



MOSSSEL BAY GOLF ESTATE HOME OWNERS ASSOCIATION

Association incorporated under section 21 of the Companies Act 1973 (as amended)

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**Dear Home Owner
Mossel Bay Golf Estate**

SUPREME COURT OF APPEAL AFFIRMS RELEVANCE OF CONDUCT RULES WITHIN GATED ESTATES

The judgement delivered on 28 March 2019 by the Supreme Court of Appeal (SCA) of South Africa in the matter Mount Edgecombe Country Club Estate Management Association II (RF) NPC v Singh & others (323/2018) [2019] set a number of principles which impact gated estates such as the Mossel Bay Golf Estate. The main issue on appeal was whether the questioned conduct rules relating to the speed limit within the Mount Edgecombe Country Club Estate (the estate is situated around a golf course) were unlawful and invalid regard being had to the National Road Traffic Act 93 of 1996 (the Act).

For some background it was noted that the estate is serviced by a network of roads and pathways used by motorised vehicles, golf carts and pedestrians. In addition, the estate is also home to a number of small animals and bird species within the confines of the estate. The appellant in this matter is a member of the Association of the Property Owners within the estate. The owners are obliged in terms of the Memorandum of Incorporation (MOI) to be part of the Association. The Directors of the Association determined that the speed limit on all the roads within the estate shall be 40 km/h. During October 2013, the daughter of Mr Singh was issued with three contravention notices for exceeding that limit. The Association imposed financial penalties for these contraventions, (in each instance a penalty of R1 500 was imposed) which amounts were deemed to be included as part of the levy account due by the owner and were debited to the owners account.

The Board of Directors, Mossel Bay Golf Estate Home Owners Association (HOA), consider it essential that three of these principles be brought to your attention as summarised hereunder:

1. The SCA held that after applying the definition of public roads in the Act and citing various cases, that the roads within the estate were private roads. Subsequently, the HOA is entitled to prescribe a lower speed limit than that required by legislation.
2. According to the SCA, the relationship between the Association and owners are contractual in nature and the conduct rules, as well as the restrictions imposed by them, are private ones, entered into voluntarily when an owner elects to buy property within the estate. The relationship between an owner and all the other owners are regulated by contract. Therefore, the control of the speed limit within the estate fell squarely within the provisions of the contract concluded between the Association and the owners of the properties within the estate. The SCA concluded that contractually

binding regulations are enforceable by the parties to the contract, and against them only.

3. The SCA found that any breach of the conduct rules remains a matter between the owner and the Association. Third party adherence to the conduct rules is the responsibility of the owner who invited/granted a third-party access to the estate and the owner must bear the consequences of any sanction imposed as a result of non-compliance by such third-party.

In spite of earlier communiques, road signage and speed calming humps, speeding by a small number of residents (and contractors) on the Mossel Bay Golf Estate remain a concern.

Should this request fail to inspire adherence to the speed limit of 25 km/h on the Mossel Bay Golf Estate the Board will have to consider additional measures in pursuing compliance therewith.

Kind regards

HOA Board

Mossel Bay Golf Estate HOA

Per:

Cleon Steyl

Portfolio Manager

Status Mark Property Management