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: 30 November 2017

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.

ESQUIRE CONSULTING AND MARKETING CC & OTHERS

V

SEA GLADES HOLDINGS (PTY) LTD & OTHERS

The appellants are owners of immovable property in what is known as the Marina Village, an extension of the St Francis Bay Marina in the Eastern Cape. They applied to court for an order interdicting and restraining the first and second respondents from building and conducting a restaurant business on another erf in the Marina Village, contending that to do so would be contrary to the existing town planning scheme and zoning of the property. The basis of their contention was that the property concerned had not been zoned for business purposes but was, rather, zoned for residential purposes. Their application in the

Eastern Cape High Court was dismissed, and they appealed to the Supreme Court of Appeal.

In a judgment delivered today, the Supreme Court of Appeal reviewed the history of the zoning of the erf in question. This showed that there had been an application by the respondents to subdivide the property which is now known as the Marina Village into various residential and other erven and to zone the erven so subdivided accordingly. This was done in respect of s 22(1)*(b)* of the Land Use Planning Ordinance 15 of 1985, Cape (LUPO) which states that although s 22(1)*(a)* of LUPO provides that no application for subdivision involving changes zoning may be considered unless and until the land concerned had been zoned in the manner permitting of subdivision, this shall not preclude applications for rezoning and subdivision being considered simultaneously. Unfortunately when it came to approval of the simultaneous applications for rezoning and subdivision, the municipality granted the subdivision in December 2001but, in respect of the application for certain of the erven to be rezoned as business, postponed the matter for further information.

To deal with this, instead of amplifying their already existing application for rezoning, the respondents applied afresh for rezoning of certain of the erven which had been subdivided as aforesaid. This application was finally approved in September 2004 when the erf in question was zoned for business, which would include a restaurant.

Things were largely allowed to lie fallow until, some 11 years later, in 2015, the respondents commenced building a restaurant on the erf in question. The

appellants then applied for the interdict. They argued that the subdivision had been effected in December 2001; that this was deemed to have been confirmed by the municipality under s 27(3) of LUPO before the approval of the application for zoning of the disputed erf as business was granted in 2004; that s 16(2)*(a)*(i) of LUPO provides that a rezoning lapses within two years in the event of land concern not being utilised as permitted in terms of the zoning, and consequently that the 2004 zoning had lapsed as the property had not been used for business purposes for more than two years before construction began on the restaurant in 2015.

The Supreme Court of Appeal dismissed this argument. It held that the municipality, in considering the rezoning application which was granted in September 2004, considered it to be part of the initial application for rezoning that had been approved in December 2001. Accordingly the decision of September 2004 to approve the rezoning brought finality in respect of the earlier applications for subdivision and rezoning, and that the two year period provided for in s 16(2) of LUPO was therefore of no application. It found that in any event the land had been used for purposes of improvement within the two year period after the rezoning of the property so that even if s 16(2) had been of application, its rezoning had not been lapsed.

The appeal was therefore dismissed, with costs.