



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 502/2024

In the matter between:

JOHANNES WESSEL GREEFF

APPELLANT

and

BODY CORPORATE OF

MERRIMAN COURT

FIRST RESPONDENT

CLAIRE ELIZABETH BLAHA

SECOND RESPONDENT

ANTONINO ROSARIO SCALABRINO

THIRD RESPONDENT

CHARLES ERIC LEONG SON

FOURTH RESPONDENT

WENDY-LEE DE GOEDE

FIFTH RESPONDENT

ISTVAN GYONGY

SIXTH RESPONDENT

Neutral citation: *Johannes Wessel Greeff v Body Corporate of Merriman Court and Others* (502/2024) [2025] ZASCA 176 (28 November 2025)

Coram: DAMBUZA, KATHREE-SETILOANE, SMITH and
BAARTMAN JJA and CHILI AJA

Heard: 28 August 2025

Delivered: 28 November 2025

Summary: Law of Property – requirements for the extension of a sectional unit prescribed in Sectional Titles Act 95 of 1986 and Sectional Titles Schemes Management Act 8 of 2011 not complied with – decision at an informal meeting

not constituting approval of building plans as required in law – ratification threshold not met for adoption of minutes of informal meeting – requirements for declaratory relief and final interdict not established.

ORDER

On appeal from: The Western Cape Division of the High Court, Cape Town (Allie, Salie and Mangcu-Lockwood JJ sitting as court of appeal):

The appeal is dismissed with costs, including costs of two counsel.

JUDGMENT

Baartman JA (Dambuza, Kathree-Setiloane, Smith JJA and Chili AJA concurring):

Introduction

[1] On 15 September 2021, the Western Cape Division of the High Court, Cape Town per Ndita J (the high court) granted the appellant, Mr Johannes Wessel Greeff (Mr Greeff) declaratory relief to the effect that he was authorised to implement building plans for construction on his property, section 1 of the Merriman Court sectional scheme located along Merriman Road in Greenpoint, Cape Town. The order included a mandamus that the respondents consider Mr Greeff's request for approval of the building plans. On 13 February 2024, the full bench of that division, per Allie, Salie and Mangcu-Lockwood JJ, (the full court), set aside that relief. This appeal against the judgment of the full court, is with the special leave of this Court.

[2] The background facts are the following. The third respondent, Mr Antonino Rosario Scalabrino (Mr Scalabrino), inherited from his father a small

block of flats (the Merriman Court), comprising six single-storey apartments, a three-car garage, domestic staff quarters and two storerooms, in Green Point, Cape Town.

[3] In 1986, Mr Scalabrino converted Merriman Court into a Sectional Title Scheme. Thereafter, various owners extended their sections into the common property, the roof, and the common property lobbies or adjacent voids beneath the building. An additional garage was also erected. Mr Greeff is the owner of section 1 of the Sectional Title Scheme, the only unit located on the lower end of the property, an 88m² flat. He is the only owner in Merriman Court who has not yet extended his unit. He has exclusive use of a garden area around his unit (the garden area).

[4] At the 2007 Annual General Meeting (AGM) of the first respondent, the Body Corporate of Merriman Court (the Body Corporate), Mr Greeff requested and obtained an 'in principle' approval to build a garage. No formalities were complied with as, at that stage, all the owners were members of the Body Corporate and partook in management decisions. They dealt informally with matters without regard to legislative requirements. However, in 2013, the Body Corporate decided to engage relevant professionals to regularise the alterations that had been affected at that stage. Pursuant thereto, a surveyor resurveyed the scheme and prepared the diagrams necessary to regularise the extensions and additions to the individual units at that stage. On 24 June 2016, the extensions were duly registered in the deeds office.

[5] In the high court application, Mr Greeff alleged that at the 2013 AGM, his wife, Mrs Greeff, requested permission from the Body Corporate to extend their unit into the garden area. Mrs Greeff, however, did not file a confirmatory affidavit. The minutes of the 2013 meeting show that no detail, such as the extent

and nature of the proposed extension was provided at that meeting. The relevant part of the minutes reveal that, ‘K Jackson, proxy for J Greeff, requested permission from the meeting for the later extension of their 2nd bedroom plus a bathroom, even changes to the kitchen. This were unanimously approved, subject to plan approval by the Body Corporate and the local authority–Approved’. As such, the request was conditionally granted. Due to work commitments, Mr Greeff did not act on the 2013 permission.

