Cases

New:

Abraham and Another v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC) (7124/12) [2014] ZAKZDHC 36 (17 September 2014)

The Associations' rules stated that written permission was required if an owner wanted to keep dogs on the premises, which cannot be unreasonably withheld. Furthermore the dog "must be small and not be of a known aggressive breed. In regard to the size of dogs, they should be of a breed which will not exceed 20 kg when fully grown." The Abrahams bought a St Bernard dog and sought to keep it on the premises, which permission was denied. It was argued that they had a legitimate expectation that they would get approval to keep the dog after discussions with a representative of the Association told them approval was a 'mere formality,' and further that the association had a discretion to allow him to keep a large dog, despite the rules of the association providing to the contrary. It was held that no legitimate expectation resulted as no facts were presented to show that the representative had any authority or apparent authority to bind the Association to a decision or to relax any of its rules. It was also found that the Association had no discretion to register a dog of a non-aggressive breed which will exceed the 20 kg limit when fully grown, except in the truly exceptional case presented by guide dogs for the blind. Where persons bind themselves voluntarily to the rules of associations when becoming owners, a contract comes into existence to which they are boun

Algar v The Body Corporate Of Thistledown and others NPD 24-02-2003 case no 575/02.

In this case the judge examined the phrase "adversely affected" as used in section 32(4) of the Sectional Titles Act, 1986. He found that in deciding whether a person has been "adversely affected" all the facts and circumstances must be taken into account and not only the fact that a particular member has had to pay more by way of a levy. He applied this principle by finding that the applicant had not been adversely affected by a rule that modified the effect of the PQs so that the cost of maintaining the common property was shared equally amongst the members of the body corporate.

New:

Body Corporate of Costando v Kiggundu and Another (12811/2013) [2014] ZAGPPHC 676 5 September 2014)

Mr and Mrs Kiggundu fell into arrears with their monthly levy payments to the Costando Body Corporate. Default judgment was granted for an amount just exceeding R5,000, followed by the issuing of a warrant of execution in respect of movable property, but the Sheriff found inadequate assets to cover the outstanding debt. The Body Corporate obtained an interim order for Mr and Mrs Kiggundu's sequestration. Nedbank (who held two bonds over property of the Kiggundus) opposed the application to make the order final in thay it had not been shown that there will be any benefit to the body of creditors. It was held that, taking the values of the outstanding amounts under the various bonds into account, it was doubtful that there would be sufficient residue from which to discharge the costs of winding up Mr and Mrs Kiggundu's estate. Less intrusive measures, such as those provided in terms of section 65 of the Magistrate's Court Act, was available to the Body Corporate to recover the money owing. The court held that the Body Corporate did not establish that there was reason to believe that sequestration would be to the advantage of creditors and dismissed the application.

New:

Buffelsdrift Game Reserve Owners Association v Holkom and Others (58258/2013) [2014] ZAGPPHC 789 (7 July 2014)

The constitution of the HOA had a rule that prohibited the keeping of domestic cats and dogs. A few owners, including one of the trustees of the HOA, did however keep domestic animals for several years. The HOA approached the court for a final interdict to oblige those owners to permanently remove the pets from their properties. The pet owners argued

that the HOA had waived its rights to enforce its constitution by allowing owners to keep pets for such a long time. The court found that the HOA did not furnish proof that it has a clear right, that it will suffer injury or harm if the order is not granted, and that there is no other suitable remedy because, amongst other things, harm or injury is not constituted merely because there was a breach or infraction of the HOA rules. Furthermore, it was shown that there was another suitable remedy as it was resolved by the HOA to establish regulations for the keeping of pets. The HOA was aware that there were domestic animals on some properties for some 8 years, and only sent a letter of demand to the various owners several years after. There was at least an 8 year period in which the HOA showed no intention to enforce its constitution. This acquiescence can be a bar to an applicant's attempt to enforce a right that he had omitted to enforce over a period of time. In the circumstances, the court held that the HOA by its conduct had waived its right to seek legal recourse to prevent the owners from keeping animals on their properties

De La Harpe v Body Corporate Bella Toscana [2014]

An owner sued the body corporate to force it to demolish and rebuild a badly built and failing wall that enclosed her exclusive use area. The court dismissed the defence that the applicant had held a s25 right and herself arranged for the building of the wall. It considered, by reference to various cases, and commented on the inappropriateness of the applicant's prior application for the appointment of an administrator to take charge of the situation and rebuild the wall. The judge considered the issues of the definition of an exclusive use area and ultimately rejected the applicant's claim on the basis that she was the only person deriving a benefit from it. This case is interesting because it deals with important sectional title management issues, but on the face of the judgement a number of the legal conclusions are

Lindsay v Trustees of the Charleen Body Corporate [2007] JOL 18373 (N)

When the body corporate refused to do so, an owner carried out repairs and maintenance and then brought arbitration proceedings under PMR 71 to recover her costs. The body corporate refused to participate in the arbitration, arguing that the proceedings were invalid. The owner approached the High Court to have the award in her favour made an order of the court. The court dismissed the body corporate' objections and granted the application on the basis that the body corporate should have participated in the arbitration proceedings to present its arguments. Having chosen not to do so, it was held to be bound to the award.

Paganelli vs Beisheim and Others [2014]

In this unreported case the applicants wished to install larger kitchen windows in their section. The essence of the dispute between the parties revolved around who has the power to make the decision that the windows can be replaced. The Judge decided that the answer to the principal question turned on who owns each of the windows and the associated walls. The applicants contend that what is proposed to be done falls within the ambit of Conduct Rule 4 and that such an alteration is permitted with the prior written consent of the trustees. The first respondent contended that the proposed alteration to the window can only be carried out under Management Rule 33. The Judge discussed the difference between luxurious and non-luxurious improvements. It was decided that the alterations to the window proposed by the applicants may be undertaken (a) by the applicants with the prior written consent of the trustees as contemplated by Conduct Rule 4 and with due regard to the provisions of Management Rules 68(1)(iii) and (iv); or (b) by the trustees with the consent of the applicants, under Management Rule 33(2).

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