



SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY – JUDGEMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 21 June 2019

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgement of the Supreme Court of Appeal.

NATIONAL HOME BUILDERS' REGISTRATION COUNCIL & ANOTHER

v

XANTHA PROPERTIES 18 (PTY) LTD

The respondent, Xantha Properties 18 (Pty) Ltd embarked upon the construction of a property development in Cape Town consisting of a number of shops and 223 residential apartments. It averred that it had no intention of selling these apartments or developing them under a sectional title scheme but with the sole intention to rent them to tenants. Although registered as a 'home builder' as defined in the Housing Consumers Protection Measures Act 95 of 1998, it disputed being obliged to enroll this development project with the appellant or to pay the prescribed enrolment fee under s 14(1) of that Act, arguing that the

section did not require a home builder to enroll houses being constructed solely for the purposes of being let.

The appellants, respectively the National Home Builders Registration Council and the Minister of Human Settlements, contended otherwise and insisted upon the respondent's development being enrolled and that it pay the necessary enrolment fee, a sum in excess of R1.5 million. The respondent paid that sum under protest but proceeded to seek a declaratory order in the High Court, Cape Town to the effect that it was obliged neither to enroll its development nor to pay such fee.

The respondent's application succeeded but with the leave of the court a quo, the two appellants appealed against the decision. The Supreme Court of Appeal today allowed the appeal. In doing so it held that the fundamental underlying premise of the Act is to guard against builders constructing sub-standard homes. Moreover the definition of a home builder's business was amended specifically to include building homes for purposes of being let or rented out, and there was no reason why the legislature would have decided that homes build for leasing purposes should be treated differently from those constructed for resale. It held that the court a quo had incorrectly reached the conclusion that s 14 did not apply to homes being built for lease and rental purposes.

The Supreme Court of Appeal therefore allowed the appeal and granted an order dismissing the respondent's application with costs.