Reportable: Yes / No
Circulate to Judges: Yes / No

Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

Case no: **438 /03**
Date heard: **07/02/2005**
Date delivered: **06/ 05/ 2005**

In the matter between:

RESCA , L **PLAINTIFF**

and

BOUWER, M.W N.O **FIRST DEFENDANT**

MEIRING, L. N.O **SECOND DEFENDANT**

VISSER, W.S N.O **THIRD DEFENDANT**

JUDGMENT

Goliath AJ:

1. The Plaintiff has instituted action against Defendants for damages arising out of the flooding of her rented apartment on 24 September 2002 at 4 Ferrara Court, 140 Du Toitspan Road, Kimberley. She was the Defendants' tenant.

2. The three Defendants are sued in their capacity as trustees of Bouwer, Meiring and Visser

Eiendomme Trust (hereinafter referred to a "the Trust") of 5 Kestell Street, Monument Heights, Kimberley. The Trust was the Plaintiff's landlord.

3. Plaintiff alleges that pursuant to her tenancy at the apartment the parties entered into an oral agreement on or about June 2001. She states that it was an express, alternatively implied, further alternatively, a tacit term of the agreement that the Trust would maintain the property in such a manner as to avoid any damage to her property as a result of incidents occurring due to a lack of maintenance. According to Plaintiff in and during September 2002 the Trust failed to maintain the sewerage system of the property resulting in the flooding of her apartment to such an extent that the floor surface was covered with raw sewerage and faeces - approximately 75 mm deep. In the alternative Plaintiff avers that the flooding was caused by the negligence of the Defendants, or the employees of the Trust acting in the course and scope of their employment with the Trust in that:

3.1 Defendants did not properly clean the drainage and/or sewerage system;

3.2 Defendants failed to inspect the drainage and sewerage system regularly or at all;

3.3 Defendants failed to generally maintain the referred to drainage system;

3.4 Defendants, notwithstanding having knowledge of the drainage and sewerage system overflowing, failed to rectify the problem; and

3.5 They failed to repair the sewerage system after having knowledge of the system having a blockage.

4. In its plea the Trust admits the existence of a tacit lease agreement and that it was a material term of the agreement that it would take reasonable steps to maintain the sewerage system. However, Defendant denies that it was in breach of this agreement or that it acted negligently.

5. At the commencement of the trial the parties requested that the issue of the quantum of damages and the merits be separated in terms of Uniform Rule 33(4). I duly acceded to this request and made an order for the trial to proceed on the merits and postponed the adjudication on the quantum. Thus the only issue to be determined in the proceedings is whether or not Defendants' negligence was the cause of the flooding of Plaintiff's flat and consequent damages. A sketch plan of the sewerage layout of the block of flats forms Schedule "A" to this judgment, and was by agreement handed in as an Exhibit.

6. What seems to be common cause or not seriously in dispute are the following:-

6.1 The property in question at 4 Ferrara Court consists of an apartment block of five floors. Plaintiff occupied a flat on the first floor. The property initially belonged to Plaintiff's family until it

was sold to the Trust in 2001.

6.2 On or about 14 September 2002 the foyer and lift area on the ground floor was submerged in water. The source of the water was the defective gully opposite the lift. The water was seeping through the gully towards the foyer area and into the lift shaft. The water was pumped out of the lift by Schindlers Lifts, who replaced the cables of the lift on 17 September 2002.

6.3 On 24 September 2002 Plaintiff returned home after a long weekend and discovered that her flat was flooded with water containing faeces and sewerage. A plumber was called in and a blockage in the system was cleared. It was established that the cause of the blockage was sanitary towels and paper which were flushed down the sewerage system.

6.4 At the time of the flooding of the lift area on 14 September 2002 there was no flooding in Plaintiff's flat in question. Similarly, at the time of the flooding of Plaintiff's flat on 24 September 2002 there was no flooding in the foyer of the building.

PLAINTIFF'S CASE

7. Plaintiff testified that in and during August 2002 she returned from abroad and discovered that the foyer and the stairs on the ground floor were submerged in water. Water was filtering from the draining pipe

which was mounted against the wall which was covered with hardboard covering. She noticed small flies in the area and that the water was murky. She contacted Mr Allan Frazier who dismissed the flooding as a natural overflow. The water remained there for at least two to three days before it was cleared.

