



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

Not reportable
Case no: 89/06

In the matter between:

BRUCE E McGREGOR
APPELLANT

FIRST

CORPCOM OUTDOOR (PTY) LTD
APPELLANT

SECOND

and

CITY OF JOHANNESBURG
RESPONDENT

CORAM: HOWIE P, CLOETE, LEWIS JJA *et* SNYDERS,
THERON AJJA

DATE OF HEARING: 9 MARCH 2007

DATE OF DELIVERY: 28 MARCH 2007

Summary: Local government – Interpretation of Municipal by-laws. Approval granted to display an advertising sign for a fixed period. Promulgation of new by-laws preserves the approval granted in terms of repealed by-laws but does not extend the scope of the right previously granted.

Neutral citation: This judgment may be referred to as *McGregor v City of Johannesburg* [2007] SCA 31 RSA

THERON AJA:

[1] The respondent, a metropolitan municipality, sought and obtained an order before Cachalia J in the Johannesburg High Court, interdicting the appellants from displaying an advertising sign and advertising hoarding on the basis that its by-laws were being contravened. An appeal to the full court was dismissed, per Satchwell and Tsoka JJ (Goldstein J dissenting). The further appeal to this court is with its special leave.

[2] 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2002, was granted in terms of the Signs and Advertising Hoardings: By-laws (the '1995 by-laws').¹ The 1995 by-laws were repealed by Notice 6271 of 1999 (the '1999 by-laws').² The 1999 by-laws were in turn repealed, with effect from 1 December 2001, by Notice 7170 of 2001 (the '2001 by-laws').³

[3] Both the 1999 and 2001 by-laws contained a provision (clause 38(2) in the former and 43(2) in the latter) which reads:

¹ The 1995 By-laws were contained in Local Authority Notice 37 of the Municipality of Sandton, published in the Gauteng Provincial Gazette No 1 of 4 January 1995.

² Notice 6271 contained the Eastern Metropolitan Local Council Advertising Signs and Hoardings By-laws and was published in the Gauteng Provincial Gazette No 80 of 29 September 1999.

³ Notice 7170 was published in the Gauteng Provincial Gazette Extraordinary No 234 of 28 November 2001 and contained the Advertising Signs and Hoarding By-laws for the City of Johannesburg.

‘Anything done under or in terms of any provision [of the by-laws repealed] ... shall be deemed to have been done under the corresponding provisions of these by-laws and such repeal shall not affect the validity of anything done under the by-laws so repealed.’

[4] By virtue of clause 5(26) of the 2001 by-laws,⁴ the display of advertising signage on property zoned ‘residential’ was declared to be unlawful. No similar provision is to be found in the 1995 or the 1999 by-laws. It is common cause that the sign was erected on property which is zoned ‘residential’.

[5] Clause 4(3) of the 2001 by-laws, which is at the heart of the present dispute, provides:

‘Any sign which does not comply with the provisions of these by-laws and which was lawfully displayed on the day immediately preceding the date of commencement of these by-laws shall be exempt from the requirements of these by-laws if the sign in the opinion of the Council is properly maintained and is not altered, moved or re-erected as contemplated in Clause 2(2).’⁵

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), which exempts the sign from the operation of the 2001 by-

⁴ Clause 5(26) renders it unlawful to, inter alia, erect or maintain:

‘Any third party advertising sign on any property zoned “Residential” in terms of the relevant Town Planning Scheme whether secondary rights or not have been granted by Council and which are exercised on the erf.’

⁵ The relevant portions of clause 2 read:

‘(1) No person shall display or erect any advertising sign or hoarding or use any advertising sign or hoarding or use any structure or device as an advertising sign or hoarding without first having obtained the written approval of the Council; provided that the provisions of this Clause shall not apply to signs contemplated in Clause 4,
(2) No sign erected displayed (*sic*) with the approval of the Council shall in any way be altered, moved, re-erected nor shall any alteration be made to the electrical wiring system of such sign except for the purposes of renovating or maintenance, without the further approval of the Council in terms of sub-clause (1).’

laws, provided that the sign is properly maintained and not altered, moved or re-erected.

