

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO.:

10278/2006

DATE:

3 OCTOBER 2008

5 In the matter between:

CLUB MYKONOS LANGEBAAN LIMITED

Applicant

and

THE LANGEBAAN COUNTRY ESTATE JOINT

VENTURE

1st Respondent

10 OWEN WIGGINS (LANGEBAAN) (PTY) LTD

2nd Respondent

BASFOUR 3632 (PTY) LIMITED

3rd Respondent

THE SALDANHA BAY MUNICIPALITY

4th Respondent

THE LANGEBAAN COUNTRY ESTATE

HOMEOWNERS ASSOCIATION

5th Respondent

15 THE MEMBER OF THE EXECUTIVE COUNCIL
OF TRANSPORT AND PUBLIC WORKS,

WESTERN CAPE

6th Respondent

THE MEMBER OF THE EXECUTIVE COUNCIL
OF ENVIRONMENTAL AFFAIRS AND
20 DEVELOPMENT PLANNING, WESTERN CAPE

7th Respondent

JUDGMENT

Leave to Appeal

KOEN, AJ:

/ds

I shall continue to refer to the parties as I did in the judgment which was delivered on 24 July 2008. On 14 August 2008 an application for leave to appeal was filed by the developer. This was followed by an application dated 15 September 2008 in which the developer sought the variation of the order made, it being contended that the order was ambiguous in certain respects. I have been advised that this latter application is not being proceeded with.

10 After a date for the hearing of the application for leave to appeal had been arranged an application was filed by the municipality for the variation of paragraph 70(4) and paragraph 70(5) of the order which was made in this matter.

15 It is contended in that application that these paragraphs should be varied in order to provide that the liability of the developer and the Municipality respectively, for payment of CML's costs should be joint and several. I do not think that the order is ambiguous in this respect. It cannot be suggested that the developer should
20 pay costs incurred by CML in, for example, perusing correspondence from, or drafting correspondence to, the municipality's attorneys. Similarly the municipality cannot be liable for costs incurred by CML when its attorneys, for example, perused correspondence from and addressed correspondence to

/ds

the developer. CML will have to prepare two bills of costs, one for taxation against the developer and one for taxation against the municipality. It is the intention of the order that two thirds of the taxed costs in respect of each bill should be payable by the parties liable for such payment. To the extent that certain costs may overlap, for example counsels' fees for the day spent in Court, there can obviously not be a double recovery but this is an issue for the taxing master to resolve in the exercise of his discretion, and not one for the Court.

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In regard to the application for leave to appeal I am quite satisfied that this is a matter in which LEAVE TO APPEAL ought to be GRANTED. The parties have prepared a draft order by agreement between them. I have been furnished with a copy, and I therefore make an order in terms of the draft which I will initial and mark "X" for identification purposes.

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KOËN, A.J