8. She subsequently left Kimberley and returned during September. Once again the foyer area was submerged, but this time the water level was higher than before. The tenants covered the floor with pieces of cardboard and bricks. The area was covered in flies. She noticed that the lift was not working. She contacted Mr Allan Frazier to report the incident. She was present when Mr Arrie Jakkals from Schindlers Lifts pumped water out of the lift. On 20 September 2002 she departed from her flat during a long weekend and returned on 24 September 2002. On entering her flat she noticed a pool of water outside her front door. On further investigation she discovered that the whole floor area of her flat was covered with sewerage water and faeces. The water originated from the toilet.

9. Under cross-examination Plaintiff stated that she was unable to confirm whether the water in the foyer was sewerage water. According to her the water was murky with particles in, but contained no faeces. Plaintiff was not prepared to concede that the water found in the foyer on two previous occasions were not sewerage water, except to state that the water came from the drain. Mr Frazier informed her that the flooding in the foyer on 14 September 2002 was caused by a blockage in the gully

on the ground floor. This was the first time she experienced this situation in the flat in 25 years since her family previously owned the Block. Her flat had no problems at the time when the foyer was flooded. According to Plaintiff, Defendants failed to attend to the problem. She conceded that she did not advise Defendants that the sewerage system was blocked, only that there was a problem.

10. Mr Arrie Jakkals, an employee at Schindlers Lifts testified that he is familiar with Ferrara Court and regularly serviced its lifts. On 17 September 2002 he attended to the lift and observed that there was water in the shaft. The lift cables were wet and had to be replaced. He noticed that the water came from the gully area. The water had a distinct faeces smell. He described the texture of the water as that of powdery sawdust. He proceeded to pump the water out of the lift shaft. He replaced the cables on 20 September 2002 after allowing the shaft to dry. Under cross-examination he testified that he was unable to say what the colour of the water was but that it was definitely not clear water. He was unable to say whether the water in the foyer was drainage water.

11. Mr Willem Martins Soekoe was the caretaker at Ferrara Court from January to March 2004. He was also a resident at Ferrara Court and confirms Plaintiff's testimony regarding the flooding in the foyer and lift area. According to him the water had a urine odour. He noticed small particles of toilet paper in the water, as well as the presence of flies in the area. He confirmed that the lift was attended to and repaired. He

briefly mentioned other floodings which occurred in the building during his tenure, but confirmed that it was not related to the sewerage system, but confined to shower and drainage water in the open system. A plumber was called in to investigate and it was established that a large amount of hair caused a blockage in the system.

12. Under cross-examination he described the water he observed in the lift and foyer area as a yellow rusty colour with a strong urine odour, containing small pieces of toilet paper or tissues. He further explained that rubble could be thrown from the other floors down the shaft into the gully. Mr Soekoe conceded that it would be difficult to prevent tenants from throwing or flushing unnatural objects down the sewerage system. Furthermore, that the caretaker could not be held responsible for blockages that result from such irresponsible behaviour. He further conceded that there was nothing that a caretaker could do to prevent a blockage if, after an inspection, goods are thrown down the sewerage system which causes a blockage.

13. Mrs Rosemary Chinbrooker was a tenant at Ferrara Court until March 2004. She confirmed Plaintiff's evidence regarding the flooding in the foyer and lift area of the building. She testified that the water was murky, had a foul faeces smell, and contained objects which were floating in it. According to her the foyer area flooded on more than one occasion. The operation of the lift was affected by the flooding, but was fixed at some stage. She is aware that after the flooding in the foyer was cleared, a new gully cover was installed and sealed.

14. Mr C B De Witt, a professional engineer was called to give expert testimony on behalf of Plaintiff. He completed a B.Eng(Civil) degree at the University of Stellenbosch. He is a qualified engineer and partner at MVD Kalahari. He was previously employed by the City Council of Kimberley and is affiliated to the South African Institute of Civil Engineers. His special field of expertise is the design of low cost housing and municipal services (roads, water sewerage and stormwater infrastructure) and the construction thereof. In his capacity as engineer he inspected the sewerage system at Ferrara Court in and during September 2004. He prepared Schedule "A" to this judgment. He testified that the sewerage system at Ferrara Court consists of firstly, a vertical closed system conveying all toilet waste directly down to the underground drainage pipes and secondly a vertical system (pipe) conveying all hand basin, bath and sink water onto a gully from where the water drain to the same underground drainage pipes as the closed system.

