



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: 12 November 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Chapman's Bay Estate Home Owners' Association v Lötter and Others (525/2023) [2024] ZASCA 153 (12 November 2024)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal against a decision of the Western Cape Division of the High Court, Cape Town (the high court).

Mr Lötter, the respondent in this appeal, approached the Community Schemes Ombud Services (the CSOS) seeking an order prohibiting the Chapman's Bay Estate Home Owners' Association (HOA), the appellant, from imposing penalty levies on him as a subsequent owner in terms of clause 9.10 of the HOA's constitution. Clause 9.10 provided that penalty levies were payable to the HOA if a dwelling on a property was not completed within three years from the date of transfer of the property from the developer. Mr Lötter acquired the property on 29 January 2021, approximately four years after it was transferred from the developer to the previous owner, and completed building his house without delay. Despite this, the HOA continued to impose penalty levies on him from the date he received the transfer, even though the previous owner had duly paid the penalty levies imposed on him.

His complaint before the CSOS was that imposing penalty levies on subsequent owners who were not to blame for non-completion of a dwelling within the three-year period stipulated in clause 9.10 was unfair. This argument was at odds with the contention of the HOA that penalty levies attached to the property and not a person or owner, which is why subsequent owners ought to be held liable to pay penalties as long as the dwelling has not been completed on the property. According to the HOA, the purpose of the clause is to encourage all owners to build timeously. Therefore, the HOA argued, that the clause should be interpreted in such a way that the purpose is not rendered nugatory.

On 5 May 2022, the adjudicator who is the third respondent, ruled in favour of Mr Lötter. The HOA appealed to the high court. The high court rejected the HOA's arguments. It nevertheless granted the HOA leave to this Court as the outcome was still unsatisfactory, hence this appeal.

In dismissing the appeal, the SCA held that the language of the clause was clear; the HOA is entitled to impose penalty levies only upon owners who purchased properties directly from the developer; subsequent owners did not acquire transfer directly from the developer; the reading-in of the words into the clause was not legitimate; to serve the purpose the HOA argued for, redrafting of the clause was required; and the purpose of the clause could not override the reasonable meaning of the text employed seen in the context of the constitution as a whole.

Lastly, the SCA further confirmed the high court's finding that whether the clause was unfair, unreasonable, or harsh was irrelevant.

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