

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg

CASE NO: **2024-033444**

In the matter between:

**PETER ANTHONY MUNDYCASTLE
,SYLVIE NICOLE LAMMENS ,FIONA
JENNIFER VON WIDDERN**

Plaintiff / Applicant / Appellant

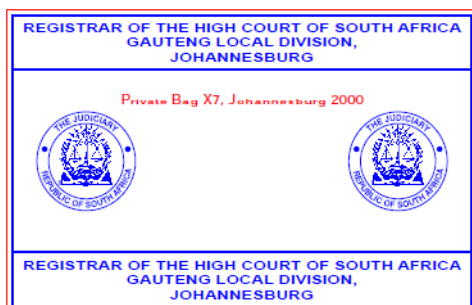
and

**THE KNIGHTSBRIDGE TRUST,THE
BODY CORPORATE OF THE
KNIGHTSBRIDGE RETIREMENT
VILLAGE,THE REGISTRAR OF DEEDS,
JOHANNESBURG,THE CITY OF
JOHANNESBURG METROPOLITAN
MUNCIPALITY,THE NINETYTHREE
REMAINING REGISTERED SECTIONAL
TITLE OWNERS IN THE
KNIGHTSBRIDGE TRUST SECTIONAL
TITLE SCHEME**

Defendant / Respondent

Notice in terms of Rule 16A

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ELECTRONICALLY SIGNED BY:

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Nr.: 2024/_____

In the matter between:

PETER ANTHONY MUNDY-CASTLE

(Identity Number: 510518 5113 08 3)

First Applicant

SYLVIE NICOLE LAMMENS

(Identity Number: 580516 0852 08 0)

Second Applicant



FIONA JENNIFER VON WIDDERN

(Identity Number: 620814 0156 08 7)

Third Applicant

-and-

THE KNIGHTSBRIDGE TRUST

(Registration Number: 1992/004102/07)

First Respondent

**THE BODY CORPORATE OF
KNIGHTSBRIDGE RETIREMENT VILLAGE**

(SS 346/1990)

(SS 59/1993)

(SS 791/1993)

Second Respondent

**THE REGISTRAR OF DEEDS,
JOHANNESBURG**

Third Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Fourth Respondent

**THE NINETY-THREE REMAINING
REGISTERED SECTIONAL TITLE
OWNERS IN THE KNIGHTSBRIDGE
TRUST SECTIONAL TITLE SCHEME**

Fifth To Eighty Eighth
Respondents

RULE 16A NOTICE

BE PLEASED TO TAKE NOTICE THAT the Applicants have raised a constitutional issue in their Application.



The Applicants are seeking an Order in the following terms:

1. That it be declared that the restrictive title conditions contained in the title deeds of the properties known as section numbers 43, 37, and 13 (*the “**Knightsbridge Retirement Village Properties**”*), which states that *“The property... shall not be sold, or in any other way be alienated unless the written consent of The Knightsbridge Trust Proprietary Limited Number 1992/004102/07 as first been obtained, which consent may be granted by the Knightsbridge Trust (Proprietary) Limited, (Number: 1992/004102/07) upon such terms and conditions as The Knightsbridge Trust (Proprietary) Limited, (Number: 1992/004102/07) may impose”* or any other similar restrictive condition (*the “**Restrictive Condition**”*) is vague, open to abuse and therefore unenforceable, alternatively, *pro non scripto*.

2. That it be declared that the First Respondent's conduct in exercising its rights afforded to it in terms of the restrictive conditions infringes on the Applicants' Constitutional Right to Property in terms of Section 25 of the Constitution of the Republic of South Africa.
3. That it be declared that the restrictive condition does not impose an obligation on any of the registered owners of the Knightsbridge Retirement Village Properties to pay any amount, as may be determined by the First Respondent, to the First Respondent as a condition for the alienation of any of the Knightsbridge Retirement Village Properties.
4. That it be declared that the manner in which the First Respondent is exercising its rights afforded in terms of the restrictive condition is not *civilliter modo*.
5. That it be declared that the manner in which the First Respondent is exercising its rights afforded in terms of the restrictive condition is *contra bonos mores*.
6. That the First Respondent be interdicted and prohibited from demanding payment *in lieu* of granting consent to alienate any of the Knightsbridge Retirement Village Properties.
7. Alternatively, the Applicants seek an order declaring that the "terms and conditions" that may be imposed by the First Respondent, in terms of the restrictive condition, *in lieu* of its consent for the alienation of the Knightsbridge Retirement Village Properties, is limited to the imposition of a condition that the



restrictive title condition and the right to first refusal which the First Respondent currently enjoys should be carried over to any subsequent title deed.

