

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case no: 9410/2010

**BOULEY PROPERTIES (PTY) LTD
(Registration number: CK 1998/09904/07)**

Applicant

v

THE CITY OF CAPE TOWN

Respondent

JUDGMENT HANDED DOWN THIS TUESDAY, 22 FEBRUARY 2011

CLEAVER J


[1] In its notice for leave to appeal against the judgment which I handed down on 21 December 2010 the applicant sought leave to appeal against my findings in its counter-application and in the respondent's main application, but noted that the application was conditional upon its application for leave to appeal to the Constitutional Court. In that application the applicant sought leave to appeal against my dismissal of its counter-claim which was to declare the provisions of the respondent's Outdoor Advertising and Signage By-Law No 10518 ("the By-Law") to be unconstitutional and valid. The application for leave to appeal to the Constitutional Court has been dismissed with costs and the applicant accordingly now seeks leave to appeal only against my finding in the main application that the respondent was entitled to an order directing the applicant to remove the unlawful signage affixed to its property at Erf 173335 Paarden Eiland. The ground upon which leave is sought is that another court might reasonably conclude that when applying for the interdictory relief against the applicant the respondent failed to establish that it had no alternative remedy available to it. Counsel for the applicant again repeated his earlier submissions that an alternative remedy was available in that the provisions of s 75 of the

By-Law could have been utilised and should have been referred to by the respondent in its papers. Section 75 provides that if a sign is displayed in contravention of the By-Law, the respondent may serve on the owner or lessee of the sign a notice calling on such person to remove the sign. If this is not done, steps may be taken in terms of s 76 of the By-Law by the municipality for the sign to be removed.

[2] At the time when the respondent reinstated its application by service of papers on the respondent's attorney on 20 July, the sign had not yet been fully erected and the respondent's purpose was accordingly to prevent the applicant from completing the erection of the sign. It was for that reason that I indicated that at that stage there was no other remedy available to the respondent to prevent the erection of the sign. The utilisation of s 75 would only have been available to the respondent once the sign had been erected.

[3] I am not persuaded that another court might reasonably come to a different conclusion, more particularly when regard is had to the applicant's conduct which amounted in effect to a manipulation of the system with the result that an unlawful sign has now been erected.

[4] The application for leave to appeal is refused with costs which are to include the costs of two counsel.



R B CLEAVER