THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Case No: 302/08

DEON DU RAND NO	**First Appellant**
ANDRÉ DU RAND NO	**Second Appellant**
JOHAN DU RAND NO	**Third Appellant**
ELIZABETH SUSANNA DU RAND NO	**Fourth Appellant**
ELMARIE BOTES NO	**Fifth Appellant**
F G J WIID	**Sixth Appellant**

and

THE FAERIE GLEN RENAISSANCE SCHEME	**Respondent**

Neutral citation:	Du Rand NO v Faerie Glen Renaissance Scheme (302/08) [2009] ZASCA 122 (28 September 2009)
Coram:	STREICHER, LEWIS, SNYDERS JJA, LEACH and BOSIELO AJJA
Heard:	21 AUGUST 2009
Delivered:	28 SEPTEMBER 2009
Summary:	Applicability of Housing Development Schemes for Retired Persons Act 65 of 1988 to a sectional title scheme.

ORDER

On appeal from: Pretoria High Court (Visser AJ sitting as court of first instance).

The following order is made:

The appeal is dismissed with costs.

JUDGMENT

SNYDERS JA: (Lewis JA, Leach and Bosielo AJJA concurring)

[1] This case concerns a development scheme in terms of the Sectional Titles Act, namely the Faerie Glen Renaissance Scheme (the scheme).[1] The body corporate of the scheme, the respondent, applied to the Pretoria High Court to grant an amendment to some of its management rules. The application took an eventful procedural path - irrelevant for current purposes – and ultimately came before Visser AJ who granted an amendment to rules 1 and 2 in the terms sought at that stage.[2] Leave to appeal was granted by Visser AJ to this court.

[2] The first five appellants are the trustees of the Ameva Trust. The trust is the owner of one of the 150 units in the scheme and so is the sixth appellant. No other owner opposed any of the relief sought by the respondents. The opposition by the appellants to the amendments sought was long-standing and unrelenting with the result that it was common cause that it would have been impossible for the respondent to effect the amendments by way of a unanimous resolution as required by s 35(2)(a) of the Sectional Titles Act.[3] The respondent therefore approached the court in terms of s 1(3A) of the Sectional Titles Act, which authorises a body corporate

[1] The Sectional Titles Act 95 of 1986.

[2] Substantially more elaborate relief was sought in the notice of motion, but abandoned at the hearing of the matter.

[3] Section 35(2)(a): 'The rules shall provide for the control, management, administration, use and enjoyment of the sections and the common property, and shall comprise – (a) management rules . . . which rules may be substituted, added to, amended or repealed from time to time by unanimous resolution of the body corporate as prescribed by regulation;'

that is unable to obtain a unanimous resolution to 'approach the court for relief', subject to the provisions of s 1(3)(c).[4]

[3] In respect of the respondent's reliance on s 1(3A) the appellants strenuously argued three points: that the meeting held by the respondent on 22 November 2005 to obtain a unanimous resolution to amend the management rules, was not properly constituted; that the respondent was unable to show that a majority at that meeting authorised the respondent to approach the court in terms of s 1(3A); and that the respondent required the written consent of the appellants, as owners whose rights would be adversely affected by the amendments, before the court could be approached in terms of s 1(3A).

[4] In support of their first point the appellants submitted that, before the respondent could approach the court in terms of s 1(3A), it had to show that it attempted to obtain a unanimous resolution at a meeting where 80 per cent of all members of the body corporate (reckoned in number) and 80 per cent of all members (reckoned in value) - the percentages necessary for a unanimous decision in terms of s 1 - was present.[5]

[5] It is unnecessary to indulge in the detailed head and value count of attendees that the appellants embarked on. It is sufficient to state that the point arose because the counting was complicated by belated proxies to vote

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[4] Section 1(3A): 'If a body corporate is unable to obtain a unanimous resolution, it may, subject to the provisions of subsection (3)(c), approach the court for relief.'
Section 1(3)(c):'(3) For the purposes of the definition of 'unanimous resolution' in subsection (1) – . . . ; (c) where the resolution in question adversely affects the proprietary rights or powers of any member as owner, the resolution shall not be regarded as having been passed unless such member consents in writing thereto.'

