

April 2019

ESTATE ROADS ARE NOT NECESSARILY PUBLIC ROADS – THE RELATIONSHIP BETWEEN THE PARTIES IS BASED ON THE LAW OF CONTRACT

We previously published articles in respect of the case of *Singh and another v Mount Edgecombe Country Club Estate Management Association 2 (RF) NPC and others* [2016] JOL 35169 (KZD) (the “**First Case**”) discussing amongst others the legality and enforceability of certain estate rules as well as a second article discussing the ruling of the High Court appeal case of *Singh and another v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC) and others* [2017] JOL 39258 (KZP) as heard in August 2017 (the “**High Court Appeal Case**”).

While the general principle remains that “*restrictions imposed by the rules are private ones, entered into voluntarily when electing to buy in the estate*”, such rules are governed by the principles of contract and if contrary to public policy such rules will be unenforceable.

In the High Court Appeal Case the Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC) (the “Association”) had conceded that the roads within the estate were public roads and as such the court did not make a ruling in this regard but proceeded on the assumption that such roads were in fact public roads. Based on such assumption the Court in the High Court Appeal case ruled that there are inherent dangers in such a dual system, one contractual and one according to public law. The result of giving effect to such contractual arrangement is that it requires a court to recognise and promote a regime of rules which have not been sanctioned by the authorities concerned. As such the High Court Appeal case ruled that the speed limit restrictions and fines imposed in terms of the rules were invalid.

The Association then appealed the matter to the Supreme Court of Appeal in *Mount Edgecombe Country Club Estate Management Association II (RF) NPC v Singh & others* (323/2018) [2019] ZASCA 30 (28 March 2019) (the “**Supreme Court Case**”). In the Supreme Court case they argued that the roads within the estate were not public roads.

The Supreme Court considered the definition of “public road” as defined in the National Road Traffic Act 93 of 1996, which reads as follows:

‘*any road, street or thoroughfare or any other place (whether a thoroughfare or not) which is commonly used by the public or any section thereof or to which the public or any section thereof has a right of access*’.

The Supreme Court of Appeal stated that at the inception of the estate, the roads within the estate were private roads. This fact never changed. The roads did not thereafter acquire the character of public roads. The estate is enclosed by a two met meter high palisade fence, which is topped with electrified security wiring. All ingress and egress to the estate is strictly controlled. Gated access points are controlled by security guards. Visitors are required to provide the guards with an access code to gain entry to the estate and residents gained entry through the use of biometrics.

The public, so it was held, must be the general public, not the special class of members of the public who have occasion for business or social purposes to go to the estate and the use of the roads by the public must be more than mere casual or isolated use.

The Supreme Court of Appeal further noted that '*[w]hilst it is correct that some members of the public (or persons other than those residing in the estate) are permitted to enter the estate, there is no right on the part of the general public or any section thereof to traverse the roads*'.

The Supreme Court of Appeal noted that when residents within the estate chose to purchase property within the estate and become members of the Association, they agreed to be bound by its rules. The relationship between the Association and the respondents is thus contractual in nature.

It was further noted that imposing a lower speed limit within the estate than that prescribed by national legislation does not go beyond promoting, advancing and protecting the interests of the respondent's members and is not unreasonable.

Conclusion

Estate rules generally and in particular those governing speed limits and the associated fines are governed by and are based on the principles of contract. In the absence of such rules being against public policy, and further provided that the roads within an estate do not fall within the definition of public roads as defined above, then an estate may in terms of its rules impose lower speed limits and may impose fines for a failure to comply with such rules.



Going Beyond

The DVH group is a national group of attorney practices with offices situated in the Western Cape, Gauteng, and Kwa Zulu Natal.

www.dvh.law.za or scan the QR to contact us.



This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.