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IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)
DATE: 6/10/2005
CASE NO: 12614/2003

UNREPORTABLE

In the matter between:

CATWALK INVESTMENTS 206 (PTY) LIMITED	1ST APPLICANT
WILLEM JOHANNES CLAASE	2ND APPLICANT

And

SILVER LAKES HOME OWNERS ASSOCIATION (ASSOCIATION INCORPORATED UNDER SECTION 21) (NR. 1992/004661/08)	1ST RESPONDENT
SILVER LAKES COUNTRY CLUB (PTY) LIMITED (NR. 199/016871/07)	2ND RESPONDENT

JUDGMENT

PRELLER, J

The English humorist PG Wodehouse, who also happened to be a keen golfer, wrote a story about a prince who was watching the slaves at work in the palace garden when he noticed that one man did not seem to

be doing any work at all. He was concentrating on propelling a round stone along a garden path with a crooked stick and took no notice of anyone or anything else around him.

Upon enquiring the prince was informed that the slave in question had been captured during the latest raid into Scotland and that he was practising his religion. The religion was called something that sounded like “Gowf”. In terms of the Labour Laws of the Kingdom the slave was entitled to practice his religion without interference.

The prince was interested and was introduced to the rudiments of the religion by the said slave. He soon became a dedicated proselyte of the new religion and the slave his fulltime mentor. The prince’s conversion had a profound effect on the kingdom that is described in more detail by the learned author.

The first and second respondents seem to be faithful adherents to the same religion. That had certain repercussions for some of the other inhabitants and more in particular the second applicant, which resulted in the present dispute.

The second applicant resides in a home owned by the first applicant in Silver Lakes. For the sake of convenience I shall refer to the second applicant as simply the applicant because the first applicant does not play any part in the rest of this judgment. The applicant launched an application which seeks in effect to compel the second respondent (the golf club) to abide by the rules which the first respondent (the home owners association) made for the use of power lawnmowers by the members. In section (b) of the Conduct Rules and under the heading "Good Neighbourliness" rule 4 restricts the use of power mowers and other noisy machines to the hours between 07:30 and 18:00 during the winter months and 07:00 and 18:00 in summer. On Sundays such activities are further restricted to the hours from 08:00 to 13:00 and 16:00 to 18:00. The applicant complains that the greenkeeper of the golf club starts mowing the greens and fairways of the golf course with a noisy mower well before the permitted hours which, he says, disturbs his peace.

The respondents admit this charge but say in effect that due to the status of a holy cow to which the golf club is entitled it is not bound to the rules which apply to the ordinary mortal members of the Home Owners Association. This is clear from particularly the answering affidavit filed on behalf of the first respondent.

It appears from the annual report of the chairman of the first respondent (which is dated 14 May 2003) that 80% of the home owners do not play golf. The golf course is also subsidised by the members who do not play golf.

Just as a democracy deserves the government that it has elected, the members of the first respondent deserve the management committee that they have elected. The privileged position in which the golf club finds itself is probably due to the apathy of the majority that allowed a small minority of golfers to control the management of the Home Owners Association.

If the mass of the immaterial affidavits and documents that make up the record is ignored the answer to the dispute is clear and simple. I shall limit myself to what is relevant.

With reference to certain of the rules laid down in the Companies Act, the applicant submitted that all the members of the first respondent are bound to the house rules. I was referred to certain authorities from which it is clear that the Articles of Association have the same force as a contract between the company and each and every member. Section 6 of the Articles of Association provides that every member shall observe all

rules made by the association or by the trustees whether such rules form part of the Articles of Association or of the house rules or otherwise. Both respondents contend that the house rules are directed at the home owners and are not applicable to the golf club (the holy cow referred to above). In that respect the respondents are clearly wrong and the applicant is correct.

The applicants' problem, however, arises from a resolution passed by the first respondent at a meeting held on 14 February 2003. Paragraph 5.9 reads as follows:

> "The chairman will address a letter to Mr Claase that the trustees have decided to amend the rules and regulations and make an exception for the club with respect to the mowing of the greens."

Although the resolution is somewhat loosely worded the intention is clearly to amend the rules. To that decision effect was given as appears from a letter that was subsequently on 27 February 2003 written to the applicant. Paragraph 3 of the letter reads:

> "Accordingly the trustees have agreed that paragraph 4 on page 3 of the Community Participation Rules and Regulations as amended in October 2001 be amended as follows:
>
> > 'The aforementioned shall not be applicable to maintenance conducted by the golf club.'"

The letter once again is not a model of clarity but the intention is clearly to inform the applicant that rule 4 has been amended by the inclusion of the sentence quoted above, the effect of which is to exempt the second respondent from the limitation on noisy machinery.

The trustees derive their powers from article 16 of the Articles of Association of the company. Paragraph 16.1 thereof provides that:

> "... the trustees shall manage and control the business and affairs of the association ... subject, however, to such rules as may have been made by the association in general meeting or as may be made by the trustees from time to time."

Article 8.1 of the Articles of Association provides as follows under the heading “Rules”:

> “8.1 Subject to the provisions of the memorandum and articles of association and any restriction imposed or direction given at the general meeting of this association the trustees may from time to time make rules in regard to:”

One of the matters in regard to which the trustees may make rules is contained in article 8.1.6 as follows:

> “The conduct of any persons within the township for the prevention of nuisance of any nature to any member;”

It is clear that these provisions entrust the power to make rules to the trustees. In their wisdom they have exempted the second respondent from the limitation on the making of noise with an appropriate amendment to the rules. It seems that the applicant’s remedy would be to persuade a general meeting of the members to instruct the trustees to amend the household rules by the deletion of the exemption referred to above.

In my view the respondents have acted within their powers and as a result the application must be dismissed with costs.

F G PRELLER
JUDGE OF THE HIGH COURT

12614/2003

HEARD ON: 24/02/2004
FOR THE APPLICANTS: Adv E P Van Rensburg
INSTRUCTED BY: Messrs Van Zyl, Le Roux & Hurter
FOR THE 1ST RESPONDENT: Adv J O Williams
INSTRUCTED BY: Messrs Klagsbrun De Vries & Van Deventer
FOR THE 2ND RESPONDENT: Adv K W Lüderitz
INSTRUCTED BY: Friedland Hart Inc
DATE OF JUDGMENT: 06/10/2005