[5] In s 1 'Unanimous resolution' is defined as 'a resolution – (a) passed unanimously by all the members of a body corporate who are present or represented by proxy or by a representative recognized by law at a general meeting of the body corporate of which at least 30 days' written notice, specifying the proposed unanimous resolution, has been given, and at which meeting at least 80% of all the members of a body corporate (reckoned in number) and at least 80% of all the members (reckoned in value) are present or so represented: Provided that in circumstances determined in the rules, a meeting of the body corporate may be convened for a date 30 days or less after notice of the proposed resolution has been given to all the members of the body corporate. . . .'

in cases where trusts were owners of units and by the attendance of couples of whom one voted without a proxy from the other. A head and value count is unnecessary as the Sectional Titles Act does not require a vote at a formally constituted meeting as a pre-condition to an approach to court for relief in terms of s 1(3A). The only requirement apparent from s 1(3A) read with s 35(2)(a) – ignoring the proviso in s 1(3)(c) for the moment – is a purely factual one, namely that the body corporate must have been unable to obtain a unanimous decision. Any variety of facts may be sufficient to persuade a court, at the hearing, of that. In this case the history of the attempts to amend the rules and the animosity between the appellants and the respondent overwhelmingly indicate that a unanimous decision was impossible. What is more, the parties were agreed on this. Therefore the factual requirement of s 1(3A) was satisfied and the court below was entitled to hear the matter on that basis.

[6] On the second point raised by the appellants a minor correction to the appellants' calculations of the number of attendees and votes at the meeting of 22 November 2005, to take account of couples that attended the meeting and one of them voted without a written proxy from the other, shows that a majority of owners attended and voted in favour of an application in terms of s 1(3A). In addition, the appellants have been the only two of 150 unit owners who have opposed the amendments. Since the litigation started during February 2006 nobody else has joined their cause. As in *Unlawful Occupiers, School Site v City of Johannesburg* 2005 (4) SA 199 (SCA) at 207H-I the question can be asked whether it is conceivable that the application would have been launched with the knowledge, but against the wishes, of the majority of the owners in the scheme. As in that case the question can be answered only in the negative. Furthermore, if the appellants seriously doubted whether the respondent had the authority to instruct an attorney to institute and conduct the proceedings on behalf of the respondent, the procedure in Rule 7(1) should have been invoked.[6] The reasons furnished in this judgment further illustrate that the trustees acted in the best interests of the body corporate by pursuing the amendments to rules 1 and 2.

[6] *Unlawful Occupiers, School Site* paras 24 to 29.

[7] The third point, the reliance on the absence of written consent in terms of s 1(3)(c) of the Sectional Titles Act, brings us to the merits of the appeal. The appellants' case is that the amendments to rules 1 and 2 seek to apply the Housing Development Schemes for Retired Persons Act (the Retirement Housing Act)[7] to the scheme for the first time with the result that their proprietary rights would be adversely affected.

[8] Rule 1 of the respondent's management rules, in its un-amended form, is rule 1 of the standard rules of any newly established sectional title scheme contained in annexure 8 to the regulations in terms of the Sectional Titles Act.[8] The amendment granted replaced the standard rule 1 with the following:
'Die Regspersoon Faerie Glen Renaissance is op 18 Augustus 2000 vir Deeltitelskema no. SS416/2000 ingestel volgens artikel 36(1) van die Wet Op Deeltitels Wet 95 van 1986. Die skema is geleë te Erf 3781, Faerie Glen, Uitbreiding 45, Pretoria, en is in 18 fases, elk met 'n eie deeltitelnommer, ontwikkel ooreenkomstig die bepalings van Wysigingskema 8270 van die Pretoria-dorpsbeplanningskema, 1974, wat onder andere bepaal dat wooneenhede opgerig sal word vir 'n afree-oord vir bejaardes.
(a) Vanweë die aard van die ontwikkeling as aftree-oord, is die Wet op Behuisingsontwikkelingskemas vir Afgetrede Persone, Wet 65 van 1988, ook van toepassing.
(b) Die Bestuursreëls van die Regspersoon van die Faerie Glen Renaissance Skema No SS 416/2000 is eenvormig van toepassing op alle eienaars en okkupeerders van die wooneenhede in die 18 fases van die ontwikkelingskema.'[9]

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[7] 65 of 1988.
[8] '1. The Rules contained in this Annexure shall not be added to, amended or repealed except in accordance with section 35(2)(a) of this Act, and subject to the provisions of section 35(3) and (5) of the Act.'
[9] My translation: 'The body corporate of the Faerie Glen Renaissance Scheme was established on 18 August 2000 in respect of sectional title scheme no SS416/2000 in terms of s 36(1) of the Sectional Titles Act 95 of 1986. The scheme is situated at erf 3781, Faerie Glen, Extension 45, Pretoria and was developed in 18 phases, each with its own sectional title number, in accordance with the provisions of Amendment Scheme 8270 to the Pretoria Town-Planning Scheme 1974, which provides, inter alia, for the development of dwelling units for a retirement centre for the aged.
(a) Due to the nature of the development as a retirement centre, the Housing Development Schemes for Retired Persons Act 65 of 1988 is also applicable.
(b) The management rules of the Faerie Glen Renaissance Scheme No SS416/2000 are uniformly applicable to all owners and occupants of the units in the 18 phases of the development scheme.'

