

## SHARE BLOCK SCHEME- PROBLEMS WITH SWOPPING SHARES IN A GARAGE

**Moosa v Albemarle Court Share Block (Pty) Ltd and Others (AR390/2019, 9987/2014) [2020] ZAKZPHC 15 (22 May 2020)**

*Difficulties present when a share block with certain allocated rights are sold to a new purchaser without a physical identification of the area sold, as this judgment illustrates. Here the seller sold a share block and use agreement which granted access to a garage with the number 28, but which lacked any reference to a particular physical garage which was swapped with another shareholder in the meantime. What did the buyer purchase?*

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

### FACTS

Mrs Boote was the owner of a block of shares of a specific class (class 29) which entitled her to the use of flat 29 in Albemarle Court. In addition, she owned another block of shares of a different class which entitled her to the use of garage 28 (class 69).

Whatever the *physical* location of garage 28 may have been, it was clear that the share block allocated to Mrs Boote was an 'inside' garage at the time, as opposed to others that were situated outside the building.

On 3 June 2004 Mrs Boote, knowing that she was about to sell her share block shares, concluded a written agreement with Mrs Maharaj, a neighbour in Albemarle Court, to swap the garages which had hitherto been allocated to them, and which they had used for some considerable time. This agreement was concluded in writing and the numbers above the garage doors were swapped. (The swapping of garages had been taking place at Albemarle since 1993.) The swop of shares owned by Mrs Boote and Mrs Maharaj respectively was never registered. It did however occur with the consent of Albemarle Court.

The next day, on 4 June 2004, Mrs Boote sold her class 29 shares (for the flat) and class 69 shares (for the garage) to Mrs Moosa. Mrs Moosa purchased those shares having never viewed the property. At a later date, she arrived at the property and was shown the outside garage which now had the number '28' above the door.

Some ten years later, in April 2014, Mrs Moosa decided to let flat 29 and the outside garage to a tenant. A few days later, Mrs Moosa received a letter from the managing agents of Albemarle Court. The letter referred to the swapping of garages and as shareholders, she was asked to confirm the location of the garages so as to assist them to have the cession and share certificate documents reflect the correct position.

Mrs Moosa then indicated that she had not checked the garage allocation and that the garage used by her was allocated to her upon her purchase of flat 29. She reserved the right to claim the correct garage '*should that be different to the garage currently allocated*'. She subsequently claimed the inside garage which had previously been allocated to Mrs Boote, before her swop with Mrs Maharaj. This led to the application in the Court *a quo* where Ms Maharaj sought, amongst other things, a declaratory order regarding her ownership of the relevant class of shares regarding garage 28 (the original inside garage 28). The Court dismissed the application and Mrs Maharaj appealed.

### HELD

- The principal factual issue in the application was whether Mrs Moosa had established that she was entitled to a garage in a different position to the one she purchased in 2004.

- The case brought by Mrs Moosa required no determination of the *physical* location of the garage. Mrs Moosa knew and accepted that she had purchased an outside garage, both at the time of concluding the agreement and for the next ten years. She thus obtained that for which she had bargained.
- In any event, the rights relied upon by Mrs Moosa arose from her agreement with Mrs Boote who was not joined in the application. No agreement was concluded between Mrs Moosa and Mrs Maharaj.
- What then was the legal right relied upon by Mrs Moosa? Her case was that she purchased 35 fully paid-up class 69 shares, which shares entitled her to the exclusive use of the garage allocated to those shares.
- It is clear from the 1935 Municipal Plan put up by Mrs Moosa, the sale agreement - itself the cession, the Securities Transfer Form and the Transfer Duty Declaration, that Mrs Moosa purchased shares entitling her to the use of garage 28. The problem was that there was no certainty as to what physically constituted garage 28 when she purchased her shares.
- According to the numbers allocated to the shares as reflected in the share certificates in the papers, Mrs Boote sold to Mrs Moosa the same shares which she claims she owned prior to the 3rd June 2004 (the date when she swapped shares with Mrs Maharaj).
- What then was the effect of the swap agreement, if the shares were never transferred? As Mrs Moosa now owns the shares, there is no prospect that she would agree to the share register being changed. But how does that fact nullify the rights acquired by Mrs Maharaj? The rights of use to the property assigned to the shares passed from Mrs Boote to Mrs Moosa on the sale of the shares cannot be greater than the rights that Mrs Boote held, and she believed she would only have had the rights to an outside garage after her agreement with Mrs Maharaj.
- What has actually occurred is that, instead of changing the share block and the share allocations, Albemarle Court changed the use or allocation plan which should form an annexure to the articles.
- Accordingly, the learned judge *a quo* was correct in dismissing Mrs Moosa's claim to the inside garage, because the case made did not accurately identify the garage, the use to which had in any event been given to Mrs Maharaj.

## CONCLUSION

The appeal was accordingly dismissed with costs.