

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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THE BODY CORPORATE OF THE SECTIONAL TITLE SCHEME SEASCAPES v C A FORD & OTHERS

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

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The Supreme Court of Appeal today dismissed an appeal against a judgment of the Cape High Court concerning an application by the appellant, being the body corporate of the Sectional Title Scheme Seascapes, for a notarial agreement between it and owners of neighbouring properties to be declared invalid.

The Sectional Title Scheme Seascapes is situated in Sea Point East, Cape Town. The scheme, as it now stands, required departures from the provisions of the applicable town planning scheme. Neighbouring property owners objected to these departures but eventually agreed to withdraw their objections in return for an undertaking by the developer, Faircape Property Developers CC, to register servitudes over six parking bays in the development in favour of neighbouring properties. As a result consent to the required departures was obtained and the project was completed.

In terms of the Sectional Titles Act the owners ie the members of a body corporate may by special resolution direct the body corporate to execute on their behalf a notarial agreement burdening the land shown on the relevant sectional plan with a servitude. A special resolution may be adopted at a general meeting of the body corporate or may be agreed to in writing by 75% in number and value of the members. Before they became members of the body corporate, the requisite majority of the members, who were purchasers at the time, and who were aware of the agreement with the objectors, agreed in writing to the registration of servitudes in respect of six parking bays in favour of the neighbouring property owners and authorised the developer to give effect to the resolution. Subsequent to the opening of the sectional title register and to the purchasers who agreed to the resolution, having become members of the appellant the developer procured the execution and registration of the required notarial agreement.

However, the appellant thereupon applied for the notarial agreement to be declared invalid on the ground that the developer did not have authority to enter into the agreement on behalf of the appellant. It contended that non-members and not members had agreed in writing to the registration of the servitudes. The SCA dismissed this submission and held that by not having revoked their agreement in writing the agreement in writing of non-members became the agreement in writing of members when the non-members became members.

In terms of the resolution agreed to the developer was authorised to register a notarial agreement as per a draft agreement annexed to the resolution. However, the notarial agreement as registered differed in certain respects from the draft agreement. The appellant submitted that assuming that the developer had been authorised to conclude the draft agreement on behalf of the appellant it had no authority to conclude an agreement which differed from the draft agreement. The SCA held that it is apparent from a reading of the draft agreement that the intention was not that the notarial agreement should be in the exact same terms as the draft agreement. It concluded that on a proper interpretation of the resolution the developer had been authorised to enter into the notarial agreement.