

CHIEF REGISTRAR'S CIRCULAR NO. 2 OF 2012

APPLICATION OF SECTION 25(13) OF THE SECTIONAL TITLES ACT, 1986 (ACT 95 OF 1986)

1. *Roseparkadmin CC and Others v The Registrar of Deeds (Western Cape High Court Case No. 5522/2011 dated 17 May 2011)*

1.1. In the above-mentioned case, Weinkove AJ ordered the setting aside of a rejection note that was made in accordance with Registrars' Conference Resolution 2 of 2009, together with an order for the registration of the relevant deeds.

1.2. The following, amongst others, is recorded as "*Reasons for Judgement*":

- Section 25(13) of the Sectional Titles Act 95 of 1986 ("the Act") provides "*that it is the owner who feels that he is prejudiced by the changes who alone may apply to court and it is not the developer who is required to make that application.*" (par. 13).
- Reference is made to *PLC Trust and Others v The Registrar of Deeds Bloemfontein and Others (case no. 4863/2010)*, where it was held that the Act made no provision for the withholding of registration before permitting a deviation from the original plan. The Act does also "*not expressly place any duty on the Registrar of Deeds to approve the extension plan or not. That approval must be given by the Surveyor-General. All the Registrar of Deeds must do to is satisfy himself that all the formalities prescribed by the Act for registration have been complied with. He is not called upon to investigate or decide on the need for any amendment or extension of this scheme.*" (par.18).
- The Judge agrees with the Judgement in the PCL Trust case and "*relieves the Registrar of Deeds from having to extend his obligations in connection with the registration of these schemes.*" (par.21).

2. 'Section 25(2) Plans'

2.1. In view of the '*Reasons for Judgement*' in the *Roseparkadmin* case, deeds examiners no longer need to examine the plans referred to in section 25(2), lodged with applications in terms of section 25(9) of the Act.

2.2. Although not being the duty of the registrar of deeds to enforce compliance with regard to deviations, it is the registrar's duty to ensure that the extension of a scheme is within the physical boundaries of the reserved right (see RCR 2 of 2009 (as amended), and RCR 12 of 2011). Thus, should it not be possible for an examiner to determine whether the extension is being exercised within the physical boundaries of the reserved right, confirmation of this fact must be sought from the architect or land surveyor concerned (see RCR61/2008).

3. Withdrawal of Chief Registrar's Circular No. 7 of 2011

Chief Registrar's Circular No. 7 of 2011 is hereby withdrawn.



✓ CHIEF REGISTRAR OF DEEDS

DATE: 23/01/2012

REFERENCE : A. 6/2/P
RINGBINDER : 55

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