



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 17 October 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Parch Properties 72 (Pty) Ltd v Summervale Lifestyle Estate Owner's Association and Others (171/2024) [2025] ZASCA 155 (17 October 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing with costs, including the cost of two counsel, an appeal against the Western Cape Division of the High Court (the high court).

In 2002, the City of Cape Town (the City) approved an application by the developer, White Waves Trading (Pty) Ltd (White Waves) to subdivide and rezone Erf 5070 to be developed as a retirement village within a gated community. The development is known as the Summervale Lifestyle Estate Owners Association (Summervale). The City imposed several conditions on the approval including that a Home Owners' Association (HOA) be established with an approved constitution. In 2010-2011, White Waves applied for and was granted permission for the rezoning, departure and phasing of Erf 6343 (Erf 6343 was developed into 55 garden cottages, with a design style similar to the dwellings on Summervale). The latter is adjacent to Erf 5070, the property of the HOA. The City imposed certain conditions, the relevant one being that the subject property resort under the Summervale Lifestyle Estate Home Owner's Association and that their constitution be amended accordingly. The HOA had since 2010 recognised the owner of Erf 6343 as a member of Summervale, charging levies in respect of the garden cottages, which were paid without demur. Since 2014, the garden cottages had become fully integrated with Summervale in that its tenants used the same shared access points and private roads and the same security measures applied to both developments.

In 2015-2016, White Waves, sold Erf 6343 and all its rights as developer of the erf to Parch. In 2021, a group of Summervale residents (the Venter group) questioned whether erf 6343 formed part of Summervale. They argued that clause 5.1 of Summervale's constitution provided that: membership of the Association should be evidenced by registered ownership in the Deeds Registry in Cape Town of one or more erven in the Area. The group further contended that 'Area' was defined in clause 2.1.2 as the remainder of Erf 5070, including any subdivision thereof. It was common cause that the garden cottages were on Erf 6343, which was not included in the definition of 'Area' in the constitution.

On 11 April 2022 and 6 June 2022 respectively, the Summervale's Trustees Committee sought unsuccessfully to amend the constitution. As a result of the unsuccessful amendment of the constitution, the appellant petitioned the high court for a declaratory relief, declaring among others, that its development on Erf 6343 (the garden cottages) be included in the definition of 'Area' in the constitution the HOA. Alternatively, in terms of s 39(4)(d) of the Community Scheme Ombud Services Act 9 of 2011 (CSOS Act), it be declared that the motion(s) which refused the amendment to the constitution to be declared unreasonable and that they be set aside and substituted with a motion that read as follows: that clause 2.1.2 of the constitution of the Summervale was amended by changing the definition of 'Area' to include Erf 6343, Strand, in addition to Erf 5070. The application was, however, unsuccessful.

Aggrieved by the high court's findings. The appellant appealed with leave from the high court to this Court.

The issues on appeal were as follows: (a) Whether the high court correctly assumed jurisdiction to entertain the matter as a court of first instance. (b) Whether the high court erred in holding that the opposition to the motion to amend the constitution was reasonable.

Regarding the first issue the SCA held that the high court had jurisdiction to entertain the application as a court of first instance. It further held that the high court did not need exceptional circumstances to entertain this application as a court of first instance. The SCA further held that the dispute was deserving of the high court's attention and should not have attracted a Coral Island costs order had Parch been successful. With regards to the second issue on appeal, the SCA held that that the opposition to amending the constitution was reasonable. The SCA concurred with the Venter group's contention that the garden cottages were rented out without any regard to the age of the tenants, thereby compromising the character of Summervale retirement village, who were mostly retired persons. Their main intention when they bought into Summervale was to benefit from a tranquil environment which was incompatible with Parch's indiscriminate rental environment. As a result, the appeal was dismissed with costs.

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