[6] The approval granted by the EMLC was for a fixed period (1 July 1999 to 30 June 2002) and it is common cause that the promulgation of the 2001 by-laws did not in any way limit such approval. What is in dispute is whether the 2001 by-laws extended the scope of the appellants' right to display the sign beyond the limit of the original approval.

[7] Clause 4(3) has to be interpreted in context, having regard to the purpose of the by-laws and the mischief sought to be regulated. The purpose of the by-laws is clearly to regulate the display of signage within the respondent's area of jurisdiction.⁶ This includes regulating the maintenance of the signage, restrictions, offences, sanctions and the granting of exemptions. In my view, and for the reasons that follow, the construction contended for by the appellants undermines and detracts from this general purpose.

⁶ The Preamble to the 2001 By-laws reads:

'WHEREAS the community of the City of Johannesburg has legitimate interests in ensuring:-

1. that signs or advertisements do not constitute a danger or nuisance to members of the general public whether by way of obstruction, interference with traffic signals or with the visibility of such signals, light nuisance or otherwise;
2. that signage or advertising displayed in its living environment is aesthetically pleasing, appropriate and placed at appropriate sites with an uncluttered effect;
3. that its environment for tourism is characterised by a high standard of user friendly signage and advertising satisfactorily integrated into the environment;

AND WHEREAS individual businesses have legitimate interests in the proper advertising of their businesses, wares and products;

AND WHEREAS it is the duty of the Council of the City of Johannesburg to balance the competing interests in a fair, equitable, flexible and responsible way;'

[8] 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.⁷ 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. In this matter, the appellants were exempted from the requirement of obtaining the approval of the respondent to erect and display the sign (clause 2(1)), which approval the respondent was precluded from granting after 30 November 2001 by reason of the enactment of clause 5(26). It follows 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.

[9] To interpret clause 4(3) in the manner contended for by the appellants would mean that a particular class of signage would be unregulated (subject only to the requirements properly to maintain and not to move or alter the sign) and

⁷ Clauses in other legislation similar to clause 4(3) have been interpreted by our courts as having the purpose of preserving existing rights. *R v Shoolman* 1937 CPD 183; *British Chemicals and Biologicals (SA) (Pty) Ltd v South African Pharmacy Board* 1955 (1) SA 184 (A); *SA Warehousing Services (Pty) Ltd v National Transport Commission* 1982 (3) SA 840 (A) at 845D-E.

completely excluded from the provisions of the respondent's by-laws. According to the appellants, approval to display the sign for a fixed period would, by virtue of the exemption in clause 4(3), and subject only to the requirements in that clause, be converted to approval in perpetuity. That cannot be so. I respectfully agree with Satchwell J that it would be absurd permanently to exempt from the provisions of the 2001 by-laws a sign which is specifically proscribed in terms of such by-laws (clause 5(26)). A further consequence of accepting the appellants' interpretation is that signs which do not comply with the provisions of the 2001 by-laws, may, by reason of such non-compliance, be favoured with extended rights. This interpretation leads to a glaringly absurd result which could never have been intended by the legislature.⁸

[10] I turn to deal with the argument, which found favour with Goldstein J, that to adopt the respondent's interpretation of clause 4(3) would render the latter 'superfluous since it would be duplicating the effect of section 43(2)'. Both clauses 4(3) and 43(2) have the effect of preserving existing rights. This does not mean that either clause is rendered superfluous. Clause 43(2) preserves the validity of legal acts performed in terms of previous by-laws, provided such acts are permitted in terms of the new by-laws. The erection of a sign in a residential area is not permitted in terms of the new by-laws (clause 5(26)). Clause 4(3) preserves what was lawfully done in terms of the repealed legislation and which has, in terms of the new legislation, become unlawful.

⁸ *Poswa v MEC for Economic Affairs, Environment and Tourism, Eastern Cape* 2001 (3) SA 582 (SCA) para 11.

[11] For these reasons, the appeal is dismissed with costs, including the costs of two counsel.

L V Theron
Acting Judge of Appeal

CONCUR:

HOWIE P

CLOETE JA

LEWIS JA

SNYDERS AJA