15. Blockages may occur at any one of the three positions marked on the sketch as A, B and C.

15.1 A blockage at position A would cause water to rise simultaneously in the closed and open systems. This will also be the result if the gully was sealed off with silicone i.e. if it is watertight. If the sealed gully was not watertight, the same result will follow at an uneven pace. This could therefore have resulted in the overflow at the toilet on the first floor at Plaintiff's toilet and the first floor

shaft.

15.2 A blockage at position B will cause water from the open system flowing from hand basins, sinks and baths to overflow at the gully. No toilets or sewerage water will be affected. An overflow at the gully will only occur if allowed to do so.

15.3 Mr De Witt testified further that a blockage at position C will directly affect the closed sewerage system. The result will be that water from the toilets will rise within the vertically closed pipe system and overflow at the first toilet on the first floor (Plaintiff's toilet). The level inside the vertical pipe can rise higher and an over-flow may occur at toilets on the other floors.

15.4 Overflowing at any gully may also occur due to blockage of waste lying on top of the gully grid, with no blockages in any of the three positions. If at any stage water flowing from the gully contained no sewerage, the blockage would be in position B (linking to the open system). A blockage in position C would not result in any overflow at the gully.

16. Under Cross examination Mr De Witt confirmed that if the toilet on the first floor had an overflow on 24 September 2002 and the foyer or lift area was unaffected, and the gully cover was not watertight, the blockage must have been at position C. He further stated that if there was an overflow in the gully on 14 September 2002, it means the gully

cover was not watertight. This overflow in the gully area would be the result of a blockage at position B.

17. Mr De Witt was asked to express an opinion on Defendants' version as to the nature and reason for the flooding. Mr De Witt confirmed that based on the facts presented to him, the blockage must have been in position C on 24 September 2002. Mr De Witt conceded that it is difficult to prevent or monitor this type of blockage, even with due diligence and regular inspection and maintenance. Mr De Witt further elaborated on the nature of the maintenance of sewerage systems and how often it should be done. He testified that the frequency of blockages should determine the frequency of inspections and rodding.

DEFENDANTS' CASE

18. Defendants called two witnesses to testify on their behalf. Mr Kurwen Edward Samuel, a plumber, testified that he was summoned by Mr Allan Frazier to attend to a plumbing problem at Ferrara Court on 24 September 2002. He inspected Plaintiff's flat and observed that the floor area was covered in sewerage. He proceeded to investigate the ground floor. He checked the manhole and noticed that it was dry. He unsuccessfully tried to rod the blockage from the manhole. He then inspected the closed system and removed the inspection cover. On opening the cover, water exploded on release from the system. He suspected a blockage on the bend (of the y-junction) and pushed his rod down the pipe. He managed to open a blockage. He removed the items responsible for the blockage and discovered that it was newspaper and sanitary towels. He only worked on the closed sewerage system and did not do any investigations in the open system.

19. Under cross-examination he agreed with the evidence of Mr De Witt

that a blockage in position B would cause an overflow of water at the gully. He also agreed that if the gully cover was not watertight, water would filter through the gully cover. According to him a blockage at position A would have the same effect. However, he submitted that water will rise simultaneously in the closed and open system if a blockage occurs at position A. The result of this would be an overflow of water at the shaft and toilet on the first floor. He confirmed that if any overflow contained urine or sewerage, a blockage must have been in position A.

20. Mr Alan Frazier testified that he was employed as a maintenance officer and caretaker at Ferrara Court from 1999 until January 2004. He did inspections on the manholes every two weeks to check for blockages and any abnormal flow of water. He testified that prior to 24 September 2002 there was an overflow of water in the foyer and lift area. He investigated the problem and removed waste materials consisting of stones, paper and plastic bottles from the gully. Apparently these objects were thrown down the shaft by tenants, and ended in the gully, thus giving rise to blockages in the system. After he removed the objects, the flow of water improved and the flooding in the foyer was remedied. Thereafter he installed diamond mesh on all the floors in the building. The purpose of the mesh was to cover the shaft and prevent objects being thrown at any point, into the gully on the ground floor. At the time of the flooding the gully cover was made of wood, but this was replaced by a metal cover at a later stage.