[9] In this court the appellants confined their objection to paragraph (a) of the amendment. The fact that they did does not affect the outcome of the appeal.

[10] Rule 2 of the respondent's management rules contains the definitions that assist in the interpretation of the rules. The amendment that was granted inserted an additional definition, as para 2(d):

'beteken "aftree-oord" 'n behuisingsontwikkelingskema vir afgetrede persone vir die huisvesting van inwoners met 'n minimum ouderdom van 50 jaar elk of in geval van 'n egpaar as inwoners moet een van die gades ten tye van okkupasie minstens 50 jaar oud wees;'.[10]

[11] The answer to the question whether the Retirement Housing Act is applicable to the Faerie Glen Renaissance Scheme even before the amendments to rules 1 and 2 resolves all of the remaining issues in this appeal.

[12] Agricultural land was proclaimed as part of the Pretoria Town-Planning Scheme 1974 for the development of the scheme.[11] Two erven, 3773 (previously Erf 1) and 3774 (previously Erf 2), were consolidated into Erf 3781. In terms of Amendment Scheme 8270 the area constituting the former Erf 3773 was zoned for 'group housing' with the explicit provision that 'dwelling-units for a retirement centre for the aged be erected'.[12] The area constituting the former Erf 3774 was zoned for 'special use' with the explicit provision that it be used for 'communal and related facilities which in the opinion of the City Council can be associated with a security retirement centre for the aged'.[13] The conditions of proclamation and the zoning requirements of

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[10] My translation: '"retirement village" means a housing development scheme for retired persons for the accommodation of occupants of at least 50 years of age or in the case of occupation by a married couple, one of them shall, at the time of occupation, be at least 50 years old.'

[11] Amendment Scheme 8270 to the Pretoria Town-Planning Scheme 1974, Administrator's Notice 2027, 20 November 1974, promulgated on 28 June 2000.

[12] Annexure B5969 to the Pretoria Town-Planning Scheme 1974.

[13] Annexure B5970 to the Pretoria Town-Planning Scheme 1974.

the land on which the scheme was established therefore restricted the developer as to the nature of the development on that land.

[13] It is not surprising then that a sectional title scheme was developed on the relevant land and that ownership of the units were acquired from the developer in terms of the Sectional Titles Act. The developer, in the agreements of sale of units of the scheme, complied with the newly established township planning provisions and zoning requirements. As the Retirement Housing Act has as its purpose the regulation of '[t]he alienation of certain interests in housing development schemes for retired persons; and to provide for matters connected therewith', it is also not surprising that the agreements of sale complied with the Retirement Housing Act.

[14] In clause 1 of the agreement between the developer and the purchasers of units in the scheme, which contains several definitions, 'wetgewing' is defined as the Retirement Housing Act and the Sectional Titles Act. Clause 3.5 of the agreement provides for ss 4(3) and 8 of the Retirement Housing Act to be applicable. These sections deal with instances where the purchaser is entitled to cancel the agreement as a result of the developer's failure to deliver to the purchaser a certificate of completion prior to occupation of the unit sold. In compliance with the zoning requirements the agreement provides for the creation of basic security, community and nursing services related to a retirement village for the elderly. It specifically provides that a unit is sold subject to not only the conditions of title, but the applicable township planning provisions. Clause 14.3 of the agreement reads:

'In die geval van 'n enkel Okkupeerder, of twee afsonderlike Okkupeerders, is die minimum ouderdom vir Okkupeerders 50 jaar. In geval van 'n egpaar as Okkupeerders, moet een van die twee gades minstens 50 jaar oud wees. Die Koper bevestig voldoening aan hierdie ouderdomsbepaling.'[14]

[14] My translation: 'In the event of a single occupant, or two independent occupants, the minimum age for occupants is 50 years. In the event of a married couple, one of the spouses has to be at least 50 years old. The purchaser confirms compliance with this age requirement.'

