinder on the second) and decide exactly what work we will now undertake. As I hope you all now know, we have devised a protocol to receive and decide about the work that is most pressing, and to consider the financing of that work, and the work on the tower will take a high priority. I will of course endeavour to keep you fully informed.

In the meantime, because of the new concern about the mullions, we now ask you to complete a further questionnaire. It can be filled in online [here](#), or you can print off a hard copy from [here](#) (see below for the actual links)

If you have *any* comments or concerns, or *any* views you wish to share, please do contact me.

With warm regards,  
on behalf of the Trustees,



(Professor) Andy Bytheway,

Chairman of the Trustees, Mutual Heights, Cape Town.

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Check out "Mutual Building" on Wikipedia:  
[http://en.wikipedia.org/wiki/Mutual\\_Building](http://en.wikipedia.org/wiki/Mutual_Building)

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Online survey: [https://docs.google.com/forms/d/1\\_NQeBK\\_yUnapIOOggFibhMXpv7P8mR3ztIpB0X7qMeo/viewform](https://docs.google.com/forms/d/1_NQeBK_yUnapIOOggFibhMXpv7P8mR3ztIpB0X7qMeo/viewform)

Printable copy of survey form: [http://www.mutualheights.net/Documents/2013\\_Survey\\_of\\_Windows.pdf](http://www.mutualheights.net/Documents/2013_Survey_of_Windows.pdf)