

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

DATE:

23 APRIL 2008

CASE NUMBER:

5983/2007

5 In the matter between:

BODY CORPORATE

WALE STREET CHAMBERS

APPELLANT

and

RICHARD JOHN KUHN

1ST RESPONDENT

10 ALICE THERESA O'BRIEN

2ND RESPONDENT

JUDGMENT

DAVIS, J.:

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This is an application which has been brought by the body corporate of a sectional title scheme known as Wale Street Chambers. In the founding affidavit in support of the relief, Mr Cudlip, the chairman of the body corporate describes the premises as follows:

"Wale Street Chambers consists of 296 registered sections. 40 of these are used as office premises, 26 are used as storerooms, 8 are used as retail premises, 1 is used as a penthouse and 221 are parking bays. Wale Street Chambers is therefore

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an office block providing good quality office accommodation storage of a limited nature and parking facilities to it occupants. The office's is situated in Wale Street Chambers and include offices of attorneys, accountants, investment companies, surveyors and certain local government departments. Wale Street Chambers is not used as and is not intended for use as industrial premises or as premises where welding, metal work and other industrial processes are carried out."

It appears to be undisputed that first respondent has conducted a welding and other metal work business in a storeroom in the building. The allegation, which is made in the founding affidavit and admitted by first respondent, is to effect that "He uses the premises as business workshop here in Cape Town". He has expressly admitted that "the business with welding and repairs for the Greenmarket arose, because people saw me and asked me to do some work fixing little piece of iron for their canopies"

The first aspect of relief which has been sought is an interdict preventing first respondent from continuing with this metalwork, welding and repair business in the storeroom. It is brought on two bases, namely; that this activity constitutes a

nuisance and secondly that it is in manifest reach of the rules of the body corporate.

As Mr Oosthuizen, who appeared on behalf of the applicant, submitted, it is clear from the description in the founding papers that Wale Street Chambers is an office block. It is not intended for the use of a workshop where welding and metal cutting are performed. The storage rooms on the premises were intended to meet the storage requirements arising for the use of the offices, that is for storage of items such as files and office stationary and other superfluous equipment and items of furniture which may not be required on a day to day basis.

First respondent has employed one of the storerooms and two adjacent parking bays, which he is entitled to use, however, for a completely different and incompatible purpose, namely the welding of trolleys of street vendors and the provision of storage at a monthly rental, a type of mini storage facility where street vendors can overnight store their trolleys and goods.

Since these activities are not denied by first respondent that they do constitute a nuisance. As the courts have said, and I refer here in particular to: Advokate Vereniging (TPA) v

Moskeeplein 1982 (3) SA 159 (T) at 163 where Eloff, J.,

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referring to the De Charmoy case observed the nuisance can be tested on the basis of one

“Who according to the ordinary standard of comfort and convenience and without any peculiar sensitivity to the particular noise would find it if, not quite intolerable, a serious impediment to the ordinary and reasonable enjoyment of his property”

Eloff, J then referred to the Restatement of the Law of

10 Torts:

“The standard for determining the substantiality of such invasions is a standard of normal persons in the particular locality. If normal persons living in the locality would regard the particular situation as definitely offensive or annoying then invasion is substantial.”

In addition to the conclusion that welding and metal work in an office block constitutes, in the eyes of a reasonable person, a form of nuisance, I also agree with Mr Oosthuizen that the rules of the body corporate, and the powers of the body corporate as such, entitled that body to ensure that the building is employed for the purposes for which it was intended, which clearly does not include a metal working business, notwithstanding that first respondent describes it as

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“a Mickey Mouse operation”; that is a small and fairly trivial business.

Significantly, in argument before this court, Mr Kuhn who
5 represented (first respondent) accepted that his metalwork and
welding business had to come to an end insofar as it was
conducted from the premises of Wale Street Chambers. He
agreed to desist from further conduct of this business as from
30 June 2008.

