

# SUMMARY OF THE JUDGMENT

## OWNERSHIP IN HOA: RULES & COMPLIANCE TRUMP

### **Randjesfontein Country Estates Limited and Others v Masoom Trading Solutions (Pty) Ltd and Others (43706/14) [2015] ZAGPPHC 199 (20 February 2015)**

*The judgment addresses a dispute between a home owners association and owner regarding the use of the property as an education facility where this is not permitted in the zoning laws. It is another one in a growing line of cases where these associations are successful in obtaining orders obliging owners to comply with the rules. Home owners in such estates should take care to conduct themselves in accordance with prevailing rules and regulations, or face the music.*

*The Judgment can be viewed [here](#).*

### **FACTS**

Masoom Trading Solutions (Pty) Ltd (the training academy) owned a property in the Randjesfontein Country Estate and was a member of Randjesfontein Country Estates Ltd, a home owners association (the HOA) established in respect of the development. The HOA is charged with managing and administrating the estate. Property owners within the estate bind themselves contractually to certain conditions and rules of the HOA which pertain to the ownership and use of their respective properties.

The property is zoned agricultural and was developed as an equestrian estate where people could reside and benefit from a pastoral, country lifestyle.

All purchasers sign a "Consent for Resale" document which includes, amongst other things, reference to the various rules and conditions that apply to ownership in the estate. This includes the title deed conditions and the provisions of the applicable zoning scheme; the estate's policies and implementation procedures; building and land use requirements. The aim of all the documentation is to bind owners to preserving the country lifestyle.

Ms Amod was the sole director and manager of the training academy. She did not reside on the property but it was used as a base from which the training academy offered SETA approved training, specialising in e-learning programmes.

In the present matter, the HOA and certain owners approached the court for a final order interdicting the training academy from operating from the property, on the basis that it constituted (i) a contravention of the applicable zoning provisions; and (ii) contravened the Consent for Resale document.

The zoning provisions provided, amongst other things, that:

- The terms “dwelling house” referred to use of buildings for residential, not business purposes;
- Where property has been zoned “agricultural”, the buildings erected thereon may in the normal course be erected and used only for dwelling houses and agricultural buildings. However, with special consent of the local authority, the buildings erected and used could, amongst other things, be used for places of instruction. (No such consent was sought or obtained in the present matter.)
- Certain exceptions are provided for. Relevant to this matter as the provision that the zoning provisions did not prohibit:

*“20.3 the practice, subject to the compliance with the by-laws by any occupant of a dwelling house or residential building of a profession or occupation, which does not involve either:*

*20.3.1 ...*

*20.3.2 ...*

*20.3.3 ...*

*20.3.4 an interference with the amenities of the neighbourhood.”*

The HOA and owners argued that the Ms Amod and the training academy was in breach of the provisions of the Consent for Resale (which document included the Town Planning Scheme) in that their conduct and business activities interfered with the peace and quiet of the neighbourhood.

The training academy and Ms Amod defended the matter and argued that the exception in the zoning provisions were applicable in the present matter; that they, as “occupants” of the property, were entitled to practise a profession or occupation, contrary to the permitted use of the relevant zoning, provided that such practise did not constitute an interference with the amenities of the neighbourhood; and that the training academy did not interfere with the amenities of the neighbourhood; that the Consent for Resale document was only of application when the property was sold.

**HELD:**

***Zoning provisions***

- The exception relied on permits the occupant of a dwelling house or residential building to practise his or her profession or occupation subject to qualifications in contravention of the general prohibition against such use of property zoned “agricultural”.
- In the zoning provisions, and in the exception, the reference to the occupant of

premises imputes a condition of physical presence that has permanency, as opposed to occasional presence.

- The training academy, as registered owner of the property, is not required to occupy the property and its ownership of the property did not constitute occupancy of the property as intended in the zoning provisions.
- Ms Amod only occasionally stayed over at the property. She conducted the courses on behalf of the training academy and in that sense she was merely an employee of the training academy and the medium through which the academy conducted its business. Ms Amod did not practise a profession or occupation, but conducted the business of the academy on its behalf.
- It followed that Ms Amod's infrequent occupancy of the property did not fall under the exception and, in the absence of special consent by the local authority, the use of the property for a place of instruction was unlawful.
- The court found that the HOA was entitled to the relief relating to the contravention of the Town Planning Scheme in respect of the unauthorised use of the property.

#### ***Alleged breach of the Consent to Resale***

- Ms Amod's argument that the contractual relationship in terms of the Consent for Resale only applied when the property is sold, had no merit. It was clear from the document that the contractual relationship came into operation on the date of signing thereof (of becoming an owner in the estate) and endured until the property was re-sold in the future. As such, the academy and Ms Amod were contractually bound to comply with the obligations imposed and to use the property in conformity with the relevant zoning provisions, building regulations, and so forth.

*(There was a dispute regarding non-compliance with other obligations allegedly transgressed by the training academy, which related to the failure to obtain building approval. The HOA did not discharge the onus in this regard and a final interdict regarding non-compliance with building rules was not granted.)*

The application therefore succeeded on the first ground raised, i.e. that the zoning provisions were contravened.

#### CONTACT US

■ CAPE TOWN  
Tel: 021 406 9100

■ SOMERSET MALL  
Tel: 021 850 6400

■ TYGER VALLEY  
Tel: 021 943 3800

■ FOURWAYS  
Tel: 010 001 2632

■ CLAREMONT  
Tel: 021 673 4700

■ STELLENBOSCH  
Tel: 021 001 1170

■ MENLYN  
Tel: 012 348 1682

■ CENTURION  
Tel: 012 001 1546

■ FISH HOEK  
Tel: 021 784 1580

■ TABLE VIEW  
Tel: 021 521 4000

■ ILLOVO  
Tel: 011 219 6200

■ BEDFORDVIEW  
Tel: 011 453 0577