

AMENDING A HOA MOI THAT IS DETRIMENTAL TO THE MAJORITY...

SUMMARY OF JUDGEMENT: SUMMARY OF JUDGMENT IN THE HIGH COURT OF SOUTH AFRICA

Court Information

- **Court:** High Court of South Africa, Gauteng Division, Pretoria
- **Case No:** 46115/21
- **Date of Judgment:** 18th December 2023
- **Judge:** C.J. Collis

Parties Involved

- **Applicants:**
 - Crystal Ball Properties 65 (Pty) Ltd - Registration Number: 2006/027260/07
 - Allan Robert Dawson
 - Micro-Therm Close Corporation - Registration Number: 1993/019501/23
 - Maghan 27 Close Corporation - Registration Number: 2002/068466/23
 - Lidia Ferreira
 - Werner Botha
- **Respondents:**
 - Landsmeer Home Owners' Association NPC - Registration Number: 2004/031410/08
 - Food Fair (Pty) Ltd - Registration Number: 1973/016741/07

Nature of the Case

This case involves an **opposed application** in which the Applicants sought relief concerning a Special Resolution adopted by the first Respondent (Landsmeer Homeowners' Association) on 10 June 2021. The resolution aimed to amend the HOA's Memorandum of Incorporation (MOI), specifically concerning the developer's (the second Respondent's) obligations to pay levies.

Relief Sought by Applicants

The Applicants requested the following:

- **Declaration of Oppressive Conduct:**
 - They wanted the court to declare that the Special Resolution's results were oppressive and unfairly prejudicial to their interests, as per Section 163(1)(a) of the Companies Act, No. 71 of 2008.
- **Amendment of MOI:**
 - A final order for the company to amend its MOI to remove the offending clauses regarding levy payments.
- **Set Aside Agreements:**
 - They sought to set aside any agreements that exonerated the second Respondent from paying certain levies.
- **Costs:**
 - They requested that the Respondents be liable for the costs of the application.

Background of the Case

- **Special Resolution Adoption:** The special resolution adopted on 10 June 2021 altered the MOI concerning the developer's obligations to pay levies, leading to significant division among HOA members. The developer, which held a majority of voting power, supported the amendment, while the Applicants opposed it.
- **Division Among Members:** The Applicants were concerned that the resolution allowed the developer to avoid paying levies for an extended period, resulting in substantial financial implications for the HOA and its members.
- **Historical Context:** Before the resolution, the developer was obligated to pay levies. The amendment absolved the developer from this obligation for a defined period, which the Applicants argued was unfair and detrimental to their interests.

Key Findings

- **Oppressive Conduct:** The court found that the adoption of the special resolution was indeed oppressive and unfairly prejudicial to the Applicants' interests.
- **Legal Interpretation:** The judgment discussed the implications of the Heritage Hill decision, which clarified developers' obligations regarding levy payments. The court ruled that developers are liable for levies even for unsold erven.
- **Power Abuse:** The court noted that the Erasmus brothers, who controlled the majority of votes, were abusing their power to benefit themselves financially at the expense of other members.
- **Court's Authority:** It was confirmed that under Section 163 of the Companies Act, the court has the authority to amend the MOI to protect members' interests in cases of oppressive conduct.

Conclusion and Order

The court ruled in favour of the Applicants, granting the following orders:

- **Declaration of Oppressive Conduct:** The Special Resolution was declared oppressive and unfairly prejudicial.
- **Regulation of Company's Affairs:** An order was made to amend the MOI by removing the offending clauses.
- **Cost Orders:** The first and second Respondents were ordered to pay the Applicants' costs, including those for Senior Counsel.



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