



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 18 March 2011
STATUS Immediate

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

Croxford Trading 7 v The Body Corporate of the Inyoni Rocks Cabanas Scheme no ss1/11978 (174/2010) [2011] ZASCA 27 (18 March 2011)

The Supreme Court of Appeal (SCA) dismissed an appeal against an order of the KwaZulu-Natal High Court, Pietermaritzburg. This appeal concerns a developer's right of extension, which permits a developer to add a further phase or phases to a sectional title development.

A sectional title scheme, known as Inyoni Rock Cabanas was registered in 1978. The Sectional Titles Act 66 of 1976 was applicable at this time. The developer, Inyoni Beach Apartments (Pty) Ltd owned a unit in the scheme and reserved to itself the right, which it had recorded in a conveyer's certificate, to extend the development. The certificate was registered in the developer's name on 13 October 2003, after the Sectional Titles Amendment Act 15 of 1993 had taken effect.

In 2003 the developer transferred the unit to the first appellant. The Deed of Cession, in terms of which the developer purported to transfer the right of extension to the first appellant, was registered on 16 July 2004. So, at the time of registration the developer no longer owned the unit and thus had no interest in the common property of the scheme.

The respondent applied to the high court for a declaratory order directing the Registrar of Deeds to cancel the Deed of Cession. The first appellant in turn brought a counter-application asking for an order declaring that the right of extension vested in it.

The court held that the developer disposed of its unit in the scheme after the 1993 Amendment had taken effect and thus ceased to have an interest in the common property. Thereafter, it purported to transfer its right of extension to the first appellant by a notarial Deed of Cession but was unable to do so because the existence or exercise of a right of extension was dependant upon its continued ownership of the relevant unit. It followed that the high court was correct in granting the declaratory order to the respondent, and refusing it in the case of the appellant.

Therefore, the SCA dismissed the appeal with costs.