[6] In April 2017, Mr Greeff presented building plans (the 2017 plans) to the Body Corporate, ostensibly based on the permission obtained in 2013. As the 2017 plans form the basis of the relief sought, I deal with these in some detail. The Body Corporate had scheduled its 2017 AGM for 28 April 2017, and Mr Greeff’s plans were an item on the agenda of that meeting. However, the meeting did not proceed as planned ‘...due to the immediate resignation of the Managing Agent (MA) at 22:00 on 27 April 2017’.¹ The members resolved to hold an informal meeting (the informal meeting) instead of the planned AGM. In respect of Mr Greeff’s agenda item, the following is recorded in the minutes of the informal meeting:

‘Unit 1 Proposal:

- Johan [Greeff] circulated architectural drawings outlining extensions to unit 1
- Body Corporate formally accepts the plans
- Tony [Scalabrino] as the chairman will sign any document necessary
- The stairs could possibly also be used as they are exclusive use area
- Once the roof top is considered a landscaper will be appointed who will review the entire blocks gardens
- Suggestion to extend into steps on the left of the building.
- Civil engineer and city council approval will be circulated to the trustees as well as building timelines.
- Common use area at the entrance

¹ This is apparent from the minutes of the informal meeting.

- Bikes can be stored there
- Builders will use this space during the building process

Improvements:

- Quote for the stairs to be retiled after unit 1 building is complete.'

The postponed AGM was held on 7 December 2017, and the minutes of the informal meeting were adopted.

[7] Mr Greeff did not implement the 2017 plans but instead instructed an architect to revise the plans (the 2019 plans). At the time, the Greeffs were expecting their first child and needed an extra bedroom. The 2019 plans accommodated that need and aimed to improve the aesthetics of the extension proposed in the 2017 plans. They included a proposed extension to the section 1 flat by providing for the construction of a double storey building onto the common property of the Body Corporate.

[8] The upper storey of the proposed extension would be a flatlet with a wraparound veranda. Mr Greeff wanted the plans to be considered at the AGM scheduled for 5 July 2019 (the 2019 AGM). Ahead of that meeting, he made the plans available to the MA for circulation to members and to be placed on the agenda. The MA obliged. At the 2019 AGM, the parties agreed that Mr Greeff's request should be dealt with at a Special General Meeting to be held on 26 July 2019.

[9] The agenda, circulated ahead of the 26 July 2019 Special General Meeting, informed members of Mr Greeff's request:

- '2 Extension of Section 1 (Application/documents attached)
- 3 Erection of Garage (Application/documents attached).'

Mr Greeff made revisions to the 2019 plans as late as two days before the meeting. The respondents, did not attend the meeting as they needed more information and time to consider Mr Greeff's revisions. The meeting was consequently inquorate

and could not proceed. It was reconvened on 2 August 2019. Only Mr Greeff, his architect, Mr Scalabrino, and the chairperson, a representative of the MA, attended the latter meeting. At that meeting, Mr Scalabrino signed off on the ‘Preliminary Plans’. In terms thereof, Mr Greeff’s unit could be extended from 88m² to 185m², essentially incorporating into his sectional unit a large portion of the garden.

[10] The second respondent Ms Claire Elizabeth Blaha (Ms Blaha), the fourth respondent, Mr Charles Eric Son (Mr Son), and the fifth respondent Ms Wendy-Lee de Goede (Ms de Goede), all owners of units in the scheme and, as such, members of the body corporate objected to the resolution taken at the reconvened meeting. The parties agreed to convene a Special General Meeting on 19 October 2019. The minutes of that meeting recorded a 100 per cent quorum and that the following concerns were raised in respect of Mr Greeff’s proposed extension:

‘The extent of the extensions of exclusive use area. Current owners had done extensions only incorporated 17 square metres.

...

Members noted that they will not be approving any plans with regards the extensions of unit 1 till such time that the owner of section 1 provides the extent of the exclusive use areas and the value of the said extension. Members further objected to the proposed structure that will be erected, which will be unsightly.

...

Members noted that the permission of the erection of the garage was not brought to the attention of all members and there seems to be a flaw on how the special resolution was passed at the said meeting.

...

70. 17 per cent of the members present at the meeting objected to the plans for the extension to be done on the exclusive use areas as well as the plan for the erection of the said garage.’ (Own emphasis.)

[11] Mr Son and Ms de Goede objected to the request for approval. They maintained that the request was irregular because Mr Greeff sought greater rights of extension than had been granted in respect of the other sections. Ms de Goede refused to vote as she considered the request illegal. The meeting adjourned without members voting.

