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REAL ESTATE ALERT

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CLIFFE DEKKER HOFMEYR

Sectional Title Owners – is common property yours to fight for?

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Can individual owners of units in sectional title schemes institute proceedings in respect of activities occurring on common property within a sectional title scheme? In *Spilhaus Property Holdings (Pty) Limited and Others v MTN and Another* [2019] ZACC 16, the Constitutional Court questions whether the Sectional Titles Act, No 95 of 1986 (STA) deprives an owner in a sectional title scheme of the legal standing to enforce its rights in respect of a zoning scheme regulation where such breach of the zoning scheme regulation occurs on the common property.

In *Spilhaus*, the erection of structures had occurred on the common property in a sectional title scheme, which structures were not in accordance with the zoning scheme regulations imposed by the local authority and therefore were illegal. The applicants (being individual owners in the scheme) sought to remedy this by applying directly to the High Court for an order to remove the said erections.

The court *a quo* considered the respondent's argument, being that the applicants lacked legal standing to institute proceedings. The respondents relied on the provisions of s41 of the STA (now s9 of the Sectional Titles Schemes Management Act, No 8 of 2011 (STSMA)), which section states that an owner may only initiate proceedings on behalf of the body corporate when such owners and the body corporate have suffered damages or loss or have been deprived of any benefit in respect of a matter mentioned in s36(6) of the STA (s2(7) of the STSMA) and the body corporate has not instituted proceedings for the recovery of such damages or loss. In this instance, the said owner must serve written notice on the body corporate calling on it to institute action, failing which the owner may make application to the court for an order appointing a curator *ad litem* to act for the body corporate (hereinafter referred to as the *Proceedings Provisions*). The court *a quo* held that the applicants lacked legal standing in this matter.



Sectional Title Owners – is common property yours to fight for?...continued

On appeal, the Constitutional Court remarked that in the event that the Proceedings Provisions are capable of various interpretations, an interpretation which promotes access to justice should be preferred.

On appeal, the Constitutional Court (CC) firstly remarked that in the event that the Proceedings Provisions are capable of various interpretations, an interpretation which promotes access to justice should be preferred. However, the CC analysed the application of the Proceedings Provisions, and held that said provisions in fact did not apply to the matter at hand. Thus, the CC did not rule on whether an individual owner lacks legal standing on matters which fall within the ambit of the Proceedings Provisions. However, it did remark that entirely excluding an individual owner from approaching a court for relief would effectively result in 'stripping thousands of sectional Title Owners of standing in all matters' where the Proceedings Provisions applied.

The CC held the applicants' claim was a self-standing claim, and that their legal standing flowed from a zoning scheme regulation which was imposed

for the protection of the interests of all surrounding owners, including that of the applicants. The CC held that the applicants had sufficient legal standing to institute such proceedings as a result of the fact that they sought to enforce the zoning scheme regulation that was passed in their interest as owners of the property where the zoning scheme regulation applies.

The *Spilhaus* judgment makes it clear that there are indeed circumstances in which individual owners in sectional title schemes will be able to institute proceedings in respect of common property, to the exclusion of the body corporate. Such circumstances would appear to include, amongst others, those in relation to zoning, town-planning and building laws, neighbour and/or nuisance laws, and other such regulations or laws where the owners' interests are affected.

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