

THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: Wednesday 28 March 2007

Status: Immediate

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McGregor v City of Johannesburg

In a judgment today the Supreme Court of Appeal has dismissed an appeal relating to the interpretation of municipal by-laws applicable to the display of advertising signage and hoarding.

The first appellant is the registered owner of certain residential property on which an advertising sign and hoarding ('the sign') belonging to the second appellant is erected. In terms of a letter dated 1 July 1999, the respondent's predecessor, the Eastern Metropolitan Local Council (EMLC), approved an application by the second appellant to erect the sign on the property. The approval, which it is important to emphasise, was to operate for the period 1 July 1999 to 30 June 2002, was granted in terms of the Signs and Advertising Hoardings: By-laws (the '1995 by-laws'). The 1995 by-laws were repealed by Notice 6271 of 1999 (the '1999 by-laws'). The 1999 by-laws were in turn repealed, with effect from 1 December 2001, by Notice 7170 of 2001 (the '2001 by-laws').

The appellants contend that in terms of the approval granted by the EMLC the sign was lawfully displayed on 30 November 2001, which was the day immediately preceding the date of commencement of the 2001 by-laws. On that basis, so it was argued, the sign falls within the ambit of the exemption created in terms of clause 4(3) of the 2001 by-laws, which exempts the sign

from the operation of the 2001 by-laws, provided that the sign is properly maintained and not altered, moved or re-erected.

The SCA, in a judgment by Theron AJA in which Howie P, Cloete JA, Lewis JA and Snyders AJA concurred, held that the purpose of clause 4(3) is to preserve that which had lawfully come into existence prior to the promulgation of the 2001 by-laws. The effect of clause 4(3) is to preserve existing rights even though such rights may be inconsistent with the 2001 by-laws. Clause 4(3) further exempts a sign that was lawfully displayed immediately before the 2001 by-laws came into operation from the requirements of such by-laws to the extent necessary to preserve the right already granted. By exempting the sign from the requirements of the 2001 by-laws, clause 4(3) does no more than preserve the validity of any approval that may have been granted in terms of repealed by-laws; the exemption does not in any way serve to extend the original approval, by, for example, deleting any limitations to which such approval had been subject.

The court held that the sign was lawfully displayed until the period for which approval was granted for its display expired. After 30 June 2002, the continued display of the sign was unlawful.

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