



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

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Status: Immediate

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

ORIBEL v BLUE DOT

The Supreme Court of Appeal today upheld an appeal by the owner and the occupier of a section in the Theba Hoskens Sectional Title Scheme in Cape Town against the developer of that scheme. The appellants appealed against an order of the Cape high court dismissing their application for an order inter alia restraining the developer from transferring or ceding its right to extend the scheme by making the exclusive use of an area on the common property available to the owner of a different section in the scheme. The scheme was registered on 28 November 2007. It concerns an existing three story building in Cape Town. On the date of registration of the scheme two sections were transferred into the names of the first appellant and another person. By virtue of these transfers the body corporate was also established. As part of the

application for the opening of the register and registration of the scheme, an eight page sectional title plan, approved by the Surveyor General, was lodged with the registrar of deeds. The scheme comprises five levels of which the third to fifth levels correspond with the first to third floors of the building. The section owned and occupied by the appellants is situated on the second floor of the building and consists of the whole of that floor less certain common areas like staircases and landings. The section on the first floor was later subdivided into three sections. On the extension plans relating to the second floor of the building it is indicated that a right is reserved for the developer to extend the plant area, ie the area that housed the defunct air-conditioning unit, adjacent to the appellants' section into the scheme by 'incorporating' it into that section so as to confer the right to the exclusive use of that area on the appellants. The appellants and the developer could not agree on a price to be paid for this right of extension and the developer resolved to sell and transfer this right to the purchaser of the section below. In terms of the Sectional Titles Act 95 of 1986 a developer is obliged to exercise the rights reserved strictly in accordance with the plans reflecting the extension. The Supreme Court of Appeal held that the developer was not entitled to transfer or cede the right reserved to any person other than the appellants. Any transfer or cession to the purchaser of the section below would not be in accordance with the right reserved. An order restraining the developer from transferring or ceding the right to any person other than the owner of the section owned and occupied by the appellants should therefore have been made by the Cape High Court.