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SUMMARY OF JUDGEMENT: PIETER JACOBUS DE WET N.O. & OTHERS V WATER'S EDGE HOME OWNERS ASSOCIATION

Court Information

- **Court:** High Court of South Africa (Western Cape Division, Cape Town)
- **Case No:** A110/2022
- **Date of Judgment:** 24th August 2022
- **Coram:** Justice J Cloete et Acting Justice S Hockey

Representation

- **For Appellants:** Adv D Van Reenen, instructed by Lionel Murray Schwormstedt & Louw, L Villet.
- **For Respondent:** Adv J P Steenkamp, instructed by GVS Attorneys, Ben Groot

Background

This case involves an appeal from the Cape Town regional court, concerning three consolidated actions against the Water's Edge Home Owners Association (the respondent). The appellants include:

- Pieter Jacobus De Wet N.O.
- Lorraine De Wet N.O.
- Nicolaas Jacobus Landman N.O.
- Deon De Kock N.O.
- Ronkem Properties (Pty) Ltd

The primary issues at stake revolve around the validity of penalty levies imposed on the appellants for failing to construct properties within a specified timeframe.

Key Issues

The appeal focused on three main grounds:

1. Validity of Penalty Levies:

- The appellants argued that the respondent's trustee committee lacked the authority to impose penalty levies without a general meeting of the members.
- The decision made on 22 September 2010 to impose these levies was claimed to be ultra vires (beyond legal power).

2. Ratification of Earlier Decision:

- The appellants contended that a general meeting held on 29 April 2013 to ratify the earlier decision was invalid due to improper notice and voting issues.

3. Excessiveness of Penalty Levies:

- Lastly, in case the first two grounds failed, the appellants sought a reduction of the penalty levies under the Conventional Penalties Act, asserting that the penalties were excessive.

Judgement

Decision on Grounds of Appeal

• Validity of Trustee Committee's Decision:

- The court found that the trustee committee had the authority to impose penalty levies. The interpretation of the constitutions of the respondent and the Big Bay Beach Estate Owners Association (BBOA) supported this conclusion. The term "association" could refer to the governing body, which in this case was the trustee committee, not just the members in general meeting

• Ratification Meeting:

- The court ruled that the ratification meeting was legally inconsequential, as the trustee committee had the power to impose penalties without requiring a general meeting for ratification

• Excessiveness of Penalties:

- The court held that the appellants did not substantiate their claim that the penalties were disproportionate to the prejudice suffered. The levies had been imposed progressively and were deemed appropriate given the context of the luxury estate

Conclusion

The High Court dismissed the appeals and ordered that the appellants pay the respondent's costs on an attorney-and-client scale. The court emphasized the need for maintaining the integrity of the community's regulations and the deterrent effect of the penalty levies.

Order Made

- The appeals are dismissed.
- The appellants are to pay the respondent's costs jointly and severally, on the scale as between attorney and client



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