[15] In the same explicit terms the agreement restricts, in clause 14.6, the right of any purchaser of a unit or successive purchaser to sell, lease or transfer the rights acquired in the agreement of sale if such sale, lease or alienation has the consequence that the unit is occupied by persons in contravention of the provisions pertaining to age.[15] The agreement contains all the essential provisions prescribed in s 4 of the Retirement Housing Act for an agreement in terms whereof a developer alienates a housing interest in terms of the Act.

[16] Two provisions in the agreement motivated the appellants to argue that the agreement does not comply with the Retirement Housing Act and that the Act is therefore not applicable. First the agreement, in clause 2.2, specifies that the title deed has not been endorsed in accordance with the provisions of s 4C of the Retirement Housing Act.[16] Second the developer, in clause 14.5 of the agreement, reserved the right to sell up to 20 per cent of the units to persons under the age of 50 years.[17]

[17] Section 4C of the Retirement Housing Act is not applicable to the alienation of a right of ownership in a development scheme, as in this case, but only a right of occupation. Clause 2.2 of the agreement does no more than state exactly that. This clause indicates an attempt to comply with the Retirement Housing Act, by explaining why there is no need to comply with s 4C of the Act. In any event non-compliance with s 4C could not render the Act inapplicable.

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[15] Clause 14.6: 'Die koper sal nie geregtig wees om sy regte in terme van hierdie Ooreenkoms te vervreem, te verhuur of oor te maak aan 'n derde party indien sodanige vervreemding of verhuring meebring dat die Eenheid geokkupeer word deur persone wat nie aan die ouderdomsbepaling hierbo genoem, of aan enige ander bepaling van hierdie Ooreenkoms, voldoen nie. Opvolgers in Titel van die Koper sal onderworpe wees aan die verpligtinge van die Koper soos vervat in hierdie Ooreenkoms en die Reëls van die Bestuursvereniging.'

[16] Clause 2.2: 'Die Titelakte van die grond is nie geëndosseer soos in Artikel 4C van die Wet bedoel nie, aangesien die regsgrondslag van die vervreemding van Deeltiteleiendomsreg in terme van die Deeltitelwet is.'

[17] Clause 14.5: 'Dit is die verklaarde voorneme van die Maatskappy om te verkry dat Eiendomsreg op Eenhede van die Ontwikkeling oorwegend toegeken sal word aan Kopers bo die ouderdom van 50 jaar. Die Maatskappy behou egter uitdruklik die reg voor om huidiglik en in die toekoms tot 20% van die Eenhede van die Ontwikkeling te vervreem aan persone onder die ouderdom van 50 jaar en die Koper stem onherroeplik toe tot sodanige vervreemding.'

[18] The reservation, in clause 14.5 of the agreement, of the right to sell up to 20 per cent of the units to persons under the age of 50 years in clause 14.5 of the agreement does not violate the provisions of the Retirement Housing Act which prescribes the age of occupants as opposed to the age of owners. Only the right to sell ownership in a unit to a person under the age of 50 years is reserved in the agreement. Clause 14.6, discussed above, would remain equally applicable to the 20 per cent owners younger than 50 years in relation to the restriction of the age of occupancy to persons 50 years or older.

[19] This distinction between the age of the owner and the age of the occupier that the developer respected in clause 14.5 originates from s 7(1), read with the definition of 'retired person', of the Retirement Housing Act:

'After a housing interest has been transferred to or has otherwise been vested in a person by virtue of a contract, no person other than a retired person or the spouse of a retired person may occupy the land to which that housing interest relates, except with the written consent of all the holders of housing interests in the housing development scheme concerned.'

Section 1 defines 'retired person' as 'a person who is 50 years of age or older'.[18]

[20] A 'housing interest' is defined in the Retirement Housing Act and includes the 'right to claim transfer of the land to which the scheme relates'.[19] If that leaves any doubt whatsoever as to whether the Retirement Housing Act is, by its own terms, applicable to this particular sectional title scheme, the definition of 'housing development scheme' removes any doubt:

'"Housing development scheme" means any scheme, arrangement or undertaking – (a) in terms of which housing interests are alienated for occupation contemplated in section 7, whether the scheme, arrangement or undertaking is operated pursuant to or in connection with a development scheme or a share block scheme or

[18] In so far as 'contract' is defined as meaning 'a document in terms of which a housing interest is alienated to a retired person. . .' it does not change this meaning of s 7(1) for the reasons stated in para 33 of the judgment of Streicher JA. Maybe for those reasons the point was not argued before us.

