



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 28 November 2018
STATUS Immediate

***Tavakoli & another v Bantry Hills (Pty) Ltd (1251/2018) [2018] ZASCA 159
(28 November 2018)***

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.

The Supreme Court of Appeal (the SCA) today dismissed an appeal against a judgment of the Western Cape Division of the High Court in terms whereof the appellants' application for the review and setting aside of building plans was dismissed with costs.

The building plans related to the construction of a block of flats in Sea Point, Cape Town, by the respondent, Bantry Hills (Pty) Ltd. The appellants, who owned residential properties situated about 80 m from the site of the proposed flats, contended that the plans violated item 40(c) of the Development Management Scheme forming part of the City of Cape Town's Municipal Planning By-Law of 2015. This item precludes the construction of flats 'if the only vehicle access to the property is from an adjacent road reserve that is less than 9 m wide'. The building plans provided for two vehicle access points to the property from two abutting roads, each such road having a reserve less than 9 m wide.

The merits of the review depended on the correct interpretation of item 40(c), more particularly whether the restriction applied unless there was at least one vehicular access to the property from an adjacent road reserve that is 9 m or more wide (as contended by the appellants) or whether the restriction was only applicable where there is a single vehicular access to the property and such access is from an adjacent road reserve that is less than 9 m wide (as contended by the respondent). There was a preliminary issue as to the locus standi of the appellants. The court a quo answered both questions in favour of the respondent and thus dismissed the review application.

On appeal the SCA agreed with the court a quo's finding on the preliminary issue of locus standi. Item 40(c) had a very parochial scope. The mischief at which it is addressed is congestion in narrow streets giving access to high-density developments. The appellants' properties were not located on either of the roads giving access to the proposed block of flats. They were not thus persons for whose benefit item 40(c) was enacted. Furthermore, they failed to establish that the violation would cause them any harm.

In view of this finding, the SCA did not decide the question regarding the proper interpretation of item 40(c).

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