

Extending extensions: Can courts grant more time to developers to complete extensions?

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A developer may, on application for the opening of a sectional title register, reserve the right to extend the scheme in terms of Section 25(1) of the Sectional Titles Act 95 of 1986 (the 'Act'). The developer is required to stipulate the period for which he requires the right to complete the extensions. The Act does not impose any limitations in relation to this period and the developer is at liberty to reserve a period to meet his requirements. If, however, the period for which the right of extension was reserved lapses by an effluxion of time, can a developer apply to a court for the extension of the said period?



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In the case of *SP & C Catering Investments (Pty) Ltd v The Body Corporate of Waterfront Mews and Others*, the Appellant (developer) applied to the North Gauteng High Court for an order extending the period the Appellant was entitled to, in order to complete extensions to the Waterfront sectional title scheme. At the time of reserving the right to extend the scheme, the Appellant, by his own election, elected a period of 10 years, which had lapsed. The High Court dismissed the application on the grounds that it did not have jurisdiction to grant such an extension.

On appeal, the Appellant argued that the expiry of the right to extend the scheme and the automatic vesting of such right in the body corporate amounted to a deprivation of property, in violation of the Section 25 of the Constitution. The Appellant further argued that Section 25(13) of the Act applies equally to a developer, where his circumstances have changed, through no fault of his own, he is entitled to apply to the Court for relief in the form of an extension of the period of the reserved right.



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The Supreme Court of Appeal dismissed the Appellant's argument regarding Section 25(13) of the Act and held that the aforesaid provision was designed to enable unit owners in the scheme to enforce compliance by the developer with the specifications of the scheme. The Court reasoned that the developer himself states the period for which a right of extension

exists, and therefore the lapsing of the right does not amount to a deprivation of property, as envisaged in the Constitution.

The appeal was dismissed on the basis that the Court does not have any inherent or statutory power to extend the right.

The aforesaid decision is an important reminder for developers to take cognisance of the period reserved for the extension of a scheme, as the Courts have no jurisdiction to extend the period once the right has lapsed.

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