[19] Section 1: '"housing interest", in relation to a housing development scheme, means any right to claim transfer of the land to which the scheme relates, or to use or occupy that land.'

membership of or participation in any club, association, organization or other body, or the issuing of shares, or otherwise, but excluding a property time-sharing scheme;'

A 'development scheme' is defined as having the meaning as it does in the Sectional Titles Act and includes a sectional title scheme such as is currently under consideration.

[21] When the provisions of the Retirement Housing Act are applied to the facts it is clear that the developer sold and transferred a 'housing interest' – ownership of a unit – in a 'housing development scheme' – a sectional title scheme – for occupation by 'retired persons or the spouse of a retired person' – a person who is 50 years of age or older or the spouse of such a person – as contemplated in s 7. In these circumstances s 7 applies.

[22] The conclusion is inevitable: the Faerie Glen Retirement Scheme was developed in compliance with the provisions of the Pretoria Town-Planning Scheme 1974; the agreement of sale in terms of which the developer sold the units complies with the provisions of the Retirement Housing Act; and the Retirement Housing Act has been applicable to the Faerie Glen Renaissance Scheme since its inception. The amendment of rules 1 and 2 of the management rules to reflect the existing state of affairs serves only to clarify and explicitly protect the interests of existing and prospective owners of units in the scheme. It certainly does not adversely affect the rights of the appellants.

[23] The court a quo awarded some of the costs of the application to the appellants, largely as a result of the abandonment by the respondent of the greater part of the relief sought in the notice of motion at the commencement of the hearing in the court below. The appellants urged interference with that costs order to include the costs of two counsel. There is no basis on which to interfere with the discretion exercised by the court a quo.

[24] The appeal is dismissed with costs.

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S SNYDERS
Judge of Appeal

STREICHER JA (LEWIS JA, LEACH and BOSIELO AJJA concurring)

[25] I agree that the appeal should be dismissed with costs. In regard to my colleague Snyders' dismissal of the first two points argued by the appellant and referred to in paragraph 3 of her judgment I have nothing to add. I do however wish to state my reasons for dismissing the third point argued by the appellant.

[26] The Faerie Glen Renaissance Scheme (the FGR Scheme) is a development scheme in terms of the Sectional Titles Act 95 of 1986. In terms of s 35(1) of that Act a development scheme shall, as from the date of establishment of a body corporate, be controlled and managed, subject to the provisions of the Act, by means of rules. Section 35(2)(a) provides that the rules should comprise, amongst other things, management rules which may be amended from time to time by unanimous resolution of the body corporate. A unanimous resolution is defined in s 1 of the Sectional Titles Act but the definition is qualified in s 1(3)(c) to the effect that where the resolution 'adversely affects the proprietary rights or powers of any member as owner, the resolution shall not be regarded as having been passed unless such member consents in writing thereto'.

[27] The appellants contended that the proposed amendments of the management rules quoted in paragraphs 8 and 10 of my colleague's judgment, by providing that the Housing Development Schemes for Retired

Persons Act 65 of 1988 (the Retired Persons Act) is applicable to the FGR Scheme adversely affects their proprietary rights as owners and that these amendments therefore required their consent in writing. The respondent, on the other hand, contended that the Retired Persons Act applied to the FGR Scheme and that the statement in the amended rule merely stated what the existing position was. The issue to be decided is therefore whether or not the Retired Persons Act applied to the FGR Scheme.

[28] The purpose of the Retired Persons Act is stated in the long title to be 'to regulate the alienation of certain interests in housing development schemes for retired persons; and to provide for matters connected therewith'. The Act prescribes formalities in respect of contracts for the alienation of housing interests to a retired person (s 2); it prescribes in what language a contract should be drawn up (s 3) and what the contents of the contracts should be if the seller concerned is a developer (s 4); it deals with rights of occupation as defined in the Act (s 4A, B and C), which are not of relevance in respect of the FGR Scheme; it provides that if a facility is to be maintained for the care of debilitated persons the facility would be deemed to be a home for the aged as defined in s 1 of the Aged Persons Act 81 of 1967 (s 5); it contains restrictions against the receipt of consideration by developers (s 6); it contains a limitation of occupation of land to which housing interests as defined in the Act relate (s 7); it prescribes what the consequences of contracts which are void or are cancelled would be (s 8) and what relief a court may grant in respect of contracts (s 9); it provides for the granting of exemptions from the operation of the Act by the Minister concerned (s 10); and it prescribes what regulations may be made by the Minister (s 11).