21. On 24 September 2002 First Defendant communicated with him regarding Plaintiff's flat. He inspected the flat and discovered the flooding. He immediately contacted Mr Samuels and arranged for the cleaning of the flat. He accompanied Mr Samuels during his inspections and was present when the inspection cover of the closed system was removed. He confirmed that Mr Samuels retrieved sanitary towels and paper from the sewerage system.

22. Under cross-examination he confirmed that his duties included attending to general maintenance and minor repairs at Ferrara Court. He was aware of the flooding in the foyer and lift area on 14 September 2002 and was present when the water was pumped out of the lift shaft. He attributed this flooding to rainwater, but conceded that he could be wrong. He also explained how he went about in inspecting the manholes. He testified that after he removed the waste from the gully, the water continued to filter through the gully and he therefore proceeded to seal the gully with silicone. As a result of this the filtering of the water into the foyer area was contained. He suspected that the reason for the continued filtering or spillage of water through the gully cover was as a result of another blockage in the system.

THE ASSESSMENT AND LEGAL AUTHORITY

23. Counsel for Plaintiff argued that there is a direct link between the events of 14 September 2002 and 24 September 2002. He contended that Defendants' failure to deal adequately with the flooding in the foyer,

on 14 September 2002, resulted in the flooding of Plaintiff's flat on 24 September 2002. It was argued that the inspections which were conducted were inadequate, that Defendant failed to maintain the sewerage system diligently and the Court was asked to rule in favour of Plaintiff.

24. Counsel for Defendant on the other hand argued that there was no nexus between the flooding of the foyer on 14 September 2002 and the flooding of Plaintiff's flat on 24 September 2002. It was contended by him that reasonable steps were taken to contain the flooding on 14 September 2002 and that Defendant could not have foreseen that Plaintiff's flat would flood as a result of irresponsible actions of tenants who flushed sanitary towels and paper down the closed sewerage system.

25. It is trite law that the person who relies on a contact bears the onus of proving its existence and its terms. (See: ***Kriegler v Minitzer and Another*** 1949(4) SA 821(A) at 826-828; ***Topaz Kitchens (Pty) Ltd v Naboom Spa (Edms) Bpk*** 1976(3) SA 470(A) at 474A-B; ***Stocks and Stocks (Pty)Ltd v TJ Daly and Sons (Pty)Ltd*** 1979(3) SA 754 (A) at 762G-H***;*** ***Da Silva v Janowski*** 1982(3) SA 205(A) at 219B. Plaintiff was therefore saddled with the onus to prove the existence of the contract as alleged. It is common cause that no evidence was adduced to prove the agreement as alleged by Plaintiff in her Particulars of Claim. In the absence of any evidence to this effect the court was bound to determine the contract terms based on the admission made by

Defendant. Defendant admitted in its plea that it was under a legal duty to take all the necessary and reasonable steps or precautions to maintain the sewerage system. In other words it effectively acknowledged that if it were found to have negligently failed to take such steps, its conduct would not only have been negligent, but also wrongful.

26. The Roman Dutch law imposes upon every lessor the duty of keeping and maintaining leased premises in a condition reasonably fit for the purpose for which they are let. Failure on the part of the lessor constitutes a breach of contract and a lessee is entitled to claim damages from the lessor. (See: ***Cape Town Municipality v Paine*** 1923 AD at 218; ***Heerman's Supermarket v Mona Road Investments (Pty) Ltd*** 1975(4) SA 391 at 393B-D; ***Hunter v Cumnor*** 1952(1) SA 735 (C) at 740A-C). However, any damages caused by the lessee as a result of the breach of this duty may be claimed from the lessor only if he knew or by reason of his trade or vocation ought to have known of the defect which caused the damage. (See: ***Hunter v Cumnor Investments*** (supra) at 743H-4A; ***Heerman's Supermarket v Mona Road Investments (Pty) Ltd*** (supra) at 393C-D).

27. A duty is therefore rests on the Plaintiff to establish that the Defendants knew of the defective condition of the sewerage and/or drainage system from which the damage resulted, or ought by reason of its trade or profession to have had that knowledge imputed to it. (See***: Hunter v***

Cumnor Investments (supra) at 743A-B). The approach of our courts appears to base the lessor's liability for consequential damages on the basis of a neglect on his part. The knowledge of the defect coupled with a failure to remedy it constitutes negligence.