[12] Aggrieved, Mr Greeff approached the high court for declaratory and interdictory relief. He further filed a rule 7² notice, which I deal with below. The following relief was sought:

‘(a) directing the respondents to consider the applicant’s request for approval of his plans for construction by way of the extension of section 1 of the Merriman court Sectional title Scheme ... attached to annexure JWG16 [the 2019 plans] to the founding affidavit.

(b) declaring that the applicant is in any event permitted to implement his plans for construction by way of the extension of section 1 of the scheme which are attached as annexure JWG14 [the 2017 plans] to the founding affidavit.

(c) ...costs ...’

[13] In the high court, Mr Greeff relied on the permission historically granted for the relief sought as follows: he alleged that at ‘the general meeting of 10 September 2007 the body corporate unanimously...Approved - In principle additions for the new garage and stairway...’. And that in 2013, the body corporate had ‘unanimously resolved’ that he could extend [his] section. Further, ‘[a]t the special general meeting of 23 April 2014 [that] right was confirmed...’. Additionally, that his 2017 plans were duly submitted and considered by the body corporate at the 2017 AGM. Therefore, the body corporate is obliged to consider [his] 2019 plans, in good faith and to grant or refuse its approval on reasonable grounds’.

² In terms of the Uniform Rules of Court.

[14] The respondents opposed the relief sought on the basis that no notice was given that a special resolution would be sought at the 2 August 2019 meeting. Further, that the 19 October 2019 Special General Meeting did not comply with s 6(3) of the Sectional Title Schemes Management Act 8 of 2011³ (the STSMA) and rule 15(6) of the Management Rules.⁴ In addition, they alleged that they had refused to vote at that meeting as they required ‘further information in the hope of finding some middle ground, in the light of the fact that [Mr Greeff] refused to concede that any decision taken at the further meeting was null and void...’.

[15] The high court held as follows: (a) ‘[I]n 2017 the body corporate approved (Mr Greeff’s) plans by adopting the minutes of the resolution in terms of s 5(1) of the Schemes Management Act, approving same in April 2017’. Therefore, Mr Greeff had established ‘his right to an order entitling him to implement the 2017 plans’; (b) the 2019 plans constituted an internal configuration of the extended apartment and that such configuration does not amount to the waiver of (Mr Greeff’s) approval obtained in 2017’. The high court further held that the Body Corporate was not properly before the court.

[16] On appeal, the full court held that Mr Greeff ‘has failed to prove an adoption of a unanimous resolution in terms of s 5(1)(a) of the STSMA, to alienate a portion of the common property...and an adoption of a special

³ Section 6 of Sectional Title Scheme Management Act 8 of 2011 (the STSMA), in relevant parts, provides: ‘(2) The body corporate must, at least 30 days prior to a meeting of the body corporate where a special resolution or unanimous resolution will be taken, give all the members of the body corporate written notice specifying the proposed resolution, except where the rules provide for shorter notice.

(3) The notice contemplated in subsection (2) must be-

- (a) delivered by hand to a member;
- (b) sent by pre-paid registered post to the address of a member's section in the relevant scheme; or
- (c) sent by pre-paid registered post to a physical or postal address in the Republic of South Africa that a member has chosen in writing for the purposes of such notice.’

⁴ Rule 15(6) provides: ‘Notice of a general meeting must be delivered to-

- (a) members at their service addresses in terms of rule 4(5), and
- (b) other persons at the most recent physical, postal, fax or email address of which they have notified the body corporate in writing.’

resolution to allow [Mr Greeff] to extend his unit into the common property in terms of s 5(1)(h)'. In the absence of 'a right of extension', the full court set aside the relief obtained in the high court.

[17] The finding by the full court to the effect that Mr Greeff had failed to prove the adoption of a unanimous resolution as required under s 5(1)(a) of the STSMA was based on an understanding that the extension of Mr Greeff's unit into the garden would constitute alienation of the common property, requiring compliance with s 5(1)(h). The section confers powers on the Body Corporate, on application by a section owner, and when a special resolution has been passed by the other owners, to approve the extension of boundaries or floor area of the applicant's section as provided in the Sectional Titles Act 95 of 1986 (the STA).

[18] However, in December 2024, this Court in *Body Corporate of San Sydney v Singh and Others*⁵ held that although the extension of a scheme by the erection of further buildings on the common property affects the owners' participation quotas by diluting the percentage of the floor areas of the owners, it does not constitute alienation of the common property. At the outset of the hearing of the appeal, the respondent conceded that in the light of this decision, the full court erred in concluding that Mr Greeff's proposed extensions into the common property constituted an alienation of property requiring the unanimous approval of the owners in terms of s 5(1)(a) of the STSMA. It accordingly did not persist with its argument on this point in the appeal.

