



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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The Body Corporate of Marsh Rose v Steinmuller and Others (149/2022) [2023] ZASCA 143 (2 November 2023)

The Supreme Court of Appeal (the SCA) today upheld an appeal against an order of the full court of the Gauteng Division of the High Court, Johannesburg (the full court) which confirmed an order of the high court, directing a body corporate to issue a clearance certificate to permit transfer of a unit in the sectional title scheme.

Mr Steinmuller (who was the first respondent in the appeal) purchased a unit in the Marsh Rose sectional title scheme at a public auction in January 2018. The property had been attached and sold in execution by Standard Bank of SA Ltd (Standard Bank) pursuant to a judgment obtained against the registered owner of the property. The conditions of sale stipulated that in addition to the purchase price, Mr Steinmuller was obliged to pay 'all levies' due to the Body Corporate of Marsh Rose (the body corporate). When Mr Steinmuller was informed of the amount payable, he objected. He called for a detailed account. A detailed ledger was provided by the body corporate. Mr Steinmuller objected to the interest charges, and legal costs which were included. He called for proof by the body corporate of resolutions entitling it to raise interest, and documents proving the amounts due. The body corporate refused to provide the information sought on the basis that Mr Steinmuller was not the registered owner of the property.

Mr Steinmuller brought an application in the high court to direct the body corporate to take all steps necessary to give transfer of the property. He tendered provision of security for the payment of amounts due to the body corporate pending resolution of an action by the body corporate to claim payment from him of amounts proved to be due. The tender of security was made to meet the requirements of s 15B(3)(a)(i) of the Sectional Titles Act 95 of 1986 (the Act).

Section 15B(3)(a)(i)(aa) provides that the registrar of deeds shall not register the transfer of a unit in a sectional title scheme unless there is produced a conveyancer's certificate confirming that the body corporate has certified that 'all monies due' by the transferor have been paid or that provision has been made for payment.

The high court granted an order compelling the body corporate to furnish the certificate. It ordered Mr Steinmuller to pay an amount of R250 000 into his attorney's trust account. This amount was to be held in trust as security for payment of the amounts due to the body corporate. The high court ordered the body corporate to institute either action proceedings or an arbitration claim against Mr Steinmuller within 10 days of the order to permit the determination of the amount due to it.

The body corporate appealed to the full court. The full court, in a split decision, dismissed the appeal, thereby confirming the high court's order.

Special leave to appeal was granted by the Supreme Court of Appeal (the SCA). At the hearing of the appeal, the National Association of Managing Agents NPC (NAMA), applied for leave to intervene in the appeal. NAMA averred that it represented a significant number of managing agents of bodies corporate. Its members had a direct interest in the interpretation of s 15B(3) of the Act and its application in circumstances such as the present. It averred that the order of the high court would have profound consequences for bodies corporate and that it would render the statutory embargo protection ineffective.

The SCA granted an order admitting NAMA as a co-appellant. It ordered Mr Steinmuller to pay the costs of opposition to the application.

Regarding the merits of the appeal, the SCA found that the position and interests of the parties was regulated by Rule 46 of the Uniform Rules. The Sheriff was empowered by a court order permitting execution to sell the property by public auction. Standard Bank, as the execution creditor, was entitled to stipulate conditions of sale. The conditions of sale constituted the terms upon which Mr Steinmuller entered into the contract to purchase the property. The SCA held that the contract, as a matter of law, was concluded between Mr Steinmuller and the Sheriff. It stated that upon performance of his contractual obligations, Mr Steinmuller was entitled to cancel performance by the Sheriff. Equally, it held the Sheriff was entitled to compel performance by Mr Steinmuller. Neither Standard Bank, nor the body corporate were parties to the contract.

The SCA held that Mr Steinmuller had no legal interest in the determination of the amount due to the body corporate. The debt owed to the body corporate was that owed by the registered owner of the unit.

The SCA further held that even if it was accepted that the conditions of sale obliged Mr Steinmuller only to pay 'levies' rather than 'all monies' due to the body corporate, that the contractual term did not limit the statutory right conferred upon the body corporate by s 15B(3)(a)(i)(aa). Mr Steinmuller's claim to transfer, assuming compliance with his contractual obligations, lay against the Sheriff and not the body corporate.

The SCA further held that the high court order compelling the body corporate to give transfer was not competent, since the body corporate was not the owner of the property. In any event, the transfer of the property was regulated by Rule 46 since it involved a court ordered sale by the Sheriff as an executor of the law. The SCA held that the broader question of provision of security did not arise. It stated that the order requiring the body corporate to institute action against Mr Steinmuller to recover what was due to it, was unsustainable since the body corporate had no cause of action against Mr Steinmuller.

The SCA therefore upheld the appeal. It replaced the high court order with one dismissing the application with costs, including those of two counsel.

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