

RIGHT TO EXTEND: SOLD BUT NOT RESERVED

Maxiprops 1041 (Pty) Ltd v Gauteng Master Builder Association and Others (22327/2018) [2020] ZAGPPHC 198 (27 May 2020)

A tricky question arose in this judgment. In terms of a sale agreement, the purchaser bought both a unit and a right to extend from the developer of a sectional title scheme. The right to extend was never formally reserved (by application in the deeds office). When the purchaser later sought to exercise this right, the members of the body corporate refused consent, which led to an application to court. No success yet for the purchaser, as the Court found that the purchaser did not have the required *locus standi*. Read the judgment to find out why.

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

FACTS

Maxiprops 1041 (Pty) Ltd (Maxiprops) purchased immovable property from the original owner and developer of the Construction Park sectional title scheme. The sale agreement included the sale of a right of extension as indicated on the approved sectional plan of the scheme. The agreement provided that the purchaser (Maxiprops) must apply on behalf of the seller, at the purchaser's cost, for the issue of a certificate of Real Right in terms of section 25(6) of the Sectional Titles Act (the STA).

The real right was not reserved and accordingly the real right had vested in the Construction Park Body Corporate (the body corporate) in terms of section 25(6) of the STA.

In 2017 Maxiprops sought to enforce its rights in terms of the deed of sale to extend a certain building. The body corporate thereupon informed its members that they were required to sign the necessary consent form to issue a Certificate of Real Right by virtue of section 25(6) of the STA, read with Section 5(1)(b) of the Sectional Title Schemes Management Act (STSMA) to give effect to the alienation, cession and transfer of the right in favour of Maxiprops; and to consent and sign the necessary consent form to issue and register a Notarial Cession of Real Right.

Certain members of the body corporate refused to sign the consents and Maxiprops thereupon approached the Pretoria High Court for relief so that it could enforce its rights in terms of the sale agreement. The main challenge raised in the application was the question whether Maxiprops had *locus standi* (the necessary legal standing) to bring this application.

HELD

- Section 25(6) of the STA reads as follows:

“(6) If no reservation was made by a developer in terms of subsection (1), or if such a reservation was made and for any reason has lapsed, the right to extend a scheme ... shall vest in the body corporate which shall be entitled ... to obtain a certificate of real right in the prescribed form in respect thereof: Provided that the body corporate shall only exercise or alienate or transfer such right with the written consent of all the members of the body corporate as well as with the written consent of the mortgagee of each unit in the scheme: Provided further that a member or mortgagee shall not withhold such approval without good cause in law.”

- What must be determined in this application is whether or not Maxiprops, as an owner of property in the sectional title scheme, has the requisite standing to bring the present application in the light of the provisions of section 25(6) of the STA.

- By ordinary interpretation of section 25(6), the body corporate can only exercise or alienate or transfer its right upon obtaining written consent of all of the members of the body corporate. This provision deals specifically with the consequences of the real right when it has failed to be reserved or such right has lapsed. Further, by virtue of Maxiprops's failure to apply for a Certificate of Real Right from the Registrar of the Deeds office as agreed in the Deed of sale, caused the right lapsed and now vested in the body corporate. The provision is clear that once the right reverts to the body corporate, the body corporate has the prerogative to exercise or alienate or transfer the real right, such exercise subject to the written consent of all of its members.
- The refusal of some members of the body corporate raised the question whether such refusal permits Maxiprops to bring the present application. The answer is no, as this would be contrary to the clear provisions of section 25(6) of the STA. In fact, in the present matter the body corporate had initiated the necessary steps to comply with the provision by communicating to the other members that their consent was required.
- Before an owner can have the necessary *locus standi* to approach a court for relief it must in any event comply with section 41 of the STA (which was repealed and substituted with a similar provision in the STSMA) which provides the owner with an internal remedy to resolve a dispute. This section confirms the body corporate mandate and sets out the requirements which an aggrieved owner must exhaust, as follows:

"41 Proceedings on behalf of bodies corporate - (1) When an owner is of the opinion that he and the body corporate have suffered damages or loss or have been deprived of any benefit in respect of a matter mentioned in section 36 (6), and the body corporate has not instituted proceedings for the recovery of such damages, loss or benefit, or where the body corporate does not take steps against an owner who does not comply with the rules, the owner may initiate proceedings on behalf of the body corporate in the manner prescribed in this section.

(2) (a) Any such owner shall serve a written notice on the body corporate calling on the body corporate to institute such proceedings within one month from the date of service of the notice, and stating that if the body corporate fails to do so, an application to the Court under paragraph (b) will be made.

(b) If the body corporate fails to institute such proceedings within the said period of one month, the owner may make application to the Court for an order appointing a curator ad litem for the body corporate for the purposes of instituting and conducting proceedings on behalf of the body corporate."

- The law is clear and required that Maxiprops ought to have served a notice on the body corporate in terms of section 41. It was not exempted from doing this by claiming entitlement of rights as a party to the Deed of Sale.

CONCLUSION

The application therefore failed as Maxiprops could not show that it had the necessary *locus standi*.