28. The classic test for determining negligence as applied by our courts is formulated by **Holmes JA** in ***Kruger v Coetzee*** 1966(2) SA 428 (A) at 430E-F:

"For the purposes of liability culpa arises if -

(a) a diligens paterfamilias in the position of the defendant -

(i) would foresee the reasonable possibility of his conduct injuring another in his person or property and causing him patrimonial loss; and

(ii) would take reasonable steps to guard against such occurrence; and

b) the defendant failed to take such steps. "

29. In ***Mukheiber v Raath and Another*** 1999(3) SA 1065 (SCA) the Supreme Court of Appeal restated the test as follows at 1077E-F:

"The test for *culpa* can, in the light of the development of our law since **Kruger v Coetzee** 1966(2) SA 428 (A), be stated as follows (See Boberg *Law of Delict at 390):*

For the purpose of liability culpa arises if-

a) a reasonable person in the position of Defendant:-

(i) would have foreseen harm of the general kind that actually occurred;

(ii) would have foreseen the general kind of causal sequence by which that harm

occurred and;

ii) would have taken steps to guard against it.

b) The defendant failed to take those steps."

30. The ultimate question is whether a reasonable man in the position of the Defendants would have foreseen the likelihood of harm and governed his or her conduct accordingly. (See:***Grootboom v Graaf-Reinet Municipality*** 2001(3) SA 373(E) at 377F-G). In ***Cape Town Municipality v Paine*** (supra) at 217, Innes CJ explained:

"The question whether, in any given situation a reasonable man would have foreseen the likelihood of harm and governed his conduct accordingly, is one to be decided in each case upon a consideration of all the circumstances. Once it is clear that the danger would have been foreseen and guarded against by the diligens paterfamilias, the duty to take care is established, and it only remains to ascertain whether it has been discharged."

31. What a reasonable person would have foreseen and how a reasonable person would have reacted, would depend on the facts of each case and it is impossible to formulate a universal test in this regard. (See: ***Odendaal v Road Accident Fund*** 2002(3) SA 70 (W) at 81I-82A; ***S v Bochris Investments (Pty)Ltd and Another*** 1988(1) SA 861(A) at 866D-E; ***Sea Harvest Corporation v Duncan Dock Cold Storage (Pty) Ltd and Another*** 2000(1) SA 827 (SCA) at 839G-J).

32. The flooding in the lift and foyer area on 14 September 2002 is common cause. There is a dispute between Plaintiff and Defendant as to the

cause and nature of the flooding, more particularly whether the water contained sewerage or not. Plaintiff testified that she did not clearly observe sewerage in the water and could not detect any distinct odour. On the other hand Mr Arrie Jakkals and Mr Soekoe testified that the water did contain sewerage. Mr Allan Frazier, testifying for Defendants, stated that the water did not contain sewerage. Plaintiff's expert witness, Mr De Witt, testified that if the water contained sewerage, the blockage in the system had to be at position A of the sewerage plan, and if not, at position B. There is no evidence before court that the flooding in the foyer on 14 September 2002 was caused by a blockage in position C. The court can therefore reasonably conclude that the blockage on 14 September 2002 was caused by a blockage at position A (if the water contained sewerage) or position B (if the water did not contain sewerage).

33. Mr De Witt also testified that a blockage in position A would cause the water to rise simultaneously in both systems. The result will be an overflow on the first floor shaft (in respect of the open system) and an overflow on Plaintiff's first floor toilet (in respect of the closed system). There is no evidence before court that this ever occurred. The probabilities therefore favour a blockage at position B on 14 September 2002.

34. The flooding of Plaintiff's apartment on 24 September 2002 primarily affected the closed sewerage system. Mr De Witt testified that a blockage at position C will affect only the closed sewerage system,

which will result in an overflow in Plaintiff's toilet. He conceded that a blockage at position A will also cause flooding in the toilet, but both systems will be affected and not only the closed sewerage system as was the case on 24 September 2002. He therefore attributed the flooding in Plaintiff's toilet to the blockage in position C. In view of this evidence the court is satisfied that the blockage on 24 September 2002 was caused by a blockage in position C.

35. The evidence of Plaintiff's expert is crucial in this case. Based on the expert testimony there can be no merit in Adv Coetzee's argument that the flooding on 24 September 2002 was caused as a result of a problem that already existed on 14 September 2002. The expert clearly ruled out a position C blockage on 14 September 2002. In fact, the expert evidence supports Adv Van Niekerk's contention that the events were not connected. Consequently the court is satisfied on the probabilities that the flooding on 14 September 2002 and 24 September 2002 were due to unrelated causes.

