



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

Flower Foundation Pretoria Homes for the Aged NPC v Registrar of Deeds, Pretoria and Others (942/2020) [2022] ZASCA 8 (20 January 2022)

The Supreme Court of Appeal (SCA) today dismissed an appeal brought by Flower Foundation Pretoria Homes for the Aged NPC (the appellant). The appeal was dismissed with costs, including the costs of two counsel.

The appeal was against the decision of the Gauteng Division of the High Court, Pretoria (the court a quo) dismissing the application by the appellant to declare that the transaction between the appellant and DIY Systems and Projects (Pty) Ltd (DIY Systems) selling part of a property, over which a housing development scheme was registered, does not transgress the provisions of s 4B of the Housing Development Schemes for Retired Persons Act 65 of 1988 (the Housing Development Schemes Act).

The issue in this appeal was whether the court a quo was correct in refusing to grant the declaratory orders sought by the appellant. Central to this was whether s 4B of the Housing Development Schemes Act prohibited the appellant from alienating the proposed portion 1 of the property to DIY Systems without the consent of the life-right holders. This issue involved the interpretation of the Housing Development Schemes Act.

The summarised facts were as follows. The appellant was the registered owner of Erf 578, Groenkloof Extension 1 (the property). During 2001, the appellant established a housing development scheme on the property. The title deed was endorsed as such in terms of s 4C(3) of the Housing Development Schemes Act on 5 July 2001. During April 2015, the second to fifth respondents (the respondents) purchased a lifelong right of occupation in respect of unit 41, garage 9 on the property. On 22 and 27 February 2018, the appellant had general meetings with the life-right owners. The purpose of the meeting was for the appellant to inform the life-right owners of the intention to sell a portion of the property. The appellant sought consent of the life-right owners in terms

of s 4B of the Housing Development Schemes Act. Notwithstanding the fact that the majority of life-right holders withheld their consent, the appellant entered into a deed of sale and option agreement with DIY Systems in around July 2018.

The SCA found that the housing development scheme was established on the entire property and not just a portion thereof. There was only one property and one title deed. The agreement of sale between the appellant and the respondents recorded that the appellant has established a housing development scheme for retired persons of the age of 60 years or older over the property. The sale agreement recorded that the respondents were to pay a monthly levy in respect of the maintenance of the entire property and not only a portion of the property they occupy. If the scheme was intended to be used for residential purposes on part of the property only, the endorsement against the title deed would have stated that.

The SCA found further that the text of s 4B must be interpreted purposively. The Housing Development Schemes Act was intended to provide protection to the life-right owners against possible exploitation by a developer. Section 4B clearly prohibited the appellant from alienating the proposed portion of the property without the 75% consent of the life-right owners.

Accordingly, the SCA dismissed the application and held that the consent of the life-right owners was required. With regard to legal costs, the SCA held that the respondents were entitled to their costs, because their extensive dealing in their answering affidavit with the issue of the impact that the proposed DIY Systems development would have on the life-right holders' daily lives and activities was relevant, reasonable and justified.

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