

Real Estate Law

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Transparency and co-operation should be the first steps in resolving real estate disputes

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Transparency and co-operation should be the first steps in resolving real estate disputes

On 9 December 2024, the Supreme Court of Appeal (SCA) handed down judgment in *The Body Corporate of San Sydney v Shivani Singh and Others* (779/2023) [2024] ZASCA 169 (9 December 2024) in terms of which the order of the KwaZulu-Natal Division of the High Court, Durban was set aside and substituted with an order directing the respondents to sign whatever consent was required for the body corporate to obtain a certificate of real right in respect of the extension of the San Sydney Sectional Title scheme by the addition of three buildings that had been erected on the common property of the scheme, and to it exercising that right itself. Furthermore, should the respondents fail to sign such consent in whatever format required by the Registrar of Deeds, the Sheriff of the High Court was authorised and directed to sign the written consents on behalf of the respondents.

The SCA's judgment explored the relevant provisions of the Sectional Titles Act 95 of 1986 (STA) and the Sectional Titles Schemes Management Act 8 of 2011 (STSMA). These statutes are crucial when a body corporate seeks to obtain a certificate of real right to extend a scheme and to exercise, alienate and transfer such right to a third party. In this case, the body corporate found itself in a tricky situation when the developer, who had since been liquidated, built three additional buildings on the common property, after the original right to extend the scheme had expired.

To rectify the situation, the body corporate elected that the right of extension to complete the buildings and for the registration of the sectional title register to incorporate the three units, vested in it and should be sold and ceded to a third party, HF Property Investments (Pty) Ltd (HFP). To

facilitate this transaction, with the real right of extension having vested in it, the body corporate sought to obtain the issue of a certificate of real right of extension and the cession thereof to HFP.

However, in this instance, the body corporate would require the written consent of all unit owners and the mortgagees of the units within the scheme, as outlined in section 25(6) of the STA read with 5(1)(b) of the STSMA. These sections stipulate that such consent cannot be withheld without "*good cause in law*". Shivani Singh, a unit owner and the first respondent, refused to provide her consent. She argued that she had not been provided with sufficient information and that the sale of the right of extension effectively constituted an alienation of common property, which required a unanimous resolution from all members – a resolution that had not been obtained.



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The SCA's finding

The body corporate contended that Singh's refusal to consent was without good cause and argued that the sale of the real right of extension did not amount to an alienation of common property. The High Court agreed with Singh, but the SCA found differently in part. The SCA determined that the sale and cession of the extension rights did not involve an alienation of common property and, therefore, did not require a unanimous resolution. Nevertheless, the SCA concurred with the High Court that the refusal to consent was not without good cause due to the lack of sufficient material information provided to Singh.

As a result, the appeal failed on this "*good cause in law*" ground, and both parties were found to be at fault for not co-operating more fully with each other to resolve the issues at hand. Consequently, the SCA ordered each party to bear its own legal costs. The impact of this ruling goes beyond the immediate parties and the outcome thereof, emphasising the importance of transparent governance in sectional title schemes.

Additionally, the judgment highlights broader issues of trust and collaboration within community ownership structures. The court noted that poor communication, lack of transparency and the absence of constructive engagement between parties could lead to misunderstandings and distrust, particularly in financial matters and property rights. Consequently, the SCA recommended the use of alternative dispute resolution mechanisms, as well as processes afforded in terms of the Community Schemes Ombud Services Act 9 of 2011, prior to seeking legal recourse, encouraging all parties to promote transparency, co-operation and mutual understanding.

**Simone Franks, Asisipho Kozana
and Ashleigh Solomons**



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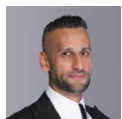
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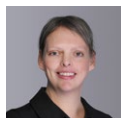


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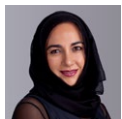
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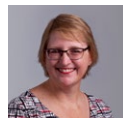
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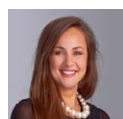
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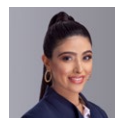
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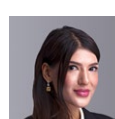
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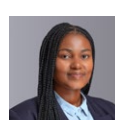
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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