



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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JDJ PROPERTIES V UMNGENI LOCAL MUNICIPALITY

The Supreme Court of Appeal (SCA) today held that the decisions of the Umngeni Local Municipality (the municipality) to relax the side space requirement of the Howick Town Planning Scheme (the scheme) and to approve the building plans in favour of Triumph Brokers (Pty) Ltd were unlawful. It upheld an appeal against an order of the KwaZulu-Natal High Court dismissing a review application by JDJ Properties CC (the first appellant) and Double Diamond CC (the second appellant).

The municipality had sold a certain immovable property to Triumph Brokers on which the latter intended to build a shopping complex and lease it to Basfour 3281 (Pty) Ltd. Subsequent to the sale agreement, the council approved Triumph Brokers' building plans and the general manager: planning and development services relaxed the side space requirement of the scheme. The first and second appellants, who were the owner and lessee of a property adjacent to Triumph Brokers' property respectively, instituted an application

in the high court in terms of the provisions of the Promotion of Administrative Justice Act 3 of 2000 (the PAJA) to review and set aside the decisions. The bases for the order sought were that the side space requirement was relaxed unlawfully and that the approval of the building plans itself was invalid.

The high court had dismissed the application on the basis that the decision to approve the building plans did not constitute administrative action as it did not adversely affect the appellants' rights and did not have a direct, external legal effect as required by the PAJA, and that the appellants had failed to exhaust internal remedies available to them. The appellants then appealed to the SCA against that order.

Before the SCA there were four questions. The first was whether the decision to approve the building plans constituted administrative action. The court, with reference to the facts, held that the decision had the capacity to affect the rights of the appellants and others living and doing business in the area concerned, and would directly impact on them. The court further held that the appellants, being the landowner and lessee respectively in the immediate vicinity of the development, had the right to enforce compliance with the scheme. Even if the decision did not constitute administrative action, the court said, it was reviewable under the principle of legality. The second question was whether the appellants had legal standing to challenge the decision. The SCA held that the scheme operated in the interest of the appellants and that their right to enforce compliance therewith gave them standing. The third question was whether the appellants had failed to exhaust internal remedies. The SCA stated there were two possible remedies but held that the appellants could not enforce those remedies as they were not available to them. The fourth question related to the merits and in that respect the SCA made the order referred to above. In making that order, the SCA held that Triumph Brokers had failed to seek special consent as required by the scheme before the decision to relax the side space requirement was made and that the decision maker had misconstrued the power delegated to him. With regard to the decision to approve the building plans, the court held that a jurisdictional fact for the proper exercise of the power, namely compliance with the scheme by Triumph Brokers' application, was absent. The decisions, the SCA held, had to be set aside.