

SOUTH GAUTENG HIGH COURT

JOHANNESBURG

CASE NO: 30293/11

DATE: 08/12/2011

10

CITY OF JOHANNESBURG

Applicant

and

HORIZON BAY INVESTMENTS (PTY) LTD
FAIRWISH PROPS 9 (PTY) LTD

1st Respondent
2nd Respondent

J U D G M E N T

20 **WILLIS J:**

[1] The applicant seeks an order directing that the respondents forthwith cease to conduct noxious related activities, in particular panel beating and spray-painting of motor vehicles on erven 15 and 16 of Longmeadow Business Estate, Extension 1, Township Registration Division IR, province Gauteng, situate at 49 and 47 Angus Crescent, Longmeadow Business Estate, Extension 1.

08/12/2011

[2] This is an unusual matter inasmuch as it is common cause that the respondents are in fact spray-painting on the property concerned. It is also common cause that it is a matter of public knowledge that the applicant intended to prohibit business of the kind conducted by the respondents on the particular property. This much appears from a document which is styled "final conditions of establishment, Longmeadow Business Estate, Extension 1, 31 October 2011".

10 [3] The difficulty for the applicant is that, despite its good intentions, it failed properly to gazette a prohibition in terms of any ordinance that prohibits the activity in question. As Mr *Hollander*, who appears for the respondents, correctly submitted, in order to succeed the applicant has to show that in terms of Section 125 of the Town Planning and Townships Ordinance No. 15 of 1986 there has been a proper proclamation not only approving the particular township but also prohibiting the type of activity in question.

20 [4] It may well seem that the respondents have succeeded in this matter on a very technical basis but it needs to be borne in mind that, at common law, one has a right to do whatever one likes on one's property provided that that activity is not prohibited in terms of the common law (in other words one is not entitled to commit a murder on one's own property). A technical, strict approach has to be adopted by the court where there are restrictions prohibiting activities of the kind in question. I record that I have sympathy for the applicant in this matter.

[4] Counsel for the applicant argued, over and over again *ad nauseam*, yesterday that if one reads notice 8188 of 2000 in respect of the Edenvale/Modderfontein Metropolitan Local Council, and notice 8189 relating to the declaration of an approved township in the Longmeadow Business Estate, Extension, together with the final conditions of establishment referred to earlier, dated 31 October 2000 there was in fact a statutory prohibition. Unfortunately, despite my inviting Mr *Magano* several times to show where, pertinently, there was the
10 necessary connection made in the proclamation as a matter of law, he was unable to do so. Yesterday afternoon the court granted him an indulgence, affording him an opportunity to consult with the legal advisors for the City of Johannesburg to have one last attempt to show me why the interdict should be granted.

[5] To my surprise, and having further agreed to stand the matter down not only from 10:00 until 11:30, at 11:30 this morning, I was informed by his opponent that Mr *Magano* was not in court because he was in another court, the urgent court. That is simply not good enough. That is
20 not how counsel conduct themselves. I am now delivering judgment at 12:55 despite repeated pleas from Mr *Hollander* that I delay giving my judgment in order to enable Mr *Magano* to attend this court, he is still not here.

[6] In the last week of the court year I do not have time to sit around

08/12/2011

waiting for counsel to deign to grace the court with their presence. I disapprove.

[7] In the result there can be only one result in this matter. It is that the application is dismissed with costs. That is the order of the court.

[8] Immediately having given judgment in this matter, Mr *Hollander* applied for the costs previously reserved to be awarded to the applicant. This application is permissible as there had not previously been an
10 address on costs. That can always be done after the judgment. I can see no reason in the circumstances why the respondent should not succeed with costs. The costs order that I have granted is to include all costs previously reserved.

[9] The court of the court is thus that the application is dismissed with cots, which costs are to include all costs previously reserved.

Counsel for the Applicant: Adv T J *Magano*
Attorneys for the applicant: Mojela Hlazo
20 Counsel for the Respondents: Adv L. *Hollander*
Attorneys for the Respondents: Phillip Silver Seven Associates
Date of hearing: 7 December 2011
Date of judgment: 8 December 2011