



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY: JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 5 November 2021

STATUS Immediate

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

The Trustees for the time being of the Legacy Body Corporate v Bae Estates and Escapes (Pty) Ltd and Another (Case no 304/2020) [2021] ZASCA 157 (5 November 2021).

Today, the Supreme Court of Appeal (the Court) dismissed an appeal against an order of the Western Cape High Court, Cape Town (the high court) which had upheld an application by the first respondent, Bae Estates and Escapes (Pty) Ltd and Another (Bae Estates) to review and set aside a decision by the appellant, the Trustees for the time being of the Legacy Body Corporate (the trustees).

Bae Estates is an estate agency that sells and rents properties on behalf of property owners in Cape Town and the surrounding areas. In May 2018 it was engaged by a property owner in the Legacy scheme (the scheme), to procure a tenant for his property on a long-term rental. Bae Estates secured the tenant, and a lease agreement was concluded between the tenant and the owner in July 2018. In terms of the lease agreement, among other provisions, the tenant was permitted to sub-let the property on short-term holiday lease, which the tenant himself later did, without reference to Bae Estates. Subsequently, there were complaints by some property owners about the conduct of some of the sub-tenants, including excessive noise and other unruly behaviour. The trustees were under the impression that those sub-tenants were sourced by Bae Estates, and accused it of having failed to properly vet the sub-tenants. Bae Estates pointed out to the trustees that it had nothing to do with the procurement of the sub-tenants, and that its role was limited to the procurement of the main tenant. Despite this explanation by Bae Estates, the trustees resolved to ban Bae Estates from operating in the scheme on the basis that the unruly sub-tenants were procured by it. That decision was taken without Bae Estates being afforded an opportunity to be heard.

At the instance of Bae Estates, the high court reviewed and set aside the trustees' decision in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). The high court also concluded that in terms of the common law, as developed by it, the trustees' decision was reviewable.

On appeal, the trustees conceded that Bae Estates had nothing to do with the unruly sub-tenants, but maintained that because they did not have a contractual relationship with Bae Estates, they had no duty to afford Bae Estates a hearing before they resolved to ban it from operating in the scheme.

As to the applicability of PAJA, the SCA concluded that the conduct of the trustees did not amount to an administrative decision as envisaged in s 1 of PAJA, as the trustees' decision (a) was not of an administrative nature; (b) was not taken in the exercise of a public power or in performance of a public function; and (c) was not pursuant to, or in terms of, any legislation or an empowering provision. Accordingly, the Court disagreed with the high court on this aspect.

The SCA then considered whether the trustees' decision was reviewable at common. After surveying the common law, the Court concluded that the common law was adequate as a basis to review the trustees' decision, and that it was not necessary to develop the common law, as the high court purportedly did. It accordingly upheld the decision of the high court on this aspect, albeit on a different reasoning to that of the high court.

As a result, the Court dismissed the trustees' appeal with costs of two counsel.

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