

/LVS
IN THE HIGH COURT OF SOUTH AFRICA
(TRANSCAPE PROVINCIAL DIVISION)

DATE: 15 OCTOBER 2008

CASE NO: 34675/08

In the matter between:

SP&C CATERING INVESTMENTS (PTY) LTD

APPLICANT

vs.

**THE BODY CORPORATE OF WATERFRONT MEWS
THE REGISTRAR OF DEEDS**

1st RESPONDENT

2nd RESPONDENT

**NATALIE ANN POP & MARK MOUREEN SAMODIEN
AND 15 OTHER RESPONDENTS**

3rd RESPONDENT

JUDGMENT

BOTHA J:

The applicant appeals against an order in which I dismissed its application to extend the reservation of a right reserved in terms of section 25(1) of Act 95 of 1986.

Mr SJ du Plessis SC, who with Mr Van der Merwe, appeared for the applicant, raised arguments that were not raised when the application was argued.

I shall accept, in spite of the protestations of Mr Saint, who appeared for the respondents, that the arguments are legal arguments capable of being raised on the papers.

The arguments are:

□ **a)** that the period of reservation referred to in Section 25(1) does not circumscribe the right but only the time within which certain buildings must be erected:

that the court has an inherent power to interpose its authority in matters of land registration and;

□ **b)** that on an application of the maxim *lex non cogit ad impossibilia* the period of the reservation of the right could not run when it was impossible for the applicant to exercise its right.

In terms of section 25(1) a developer may, in his application for the registration of a sectional title "reserve the right to erect and complete from time to time but within a period stipulated in such condition, for his personal account -

- **a)** a further building or buildings,
- **b)** a horizontal extension of an existing building,
- **c)** a vertical extension of an existing building (my underlining)

I detect no indication in section 25(1)(a) that there is a dichotomy between the right and the period within which erection and completion may be effected from time to time. Everything must be erected and completed within the period stipulated in the condition. In my view the conclusion is inescapable that the period stipulated is nothing other than the life span of the right.

I may add that if the right to the applicant is not of a limited duration, the prayer for its extension makes no sense.

For the argument that the court has a general discretion to interpose its authority in matters relating to the registration of land, reliance was placed on the case of **Ex parte Millsite Investments Co (Pty) Ltd 1965(2) SA 582T**. That case related to the deletion of restrictive conditions. It is, in my view, no authority for the proposition that a court has the authority to extend a real right where its duration is limited in time.

In respect of the argument based on *lex non cogit ad impossibilia*, I was referred to **Montsisi v Minister van Polisie 1984(1) SA 619 A**. That case

concerned a situation where the court found that a statutory period within which notice of an action must be given does not apply to a person who is by law prevented from taking legal steps for the duration of his incapacity.

The analogy is inapt. There is no question of the applicant having been incapacitated in the exercise of its right. Such obstacles as there were in its way were of a relative nature. In principle there was no legal or insurmountable physical impediment to the exercise of its right

For all these reasons I am of the view that the application for leave to appeal should be dismissed.

It is dismissed with costs.

C. BOTHA

JUDGE OF THE HIGH COURT