[19] Mr Greeff argued that despite the 2017 meeting having been informal, his plans were validly approved by the Body Corporate. The argument is based on the fact that the scheme comprised only six trustee owners, and they managed the

⁵ *Body Corporate of San Sydney v Singh and Others* (779/2023) [2024] ZASCA 169 (9 December 2024) para 42.

scheme on the basis that all owners would be actively involved in the management of the scheme. All owners usually attended meetings and occasionally matters would be dealt with informally but would be regularised later.

[20] Conversely, the Body Corporate and the opposing trustees argued that the owners who attended the informal meeting did not intend to take any binding decisions at that meeting. They contended that, in any event, Mr Greeff only circulated ‘architectural sketches with very little detail’, which did not include the garage or an indication of the extent of the proposed encroachment upon the common property.

Discussion

[21] As stated, the issue for determination is whether Mr Greeff has, in compliance with the relevant legislative provisions, acquired the right to extend his section or is entitled to a declarator to that effect. Section 24 of the STA provides that:

‘Extension of sections

(3) If an owner of a section proposes to extend the boundaries or floor area of his or her section, he or she shall if authorised in terms of section 5 (1) (*h*) of the Sectional Titles Schemes Management Act, cause the land surveyor or architect concerned to submit a draft sectional plan of the extension to the Surveyor-General for approval.’

[22] Section 5(1)(*h*) of the STSMA provides that:

‘(1) In addition to the body corporate’s main functions and powers under sections 3 and 4, the body corporate –

...

(*h*) must, on application by an owner and upon special resolution by the owners, approve the extension of boundaries or floor area of a section in terms of the Sectional Titles Act.’

[23] The Body Corporate has a duty to act in the best interests of all its members. Section 3 of the STSMA provides that the Body Corporate must perform the functions entrusted to it which include the power in general, to control, manage and administer the common property for the benefit of all owners.

[24] Mr Greeff contended that he had demonstrated a clear right to have the 2019 plans considered based on the approvals recorded in the minutes of the 19 October 2019 Special General Meeting.⁶ The courts have repeatedly stressed that commercial and legal documents must be interpreted contextually and purposively. In *Cool Ideas 1186 CC v Hubbard and Another*⁷ the Constitutional Court held that:

‘A fundamental tenet of statutory interpretation is that the words in a statute must be given their ordinary grammatical meaning, unless to do so would result in absurdity. There are three important interrelated riders to this general principle, namely:

- (a) that statutory provisions should always be interpreted purposively;
- (b) the relevant statutory provision must be properly contextualised; and
- (c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a).’ (Citations omitted.)

[25] It is apparent from a plain reading of the relevant resolutions that Mr Greeff’s request was considered by the owners and that they raised certain concerns. The first concern was that the request was irregular because Mr Greeff sought greater rights of extension than had been granted to owners of the other sections. The second was that the permission to erect a garage was not brought to

⁶ See paragraph 10 above.

⁷ *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) para 28. See also *Natal Joint Municipality Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA).

the attention of all members and there seems to be a flaw on how the special resolution was passed at the said meeting. In addition, it is apparent from all the resolutions that the respondents were of the view that important information, that was essential for them to make an informed decision on the documents submitted by Mr Greef, was missing. The approval given at the 2013 meeting was subject to approval of the plans by the Body Corporate and the ‘local authority’. The meeting held on 27 April 2017 was informal and those in attendance only ‘accepted the plans’ submitted by Mr Greef. There is no evidence of an unreserved approval of the proposed extensions.

[26] Mr Greeff alleges that the Body Corporate managed its affairs informally, hence there was no need for compliance with legislative prescripts. This argument does not assist Mr Greef. As stated, the Body Corporate is obliged to act in terms of the law and in the interest of its members. In any event the respondents opposed the relief sought on, amongst others, the basis that no notice was given that a special resolution would be sought at the 2 August 2019 meeting. Further, that the 19 October 2019 Special General Meeting did not comply with s 6(3) of the STSMA and rule 15(6) of the Management Rules. In addition, it was not in dispute that the respondents refused to vote at that meeting as they required ‘further information in the hope of finding some middle ground, in the light of the fact that [Mr Greeff] refused to concede that any decision taken at the further meeting was null and void...’.