8. That the Second Respondent be directed to note a caveat in respect of Knightsbridge Retirement Village Properties in respect of this order granted and the amendment to be made to any future title deed.
9. That the First Respondent be ordered to pay the costs of this application on a scale as between attorney and client, including the costs of two counsels where so employed.



The constitutional issue herein is:

1. In terms of Section 25 of the Constitution, the Applicants have a right to property (“property right”), which includes the right not to be arbitrarily deprived of such property.
2. The Applicants are advised that the property right enshrined in Section 25 of the Constitution is not limited to the actual possession of the property but includes the right to use, pledge, mortgage and sell or otherwise trade in property.
3. The restrictive title condition stated in the title deed affords the First Respondent the right to impose virtually any condition *in lieu* of its consent to alienate the subject property.

4. The First Applicant has been in the process of selling his property which forms part of the Knightsbridge Village.
5. The First Applicant's property was the subject of a sale agreement which was cancelled by a purchaser as a result of a dispute between the First Applicant and the First Respondent.
6. The dispute in respect of the payment of the 5% portion of the selling price, which the First Respondent demanded to be paid to it, was not resolved.
7. The First Respondent communicated its decision to only consent to the alienation of the Applicants' properties if the Applicant; first agreed to carry the restrictive title condition and the right of first refusal over in the title deed of the prospective purchaser (the "first" condition) and secondly, if the Applicants agree to pay 5% of the selling price of their respective properties to the First Respondent (the "second" condition).
8. The Applicants have been advised that the second condition constitutes a form of commission that the First Respondent requires *in lieu* of providing its consent for the alienation of the Applicants' properties.
9. The Applicants do not take issue with the first condition, however, the second condition, imposed on any such terms as the First Respondent deems fit, cannot be accepted.



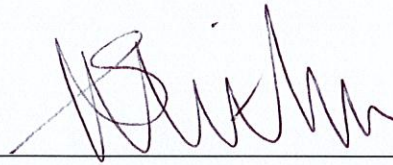
10. The Applicants have been seeking clarification and documentary confirmation from the First Respondent in respect of the 5% levied *in lieu* of the letter of consent.
11. The First Respondent's attorney has explained that the 5% payment *in lieu* of the letter of consent has "*been practice in the past to waive the right of first refusal and grant the required consent in return for the payment of a sum of 5% of the sale price*".
12. The First Respondent is attempting to expropriate 5% of the selling price from each Applicant in respect of the sale of their respective properties. Should the Applicants not heed such demand, the Applicants are held "*hostage*" by way of the First Respondent refusing to furnish consent for the alienation of the subject property.
13. The intended "*expropriation*" is not conducted in terms of a "*law of general application*" and constitutes an attempt by the First Respondent to arbitrarily expropriate 5% of the selling price of each of the Applicants' properties.
14. The Applicants were never informed, nor did the Applicants agree, that the First Respondent would require them to pay 5% of the selling price of their respective properties to the First Respondent *in lieu* of its consent to alienate their respective properties.



15. In order for there to have been consent, the Applicants should have been informed of what they were consenting to.

16. In the circumstances, the conduct of the First Respondent is inconsistent with the provisions of the Constitution.

DATED at JOHANNESBURG this 25TH day of MARCH 2024.



VAN DEVENTER AND VAN DEVENTER INCORPORATED

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**TO: THE REGISTRAR OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

**AND TO: THE KNIGHTSBRIDGE TRUST
FIRST RESPONDENT**

40 Torquay Road

Parktown

Johannesburg

Email: accounts@stevelyn.co.za

(Service by email)

C/O Christodoulou & Mavrikis Inc

Attorney for the First Respondent

E-mail: mario@cm-attorneys.com

Tel: 011 325 4201

**AND TO: THE BODY CORPORATE OF THE KNIGHTSBRIDGE
RETIREMENT VILLAGE
SECOND RESPONDENT**

1 Eilleen Road

Bryaston

Extension 3

Johannesburg, 2191



**AND TO: THE REGISTRAR OF DEEDS
THIRD RESPONDENT**

Cnr Von Wielligh Street and

Rahima Moosa Street

Johannesburg

Email: keri@univestjhb.co.za

(Service by email)

**AND TO: THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY
FOURTH RESPONDENT**

**AND TO: THE NINETY-THREE REMAINING
REGISTERED SECTIONAL TITLE
OWNERS IN THE KNIGHTSBRIDGE
TRUST SECTIONAL TITLE SCHEME
FIFTH TO EIGHTY-EIGHTH RESPONDENTS**