

Monday Contemplation No 28

Changing my windows in a sectional title scheme

Here is **an interesting case relating to renovations of a section in a sectional title scheme**. It is a relatively new case dating back to 2019 and is very instructive.

The facts of the case in Body Corporate Le Chene D'Or v Sohail Carim and Shablam Haroon Carim (30507/2017) [2019] ZAGPJHC 17 are as follows:

On **4 July 2017**, the Respondents (Carim) purchased Unit 1 in the Sectional Title Scheme known as Body Corporate Le Chene D'Or.

During August 2017 and following their purchase of the unit in July 2017, the Respondents, being the new owners, became members of the body corporate.

On 24 August, they bound themselves to the Conduct Rules of the Applicant. Once they had become members of the scheme, they sought to make certain improvements, alterations and extensions to their unit. According to the Applicant (body corporate), since **the improvements and/or alterations involved demolition** of certain walls within the unit, the trustees made a request to the Respondents that before commencement of such works, they be provided with an engineer's certificate confirming that the structural integrity of the building would not be compromised.

In response, the Respondents (Carim) provided the Applicant (body corporate) with an engineer's report. The trustees were not satisfied with the engineer's report. Consequently, they declined to provide written consent to the Respondents to commence demolition of the internal walls within their unit.

In **October 2017**, the Respondents proceeded to demolish the internal walls within their unit notwithstanding the lack of consent from the trustees.

On **2 November 2017**, the Respondent sought permission to combine 2 windows that were positioned next to each other. On the **16th of November 2017**, it was discovered that the Respondents had, without permission, **broken through an exterior common property wall**.

On the same date, **16 November 2017**, the Applicant delivered a letter to the Respondents demanding that they:

7.1 Immediately cease and desist with all structural alterations to the interior of the section until the applicant has satisfied itself that the structural integrity of the building had not been affected;

7.2 To immediately cease and desist with all alterations (structural or otherwise) to the exterior common property of the section until such time as the members have consented to such alterations;

7.3 Not to proceed with any extension unless and until they have complied with section 5(1)(h) of the Sectional Titles Act.

In an e-mail message dated **17 November 2017**, the Respondents confirmed that structural changes had been suspended. Despite this and prior to the Applicants engineer submitting a report, the Applicant discovered that the Respondents had broken another window on **21 November 2017**.

Subsequent to **sending a 'court warning letter'** to the Respondents on the 22 November 2017, the Applicant discovered that further external windows were removed and that the respondents had changed the features of their glass door leading out onto the patio from their lounge.

In the ensuing court case, the Respondents (Carim) contended that the Applicant (body corporate) had breached its obligations and specifically obligations imposed by the Conduct Rules in that they have failed to provide regulation, management, administration, use and enjoyment of sections and common property.

The Respondents said that they had substantially complied with the Conduct Rules and the relevant legislation. On the contrary, the Applicant had acted mala fide (in bad faith) and unreasonably by not consenting to the proposed alterations.

The body corporate argued that it had a clear right and an obligation towards the members of the body corporate to ensure that the harmonious appearance of the scheme remains intact.

The right and obligation are **imposed upon the applicant** by virtue of the Sectional Title Schemes Management Act, the Sectional Titles Act and Conduct Rules.

The judge referred to Section 24 of the Sectional Titles Act, which provides:

"(1) If an owner of a section proposes to extend the limits of his section, he shall with the approval of the body corporate, authorised by a unanimous resolution of its members, make application to the local authority for approval of the proposed extension of his section."

The judge also referred to the conduct rules of the body corporate which said:

"Changes to the external appearance of a unit with building alterations or painting is not permitted without the written approval from the Trustees and the requisite plans being passed by the municipal authorities. Standards to ensure uniformity have been established for the exterior appearance of the building and must be adhered to by all residents."

"No structural alterations, which may affect the stability of the building or any other units, or the common property, shall be effected to the interior of any unit by any owner, without the prior written approval of the trustees."

The judge ordered the Respondents (Carim) to restore the property back to how it was originally and that any future alterations could only occur with strict compliance to the Conduct Rules of the Scheme and the provisions of the Sectional Titles Schemes Management Act 8 of 2011 and the Sectional Titles Act 95 of 1986, insofar as it is applicable.

It is clear that an owner may not just proceed with a renovation. Every owner must adhere to the relevant legislation. The trustees are well within their rights to ensure compliance with the legislation and rules of the Scheme; in this case, the harmonious appearance rules.

Very expensive lesson to learn for an owner that did want to adhere to the rules!