[27] The full minute of the informal meeting is set out in paragraph 6 above. The minutes indicate that Mr Greeff circulated architectural drawings at the meeting. Since that issue was not an item on the agenda for that meeting, those present would not have had time to consider and apply their minds to the impact it could have on the scheme or individual owners. The architectural drawings did not reflect which portions of the common areas would be subsumed into Mr

Greeff's new exclusive use areas. A landscaper would still review the gardens in the sectional scheme once the rooftop was finalised. It is also important to bear in mind that there was general acceptance that Mr Greeff was also entitled to extend his unit as the other owners had. At that stage, the extent of the encroachment was a concern. Therefore, the acceptance of Mr Greeff's drawings at the meeting is an indication of the willingness to accommodate him rather than the approval which Mr Greeff contends for.

[28] The adoption of the minutes of the informal meeting held on 7 December 2017 does not constitute ratification of the resolution taken at the informal meeting, as Mr Greeff argued. The adoption only signifies that the minutes reflected correctly the discussion that took place at the informal meeting. Mr Greeff was the only owner who had not extended his unit, and the Body Corporate was willing to give him a reasonable opportunity to do so. That does not mean that Mr Greeff's plans would not be subjected to scrutiny and other members would not be allowed to raise objections before final acceptance.

[29] The resolution taken at the informal meeting did not have any binding force, and the adoption of the minutes on 7 December 2017 did not meet the test for ratification. There is therefore no merit in the submission that Mr Greeff's claim had prescribed. The high court, in the exercise of its discretion, did not consider all these important facts mentioned above. Therefore, Mr Greeff did not satisfy the requirements for a declaratory order. He did not have a claim.

[30] Nowhere in the record does Mr Greeff explain why he has not addressed the concerns raised by the owners. Nor does he show that in terms of s 5(1)(h) of the STSMA he has the necessary approval, in the form of a 'special resolution' from the owners to extend his unit as proposed.

[31] Mr Greeff's request was appropriately considered. It is now incumbent on him to address the concerns raised by the owners and approach the Body Corporate to consider his responses. Until such time that is done, there is no obligation on the owners to reconsider his plans. Mr Greeff has failed to demonstrate that he has a clear right to the interdictory relief sought or that he will suffer any harm if the interdictory relief is not granted.

Rule 7 notice

[32] On 27 November 2020, Mr Greeff filed a notice in terms of rule 7 of the Uniform Rules of Court, disputing the authority of the attorneys appointed to oppose the application on behalf of the Body Corporate. He relied, for this objection, on a R15 000 limit on the amount in respect of the legal costs that the trustees were permitted to incur on behalf of the Body Corporate. It was common cause that defending the application would far exceed that amount.

[33] In response to the rule 7 application, the trustee respondents put up a resolution, dated 4 November 2020, from which the following appears:

‘MERRIMAN COURT BODY CORPORATE TRUSTEES RESOLUTION

In terms of Prescribed Management Rules of the Sectional Titles Act, 1986 (Act 95 of 1986) .

. . we, the trustees, are raising a special levy upon the owners of . . . to pay for legal fees, which were not included in the current budget. The body corporate is being sued in the High Court, & has a fiduciary responsibility to defend itself, hence the special levy.

The amount of R 84, 527, 50 is to be paid by participation quota. . . per attached schedule.

...

The initial deposit of R42, 775 – which was paid out of funds due to Wendy de Goede for various payments made on behalf of the body corporate. . .’

[34] It was common cause that Mr Greeff and Mr Scalabrino did not support the resolution. The full court held, correctly in my view, that there was no conflict of interest ‘when the trustees appointed an attorney for the body

corporate...because the decision of the trustees...was approved by the general meeting of the body corporate, where all the members were present or represented'. The full court further held that the Body Corporate had a substantial and material interest and locus standi in the litigation. In the circumstances of the matter, I cannot fault those findings nor the order setting aside the orders of the high court.

[35] For the reasons stated above, I make the following order:

The appeal is dismissed with costs, including costs of two counsel.

E D BAARTMAN
JUDGE OF APPEAL

Appearances

For the appellant:

RG Patrick SC

Instructed by:

Maurice Phillips Wisenberg Attorneys,
Cape Town,
Phatshoane Henney Attorneys,
Bloemfontein.

For the first, second and
fourth to sixth respondents:

PA Corbett SC and DM Lubbe

Instructed by:

Van Rensburg & CO. Attorneys,
Cape Town,
Symington De Kok Inc, Bloemfontein.