

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG DIVISION, JOHANNESBURG

Case number: 32935/2016

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
19/4/2018 DATE	<i>SM Wentzel</i> SIGNATURE

In the matter between:

BUUREN PLACE BODY CORPORATE

APPLICANT

AND

TRACY-LYNN SMITH

RESPONDENT

JUDGMENT

WENTZEL, AJ:

1. The respondent owns a property in a complex controlled by the the applicant.
2. The applicant seeks an order compelling the respondent to demolish certain improvements she effected to her patio during December 2015, which it avers

were not authorized by it and for which she had not obtained the requisite municipal approval.

3. The respondent made enquiries during 2013 regarding what was required in order for her to effect certain alterations to her garage and patio in the complex. She was provided with guidelines that stated that an alteration or an improvement required 100% of the trustees' consent by round-robin resolution or 80% consent of the members at a special general meeting where 80% of the owners were represented.
4. The respondent avers that she obtained the requisite consent.
5. It would appear that the respondent's first request to effect these alterations was rejected. At a meeting of the trustees of the applicant held on 2 December 2013, the respondent's further application to effect the proposed alterations was discussed. The minute records that:

" the owner having re-submitted her request for certain alterations to be made to Unit 7, approval was forthcoming for the replacement/ refitting of the garage window and the required patio repairs."

6. Subsequent hereto, the managing agent of the complex informed the respondent that :

" As per our telephonic conversation. The extension approved was for the patio only."

7. The applicant contends that the word "*extension*" should be read as "*repairs*", notwithstanding that neither repairs nor extensions to the patio had, when properly construed, been requested. What had been requested, when properly construed, was that certain alterations be effected to the patio.

8. The approval granted had been preceded by an application by the respondent submitted to the managing agent enclosing pictures of the repairs and alterations that she envisaged doing. This made it clear that what was envisaged was to :
 - 8.1. Repace the patio roof;
 - 8.2. Relace the metal poles with brick pillars;
 - 8.3. Re-tile the floor.
9. None of the intended works could reasonably be regarded as repairs.
10. Accepting that she had consent to effect the works, however they were described, to her patio, but not her garage, the respondent set about effecting the repairs during December 2015, when she was in position to take leave and had sufficient funds to effect the proposed alterations.
11. However, when she commenced the works, the trustees instructed her to cease as she did not have the requisite authorization. The respondent insisted that she had the required consent and thus, refused to cease her building operations.
12. The respondent contends that even if it was not intended that she be given consent to effect alterations to her patio, she reasonably acted on the information furnished to her by the managing agent that the required consent had been given and the applicant is accordingly estopped from denying same.
13. The applicant contends that this aside, the respondent required approval by the Municipality of her proposed building plans before she could have proceeded with her alterations.
14. The respondent contends that whilst she admits that she did not obtain the Municipality's prior consent, she has been precluded from obtaining their subsequent consent as the applicant has refused to consent thereto rendering it impossible for her to obtain the required consent.

15. I do not accept that the applicant did not intend to grant the respondent to effect the alterations to her patio as reflected in the diagram that accompanied her application. That did not in any way reflect that only repairs to the floor tiles of the patio be effected. It was quite clear that what she requested was to alter her patio in the manner reflected in the diagram. No restrictions were placed on the consent granted and there was no question of the managing agent not having consent to convey the decision of the Board of Trustees to the respondent.
16. Although the guidelines may have required that the building plans for the proposed alterations be approved by the Municipal Authorities, the respondent waived their right to insist on compliance with this guideline in approving the proposal submitted by the respondent without qualification. It also did not require that the respondent obtain the consent of 100% of the members and cannot now *ex post facto*, after it had granted the requisite consent, insist that either of these independent requirements be complied with. Should the respondent's members contend that this consent was not properly given as it required the consent of all the members, this is an issue between the members and the applicant.
17. What is clear is that the respondent reasonably acted on the consent given to her and it would be manifestly unjust to require her to demolish the alterations effected by her to her patio.
18. In the circumstances, I have no hesitation in dismissing the applicant's application with costs.



SM WENTZEL, AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Counsel for the applicant: WC Carstens instructed by Karen Bliejs attorneys
Counsel for the respondent: C. J Nieuwenhuys instructed by Botoulas Krause & Da
Silva Inc
Date of hearing: 31/1/2018
Date of Judgment: 19/04/2018