[29] The only provisions of the Retired Persons Act which are relevant in respect of the management of the FGR Scheme as opposed to the contracts for the alienation of a housing interest in respect of the scheme and the receipt of consideration by a developer are therefore the provisions in respect of a facility for the care of debilitated persons, the provision containing a limitation to the occupation of land to which housing interests relate and the provision relating to the granting of exemptions. In the case of the FGR

Scheme no facility is to be maintained for the care of debilitated persons. It follows that the statement in the amended rule 1 that the Retired Persons Act is applicable means no more than that sections 7 and 10 of that Act are applicable to the scheme. If s 7 is applicable it follows that s 10, which authorises the Minister to grant an exemption from the operation of any provision of the Act, is applicable. In the result it remains to determine only whether s 7 of the Act is applicable to the FGR Scheme.

[30] Section 7 reads as follows:

'7(1) After a housing interest has been transferred to or has otherwise been vested in a person by virtue of a contract, no person other than a retired person or the spouse of a retired person may occupy the land to which that housing interest relates, except with the written consent of all the holders of housing interests in the housing development scheme concerned.'

[31] A retired person is defined as a person who is 50 years of age or older. It is the applicability of the injunction in s 7 that 'no person other than a retired person or the spouse of a retired person may occupy the land to which that housing interest relates' which is the real bone of contention between the parties, hence the appellants' objection to the definition of aftree-oord in the amended rule 2(d) namely: ''n behuisingsontwikkelingskema vir afgetrede persone vir die huisvesting van inwoners met `n minimum ouderdom van 50 jaar elk of in geval van `n egpaar as inwoners moet een van die gades ten tye van okkupasie minstens 50 jaar oud wees'.

[32] The injunction in s 7 is applicable after a housing interest in a housing development scheme has been transferred to or has otherwise been vested in a person by virtue of a contract. In terms of s 1 a housing interest in respect of a housing development scheme means, amongst other things, any right to claim transfer of the land to which the scheme relates. A housing development scheme is defined as meaning, amongst other things, a scheme in terms of which housing interests ie the right to claim transfer of land, are alienated for occupation contemplated in section 7 pursuant to or in connection with a development scheme; a development scheme means a

development scheme as defined in section 1(1) of the Sectional Titles Act 95 of 1986; and occupation contemplated in s 7 means occupation by retired persons or the spouses of retired persons.

[33] 'Contract' is defined in s 1 as meaning 'a document in terms of which a housing interest is alienated to a retired person . . .'. Like all the other definitions in s 1 the definition is qualified by the introductory phrase 'unless the context indicates otherwise'. In the case of s 7 the context does indicate otherwise. If the contract referred to in the section was intended to be a contract with a retired person the section would not have read 'after a housing interest has been transferred to . . . a person by virtue of a contract' it would have read 'after a housing interest has been transferred to . . . a retired person'. More so in the light of the fact that in the very same section reference is made to a 'retired person'. Compare in this regard s 2(1) which provides that 'no alienation of a housing interest to a retired person shall . . . be of any force or effect, unless it is contained in a contract . . .'. Moreover, if 'contract' in s 7 were to be interpreted to mean a document in terms of which a housing interest is alienated to a retired person it would mean that in the case of an alienation of a housing interest to a company or a trust for occupation contemplated in s 7 in connection with a sectional title development scheme ie a housing development scheme, the section would not apply. That could in my view not have been the intention of the legislature.

[34] The members of the respondent obtained ownership of units in the FGR Scheme ie in a development scheme in terms of contracts subject to the same terms and conditions. One of the terms of the contracts was that in the case of a single occupier the minimum age of the occupier had to be 50 years and in the case of married occupiers one of the spouses had to be a minimum of 50 years of age. The FGR Scheme is therefore a housing development scheme as defined in the Retired Persons Act and the transfer of the units in the scheme constituted the transfer of housing interests by virtue of a contract. It follows that in terms of s 7 'no person other than a retired person or the spouse of a retired person may occupy the land to which the transferred housing interests relate'.

[35] For these reasons I conclude that the Retired Persons Act is applicable to the FGR Scheme as stated in the amended rule 1 and that the appellants' property rights or powers as members were not adversely affected by the amendment.

P E STREICHER
JUDGE OF APPEAL

APPEARANCES:

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