

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 14606/2017

17/3/2017

Not reportable

Not of interest to other judges

Revised.

In the application between:

RENIER STEPHANUS MEYER

Applicant

and

**CELTISDAL EXTENSION 20 HOMEOWNERS
ASSOCIATION NPC
(REGISTRATION NO: 2004123722/08)**

First Respondent

**CITY OF TSHWANE METROPOLITAN
MUNICIPALITY**

Second Respondent

**RESIDENTS OF HEUWELSIG ESTATE
CELTISDAL**

Intervening Parties

JUDGMENT

DAVIS, AJ:

[1] This is one of almost 50 urgent applications which came before this court during this

week. The matter was heard earlier in the week and I reserved judgment until today, Friday 17 March 2017.

[2] The Applicant is the owner of two erven known as Erf [...]4 and Erf [...]5 Celtisdal Extension 20 which erven are situated within the Heuwelsig Estate in a suburb of Pretoria. The First Respondent is the Homeowners Association of residents of the Heuwelsig Estate, being a non-profit company. The Second Respondent is the City of Tshwane Metropolitan Municipality within whose area of jurisdiction the estate is situated.

[3] The Applicant intends developing the two erven by erecting second dwellings on each of them. The even are residential properties and from the plans submitted and which had been approved by the Second Respondent's various divisions, including the City Planning and Development Committee, it appears that each of the two dwellings to be erected on each of the two erven comprise of 3-bedroom units with double garages and open plan living areas.

[4] Prior to the approval of the building plans, the Applicant has submitted the required applications for permission to erect a second dwelling house as long ago as 4 October 2013. The applications were duly advertised and, in respect of Erf [...]4, three residents in the Heuwelsig Estate lodged objections. In respect of Erf [...]5, two of these three objectors also lodged objections. The objections were replied to by the Applicant. After having considered the nature of the stands, the proposed dwellings, the Heuwelsig Estate, the Integrated Development Plan and Compaction and Densification Strategy of the City of Tshwane Metropolitan Municipality, the available Amenities and Services, the Regional Special Development Framework for the area, the reports of the Departments of Water and Sanitation, Water Engineering Services, Energy and Electricity, Roads and Transport, Transportation Planning and previous Council and Mayoral Committee resolutions in line with frameworks, policies and strategies as approved by the City of Tshwane, the necessary consents were granted on 12 July 2016.

[5] Subsequent to this, the building plans were submitted and separately and independently approved at the end of 2016. The plans were also submitted to the First

Respondent and consent was given by an official thereof.

[6] Upon the attempted commencement of inspection of the erven for purposes of site establishment by the Applicant and its contractors, its free and undisturbed access to the erven was spoliated by the First Respondent who had through various actions, *inter alia* the confiscation of access cards and the disablement of fingerprint recognition systems necessary for access to the estate prevented the Applicant and his wife from granting access to contractors to the erven. The spoliation went so far as to only allow personal access of the Applicant and his wife and then only when accompanied by security guards.

[7] Despite a flurry of correspondence, unfettered access was not restored, leading to the current spoliation application. Initially the First Respondent opposed the matter but, subsequent to a meeting of the board thereof and obtaining legal advice, the opposition was withdrawn.

[8] At the hearing of the application however, "*residents of Heuwelsig Estate*" sought to intervene. The basis of the intervention was that a review application was launched for the review of the approvals referred to above. The basis of the review of the First Respondent's consent was that there was no indication that the official who had granted the consent had been delegated in writing by the general manager to do so. The basis of the review of the Second Respondent's approval was that the objectors had not been informed of the approval prior to the exercise of the rights obtained as a result of the approval within 28 days from date thereof and that thereby the "residents" had been deprived of their procedural rights of an appeal against the approval. This review application was served on 13 March 2017, that is a day before the urgent application. In it, an interdict preventing the commencement of building operations is also sought. This application for interdict and for review was however not yet ripe for hearing and has not been set down and neither was it enrolled before me.

[9] In the application for intervention, the residents of the Heuwelsig Estate also request a postponement of the urgent application, pending their filing opposing papers and the matter being heard in due course.

[10] I have considered the application for intervention and in my view it should not succeed for the following reasons:

10.1. The residents of the Heuwelsig Estate are represented by the First Respondent, a body which represents all the residents of the estate, comprising some 1200. The residents who now seek intervention are only 12.

10.2. The 12 residents have not been individually cited in their application for intervention and have simply been cited as a group of people as if a voluntary association with *locus standi*.

10.3. Although the group of people or individuals comprising it may have concerns regarding the proposed construction, they cannot, by their intervention application and proposed opposition to the Applicant's application effectively perpetuate the spoliation perpetrated by the First Respondent and which the First Respondent had already conceded by way of the withdrawal of its opposition.

10.4. There is no direct and substantial interest justifying intervention or joinder in the spoliation application itself.

[11] I have considered whether a grave injustice will result if the urgent application is not immediately stayed and postponed. In this context I had regard to the following:

11.1. The Intervening Parties' purported basis of review against the consent granted by the First Respondent appears to be spurious. Nothing of substance turns on the fact whether a head of a department rather than the general manager had granted the requisite consent in the absence of an allegation by the First Respondent that no such consent should have been granted, either procedurally or on the merits thereof. Insofar as this is simply a contractual issue relating to the MOI of the First Respondent, any such breach, if it occurred has been condoned by the First Respondent by its conduct.

11.2. The *gravamen* of the objectors' objection against the consent granted by the Second Respondent and which they allegedly seek to pursue by way of an

appeal against the granting of consent are the allegations that their own property values might be decreased, that the *"theme"* of their properties would be compromised and that there would be *"too much traffic and lack of discipline if the second dwellings are erected and our children will not be safe in such a congested environment"*. Apart from the fact that these aspects have been far more extensively and in detail examined and considered by the Second Respondent and its various departments, it is difficult to conceive how two additional dwellings in an estate comprising hundreds of erven could lead to this result. There are in any event already many other subdivided erven and dual residences and it has not been suggested that the additional two proposed by the Applicant would be the proverbial *"last straw"*. There appears to be little prospect of success in the review of the appeal.

11.3. The rights of the Applicant not to be spoliated outweigh the abovenamed considerations now raised by the Intervening Parties.

11.4. The Intervening Parties have an alternate remedy namely the pursuit of their separate application for interdict and review, should they be so advised and the order to be granted would be limited so as not to oust this possibility.

[12] In the premises the application for intervention and joinder by the *"residents of Heuwelsig Estate"* is refused.

[13] In the exercise of my discretion and considering the nature of the First Respondent's conduct referred to above regarding the spoliation of the Applicant's unfettered rights of access to his properties, I consider that costs on the scale as between attorney and client should be allowed which costs order should follow the success of the event.

ORDER:

[13] In the premises I grant an order in terms of a draft which I have amended and marked "X" and which now reads as follows:

1. The First Respondent is ordered to restore unrestricted access to the Applicant, his wife and any unauthorised contractor or worker attending to any construction activities or related activities on Erven [...]4 and [...]5 Celtisdal Extension 20;
2. The First Respondent is ordered to pay the costs of the application on a scale as between attorney and client

ACTING JUDGE OF THE HIGH COURT

Date of hearing: 14 March 2017

Judgment delivered: 17 March 2017

Counsel for Applicant:

Attorneys for Applicant: DP Du Plessis Inc

Counsel for Respondents:

Attorneys for Respondents: Mashamba Inc

Counsel for Intervening Parties:

Attorneys for Intervening Parties: Nchupetsang Attorneys