



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

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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

The Body Corporate of San Sydney v Shivani Singh and Others (779/2023) [2024] ZASCA 169 (9 December 2024)

The Supreme Court of Appeal (SCA) today, in part upheld an appeal by the Body Corporate of San Sydney (the body corporate) against a judgment of the KwaZulu-Natal Division of the High Court, Durban (the high court). It directed each party to the appeal to pay its own costs. The order of the high court was set aside and substituted with an order directing the respondents to sign whatever consent is required for the body corporate to obtain a Certificate of Real Right in respect of the extension of the San Sydney Sectional Title scheme by the addition of three buildings that have been erected on the common property of the scheme, and to it exercising that right itself. Should the respondents fail to sign such consent in whatever format required by the Registrar of Deeds, the Sheriff of the high court was authorised and directed to sign the written consents on behalf of the respondents.

The judgment considers various provisions of the Sectional Titles Act 95 of 1986 (the STA) and the Sectional Titles Schemes Management Act 8 of 2011 (the STSMA) which find application when a body corporate of a sectional title scheme wishes to dispose of the right to extend the scheme, which vests in it, to a third party.

The appeal has its origins in the conundrum faced by the body corporate when the developer, which has since been liquidated, erected a further three sections on the common property of the scheme, after the initial right to extend the scheme, which the developer had reserved to itself had been fully performed, had lapsed, and when it had no right to do so. In an attempt to regularise the position, the body corporate resolved that the right of extension to complete the buildings and for the registration of the sectional title register to incorporate the three units, vested in it and should be sold and ceded to a third party, HF Property Investments (Pty) Ltd (HFP).

To achieve that result it had to obtain a certificate of real right in respect of the extension of the scheme in terms of section 25(6) of the STA, which it could then transfer by cession to HFP. These two acts required the written consents of all owners of units in the scheme, and all mortgagees in respect of such units, as contemplated in section 5(1)(b) of the STSMA. Section 5(1)(b) provides that such consents may not be withheld without good cause in law.

The first respondent, Ms Shivani Singh, who owns one of the units did not provide her consent when requested. The body corporate contended that her failure to grant her approval was without good reason in law. She however maintained that she had good reason to withhold her approval because the sale of the right of extension entailed an alienation of part of the common property of the scheme, which required a unanimous resolution of the members, and that such resolution

had not been obtained. Further she contended that she had not been provided with adequate information to decide whether she should consent, and accordingly that her failure to consent was not without good reason in law. She was successful in the high court.

The SCA found that the alienation of the right to extend would not involve an alienation of common property and did not require a unanimous resolution. It however agreed with the high court that the refusal of the consent to the alienation and cession of the right to extend, was not without good cause in law. Insufficient information had been communicated to render the failure to consent as being without good reason in law. The appeal accordingly had to fail in that respect.

Both the body corporate and Ms Singh were to blame for not co-operating more fully with each other to deal with this unique problem. Hence, they were each directed to pay their own costs.

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