

SUMMARY OF THE JUDGMENT

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>> PROPERTY LAW UPDATE

ROAD RULES IN HOMEOWNERS' ASSOCIATIONS: NEWS!

Singh and Another v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC) and Others (AR575/2016) [2017] ZAKZPHC 48 (17 November 2017)

To make provision for its residents, be it the elderly, those enjoying the availability of golf carts or the owners generally, many homeowners' associations have rules regarding the use of roads within the estate. Owners are bound to the rules by virtue of conditions in the sale agreement in terms of which they purchased their homes. But roads commonly used by the public are 'public roads' and regulated by the provisions of the National Road Traffic Act, with the Minister as authority to make rules regarding use thereof and exceptions. Does this trump the homeowners' association's rules?

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

FACTS

This matter deals with an attack on the validity of certain rules of a homeowners' association (the HOA). The rules became binding on owners when they bought properties in the estate. The sale agreements, in each instance, provide that on purchasing a property in the estate, the purchaser acknowledges that there is an HOA in existence of which the purchaser will become a member and that there are 'estate rules' that he/she must comply with.

The rules in question were those of the Mount Edgecombe Country Club Estate. This gated complex consists of in excess of 890 freehold and sectional title residential developments which include extensive common property, consisting of open areas, dams, ponds, rivulets, water features, community facilities, roads and other infrastructure. The common facilities on the estate include a golf course, clubhouse and a function venue; it also provides facilities for various sporting activities, including squash, tennis, fishing and bowling. The estate has gated access points which are controlled by guards and is serviced by a network of roads which are situated upon erven registered in the name of the HOA.

Mr Singh's daughter was fined for contravening the rules relating to speeding on the roads in the estate and the management withdrew his (and his family's) biometric access facility to the estate as the fine remained unpaid. Further altercations arose between Singh and the HOA regarding prescribed times that domestic personnel were allowed to enter and leave the estate. In this regard, the rules provided that domestic personnel had to make use of dedicated minibus transport, provided by the HOA, and could not generally use the

roads in the estate; their access was restricted to between 6am and 6pm and they could only “walk on the estate between the residence where working that day and their gate of exit”.

When the matter was first heard in the Pietermaritzburg High Court (the court *a quo*), that Court held, amongst other things, that the contractual nature of the relationship between the HOA and Mr Singh (and other owners) was determinative of the dispute. Simply, that since Mr Singh, on purchasing a property in the estate and agreeing to be bound to the rules of the association, he must consider himself bound thereto and act in accordance; and that, on the face of it, the rules were not invalid.

Regarding the limitations on the movement of domestic employees in the estate, the Court held that these rules were not unreasonable, taking into account the security aims of the estate management.

Singh appealed the matter and argued that the estate should not be allowed to issue speeding fines to motorists driving in the estate as it did not have the authority to do so under the Road Traffic Act. He also argued that the rules relating to the movement of domestic personnel were inappropriate.

HELD:

Road use rules in the estate

- The issues raised in this judgment bring into play the demarcation of public and private law and their impact, if any, on the regime of certain conduct rules that exist in the HOA estate.
- The roads, albeit owned by the HOA, are ‘public roads’ as these are defined in the National Road Traffic Act 93 of 1996 (the ‘NRTA’).
- In terms of section 2 of the NRTA, it “*shall apply throughout the Republic: Provided that any provision thereof shall only apply to those areas of the Republic in respect of which the Road Traffic Act 1989 (Act 29 of 1989), did not apply before its repeal by section 93, as from a date fixed by the Minister by Notice in the Gazette.*” In addition, the definition provides that a ‘public road’ means “*any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access.*”
- The fact that the roads were ‘public roads’ meant that certain public law consequences followed (and that it could not be said that the application of the rules

are confined to the contractual relationship between the parties only).

- Inherent in the concept of a public road was that the public had access to it, and that the regulatory regime was a statutory one, as prescribed by the NRTA. Chapter IX of the NRTA contained various provisions having a bearing on the road rules as formulated and implemented by the HOA. In fact, only the Minister of Transport or someone authorised by him (as provided for in the NRTA) had the power to regulate any aspect of public roads. In the context of this matter it was significant that section 57(6) of the NRTA obliged private bodies (such as the HOA) to seek permission for regulating traffic on and access to public roads from the MEC and/or the municipality concerned. It was common cause that the HOA in the present matter did not apply for such permission at any stage. This failure rendered both the rules and the contractual arrangement with its members illegal.
- The rules relating to traffic control within the estate were thus against public policy because it was in direct conflict with the relevant provisions of the NRTA. The HOA and its members could not contract out of the obligations imposed by legislation (and the NRTA, in this instance). A contractual arrangement could not remedy such an illegality.

Rules relating to movement of domestic personnel

- By the same token, the rules limiting or restricting the domestic employees' access to the public roads, had to be rejected as invalid insofar as it appeared that domestic employees are not free to traverse the public roads in the estate save in the limited manner provided by the HOA's Rules.
- From a constitutional point of view their rights in this regard were severely restricted.
- The restrictions placed on domestic employees with regard to their movements on the roads in the estate, flow from a misconceived notion on the part of the HOA that it is entitled to exercise usurped control over the public roads in the estate through its conduct rules. To the extent that these rules restricted the rights of domestic employees from freely being on and traversing public roads in the estate, they were unreasonable and unlawful.

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