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The second issue which flows from the relief sought turns on
first respondent’s alleged abuse of the security system. It is
undisputed on the papers that each owner or tenant is entitled
to access to the building by way of a remote control and that
15 further or visitors to Wale Street Chambers are required to
report to reception desk. Obviously these requirements which
are intended to preserve the security of the building under the
present climate which operates in South Africa are reasonable
and understandable.

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The papers also indicate that the first respondent had
tampered with and forced open the rolling door at the entrance
to the garage, instructed a third party to override the security
access system and permitted his clients to gain access to the
25 building without reporting to reception desk in the main foyer.

Although the answering papers are hardly a model of clarity, having been prepared by first respondent as a layperson, it is clear that this conduct did take place as alleged and accordingly these allegations are not placed in dispute.

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A further issue arises as to the employment by first respondent, of at least one of his two bays designed as a parking bay for a vehicle, for the storage of trolleys which apparently are employed by vendors at Greenmarket Square.

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If a range of vendors are entitled to park their trolleys in a bay which was intended for a motor vehicle, the volume of such 'trolley' traffic by way of parking of trolleys in the building, raises the potential compromise of the security system of Wales Street Chambers.

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It is my view, that whilst first respondent is perfectly entitled to use a parking bay which he owns, or which he has leased for any motor vehicle, either his own or owned by a person duly authorised by him, it would be incorrect to allow these parking bays to be used for the storage of a plethora of trolleys.

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Two further issues arise. First respondent brought a counter claim in the amount of R1 800 450 and for ancillary relief. I informed the first respondent that a claim of this nature could

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not be brought by way of an application, but only by way of an action. If he wished to pursue his claim he would have to launch a properly considered action for the amount which he has so claimed and the other relief which he wishes to obtain from applicant. I will therefore say no more about the counter application.

The final question arises as to costs. Ordinarily costs follow results and the applicant is entitled to its costs. It is also true that in this particular matter first respondent has hardly been shy in making a whole range of remarks of a negative and derogatory fashion about members of the body corporate and the manner in which the matter was conducted. But he is clearly a man of limited means, acting on his own and I feel sure that had an attorney advised him properly, this matter could have been resolved long before it went to court. Whilst Mr Oosthuizen is correct that it is unarguable that the costs will be born by the sectional title holders of the Wale Street Chambers rather than first respondent, the truth is that the bulk of the costs would be born by them anyway, given the tariff which applies. Furthermore I have some sympathy for a litigant who in a sense is alone and ill advised in that he was not afforded proper legal advice.

For these reasons the following order is made:

1. First respondent is prevented as from any time after the 30th of June 2008 from conducting any metal work, welding, manufacturing or repair business from the premises known as section 287 Wale Street Chambers or any other part of the building known as Wale Street Chambers.
2. First respondent is directed to comply with all such conduct rules as made from time to time applying to Wale Street Chambers. In order to comply with such order, first respondent shall be provided with a copy of the conduct rules and any such amendments as may be made from time to time.
3. First respondent is interdicted and prevented from:
 - 3.1 Tampering with or endeavouring to alter in any manner the access control system installed at Wale Street Chambers.
 - 3.2 Using the Berg Street entrance to Wale Street Chambers for any purpose other than:
 - 3.2.1 Entering or leaving the building in any motor vehicle parked by first respondent or by any person duly authorised by him in a parking bay section owned by or leased to him.

3.2.2 Moving goods stored in section 287 into
or out of the building.

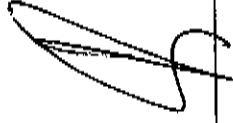
3.3 In any way blocking access to any parking bay
section in the building which is not owned by or
lease to him

3.4 Any way interfering with the security personal
employed by the body corporate at Wale Street
Chambers

3.5 Utilising sections 275 and 287 of Wale Street
Chambers in any manner which conflicts with the
zoning scheme currently applicable to Wale Street
Chambers.

4. There is no order as to costs.

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DAVIS, J

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