

IN THE NORTH GAUTENG HIGH COURT OF SOUTH AFRICA

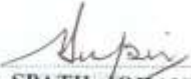
DISPUTE WHICHEVER IS NOT APPLICABLE

PRETORIA

(1) REPORTABLE: ~~YES~~ NO.(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ NO.

(3) REVISED:

Case No: 13188/2009

30.12.2009
DATE
SPATH, JOHANNES CARLE HEINRICH N.O.
First Applicant

30/4/2010

SPATH, GESIE MARIA N.O.
Second ApplicantKNOETZE, MARIUS VICTOR N.O.
Third ApplicantALLAN, JOHN ADRIAN N.O.
Fourth ApplicantNEL, DANIEL BEN
Fifth ApplicantREYNECKE, SCHALK JACOBUS
Sixth ApplicantDE WET CO (PTY) LTD
Seventh Applicant

AGAINST

EAGLE CANYON GOLF ESTATE (PTY) LIMITED
First RespondentEAGLE INTERNATIONAL GOLFMANAGEMENT (PTY) LTD
Second Respondent

CORAM: SAIRE, AJ

REASONS

On the 23rd of March 2010 I dismissed the application for Leave to Appeal against the order made by me on the 19th of February 2010. This latter order was supported by a

written judgment to which I refer. The judgment covers all the points which were raised at the hearing of the Opposed Application.

The order I made is in effect an order requiring the Respondents to abate a nuisance caused by misdirected golf balls emanating from the property owned or used by the Respondents.

That such a nuisance existed is clear from the admission by the Applicants who were the Respondents in the original application. In paragraph 11 of the Replying Affidavit reference is made to "more appropriate solutions to the 'problem'". The Respondents without acknowledgement of liability have discussed the solution without any agreement have been reached.

The Respondents go on to say that the principal reason why the discussions have failed is not because the Respondents are not prepared to find a solution but because the Applicants do not wish to make a more than nominal contribution to the costs thereof.

The deponent went on to say that in attempting to find a workable solution he had on behalf of the Respondents made a number of changes to the routing of the 16th hole with a view to eliminating the possibility of golf balls finding their way to the Applicant's houses.

The Affidavit then describes the proposed solution which the Deponent to the Affidavit considered would be effective.

In the light of this the order I made requires the Respondents to do no more than put its solution into effect. What it cannot demand is that the Applicants contribute to the costs.

The principle involved is that the owner or user of land on which or from which a nuisance is caused is obliged to abate that nuisance.

I do not think that another court will come to a conclusion different from that to which I came and that accordingly there is no reasonable prospect on appeal.

A handwritten signature in black ink, appearing to read 'S W SAPIRE', is written over a horizontal line.

S W SAPIRE

ACTING JUDGE

NORTH GAUTENG HIGH COURT

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