

SUMMARY OF THE JUDGMENT

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>> PROPERTY LAW UPDATE

MAKE USE OF INTERNAL REMEDIES!

Christina Friederike CC v Quartet Body Corporate and Others (2013/19206) [2016] ZAGPJHC 35 (2 March 2016)

The judgment deals with the mud-slinging between two sectional title owners regarding renovations to their units and leaks allegedly caused as a result. The court cautions that before a final interdict is sought, parties should make sure to first exhaust available internal remedies provided in the scheme's rules, as a final interdict is a drastic remedy and will not be granted without more.

The Judgment can be viewed [here](#).

FACTS

The dispute in this matter arose amongst two owners in a sectional title scheme comprising of only 4 units.

The owner of unit Nr 2, the Christina Frederike CC (the CC), sought a final interdict against the owners of Unit Nr 1 (Bartz-Siebrits) to the effect that the latter remove, at their own cost, a wetlands pool filtration system and accessories from the roof common to the two units as this caused leakage to Unit Nr 2 or at least hampered the CC from accessing the area to have the apparent leak repaired.

Bartz-Siebrits denied that the system was the cause of the alleged leak in the CC's unit and in a counter claim, sought an order requiring, amongst other things, the repair or removal of a defective skylight in the CC's unit which allegedly caused water inflow into their unit, and removal of an enclosure of an upstairs flower box at the CC's unit which was allegedly constructed without proper authorisation.

HELD:

- It appeared that both the CC and Bartz-Siebrits effected improvements to their respective units without obtaining proper authorisation from the body corporate.

Has a case been made for the granting of permanent mandatory relief?

- A permanent interdict is a drastic remedy which is not granted lightly and an applicant must exhaust other remedies at its disposal before seeking an interdict.
- The court has a discretion whether or not to grant an interdict. When exercising this discretion, the court balances the relative convenience and prejudice caused to both

parties.

- Before a permanent interdict can be granted, the party seeking the interdict must demonstrate that he/she has a clear right that is protectable by interdict; that an injury or infringement of the clear right has actually been committed or that it is reasonably apprehended; and that there is no alternative remedy.
- Applying this criteria, it was not disputed that the CC had a clear right to the maintenance of the integrity of its unit. However, the CC had not shown that the leak in its unit was caused by water leaking from the wetlands filtration unit. It also had not demonstrated that it exhausted other remedies such as seeking enforcement of the internal rules by the body corporate or pursuing an action for damages.
- Similarly, with regard to Bartz-Siebrits' counterclaim, they had shown that they had a clear right. However, they had not shown that this right had to be enforced through a permanent interdict. The alleged violations ought to have been enforced by having recourse to the body corporate for the enforcement of its rules and municipal building by-laws.

As a result the CC's claim was dismissed, so too Bartz-Siebrits' counterclaim.

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