36. It is also clear that Defendants were unaware of the blockage on 24 September 2002 and only became aware of it when the damage was already done. The plumber was immediately contacted and it was not disputed that the cause of the flooding was a blockage in the closed system as a result of sanitary towels and paper which were flushed down the system. Defendants employed a full time maintenance officer to regularly inspect the building, attend to minor repairs and report problems. Plaintiff testified that flooding at Ferrara Court was a rare occurrence. In my view the Defendants acted reasonably in ensuring

that proper measures are in place to detect any problems in the building.

37. Applying the test for negligence as set out above, I am satisfied that a reasonable person in the position of the Defendants would not have foreseen the irresponsible behaviour of other tenants in the building and would therefore not have considered it necessary to take precautionary measures to prevent it. In ***Sea Harvest corporation v Duncan Dock Cold Storge (Pty) Ltd and Another*** (supra) at 840C-F the following was stated:

> "The problem is always to decide where to draw the line, particularly in those cases where the result is readily foreseeable but not the cause. This is more likely to arise in situations where, for example, one is dealing with a genus of potential danger which is extensive, such as fire, or where it is common cause there is another person whose wrongdoing is more obvious than that of the chosen defendant. It is here that a degree of flexibility is called for. Just where the inquiry as to culpability ends and the inquiry as to remoteness (or legal causation) begins - both of which may involve the question of foreseeability - must therefore to some extent depend on the circumstances. (Compare, for instance, ***S v Bochris Investments (Pty) Ltd (supra) with International Shipping Co (Pty) Ltd v Bentley*** *1990 (1) SA 680 (A).) In many cases the facts will be such as to render the distinction clear, but not always. Too rigid an approach in borderline cases could result in attributing culpability to conduct which has sometimes been called negligence 'in the air'."*

38. In ***S v Bochris Investment*** (supra) at 866J-867B **Nicholas AJA** said the following:

"In considering this question [what was reasonably foreseeable], one must guard against what Williamson JA called "the insidious subconscious influence of ex post facto knowledge" (in S v Mini 1963 (3) SA 188 (A) at 196E - F). Negligence is not established by showing merely that the occurrence happened (unless the case is one where res ipsa loquitur), or by showing after it happened how it could have been prevented. The diligens paterfamilias does not have "prophetic foresight". (***S v Burger*** *(supra at 879D).) In* ***Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (****The Wagon Mound) [1961] AC 388 (PC) ([1961] 1 All ER 404) Viscount Simonds said at 424 (AC) and at 414G - H (in All ER):*

'After the event, even a fool is wise. But it is not the hindsight of a fool; it is the foresight of the reasonable man which alone can determine responsibility.'

(Also see: ***Grootboom v Graaf-Reinet Municipality*** 2001(3) SA 373 (E) at 379A-E; ***Sea Harvest Corporation v Duncan Dock Cold Storage*** (supra) at 842F-I; ***Kruger v Carlton Paper of South Africa (Pty) Ltd*** 2002(2) SA 335 (SCA) at 342F-343B).

39. However, even if such a possibility was remotely foreseeable, the question arises which steps Defendants should have taken to prevent the occurrence. Mr De Witt, Mr Soekoe and Mr Samuels testified that it would be difficult to prescribe any specific steps. Mr De Witt conceded that the most diligent maintenance of the sewerage system is no guarantee that such an occurrence would be prevented. A sewerage system can be unblocked today and a similar blockage as in this instance can occur hours thereafter, resulting in the flooding of an apartment. The Plaintiff therefore failed to prove what reasonable steps

could have been taken to prevent or minimize the risk of harm in her particular case. To hold Defendants liable in this instance would imply that owners of property have a general duty to constantly check sewerage systems after every toilet is flushed. The recognition of such a duty would to my mind not be justifiable.

40. In my view the Plaintiff did not establish on the evidence a failure by Defendants to take reasonable steps which, if taken, would have prevented the flooding of her flat. Plaintiff has accordingly failed to discharge the burden of showing that Defendants were negligent.

In the premises the following order is made:

Plaintiff's claim is dismissed with costs.

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P L GOLIATH
ACTING JUDGE
(NORTHERN CAPE DIVISION)

Attorneys for the Plaintiff	HAARHOFFS
Counsel for the Plaintiff	**Adv. W. Coetzee**
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