

SOUTH AFRICA / JUDGMENT

Heinrich N.O and Others v Eagle Canyon Golf Estate (Pty) Limited and Another (131881009) [2010] ZAGPPHC 286 (30 April 2010)

[2010] ZAGPPHC 286**COURT**

North Gauteng High Court, Pretoria

BEFORE

S W Sapire

CASE / FILE NUMBER

131881009

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IN THE NORTH GAUTENG HIGH COURT OF SOUTH AFRICA PRETORIA

Case No: 131881009

DATE: 30 APRIL 2010

SPATH. JOHANNES CARLE HEINRICH N.O.....First Applicant

SPATII. GESIE MARIA N.O.Second Applicant

KNOETZ, M \RIUS VICTOR N.O.....Third Applicant

ALLAN. JOHN ADRIAN N.O.....Fourth Applicant

NEL, DANIEL BEN.....Fifth Applicant

RFYNECKE. SC HA I. K JACOBI'S.....Sixth Applicant

DF. WET CO(P n) LTD.....Seventh Applicant

AGAINST

EAGLE CANYON GOLF ESTATE (PTY) LIMITED.....First Respondent

EAGLE INTERNATIONAL GOLFMANAGEMENT(PTY) LTD.....Second Respondent

CORAM SAPIRE. AJ

REASONS

On the 23rd of March 2010 I dismissed the application for Leave to Appeal against the order made by me on the 19th of February 2010 This latter order was supported by a

written judgment to which I refer The judgment covers all the points which were raised at the hearing of the Opposed Application

The order I made is in effect an order requiring the Respondents to abate a nuisance caused by misdirected golf balls emanating from the property owned or used by the Respondents

That such a nuisance existed is clear from the admission by the Applicants who were the Respondents in the original application In paragraph 11 of the Replying Affidavit reference is made to "more appropriate solutions to the 'problem The Respondents without acknowledgement of liability have discussed the solution without an agreement have been reached

The Respondents go on to say that the principal reason why the discussions have failed is not because the Respondents are not prepared to find a solution but because the Applicants do not wish to make a more than nominal contribution to the costs thereof

The deponent went on to say that in attempting to find a workable solution he had on behalf of the Respondents made a number of changes to the routing of the lb" hole with a view to eliminating the possibility of golf balls finding their way to the Applicant's houses

The Affidavit then describes the proposed solution which the Deponent to the Affidavit considered would be effective

In the light of this the order I made requires the Respondents to do no more than put its solution into effect What it cannot demand is that the Applicants contribute to the costs

The principle involved is that the owner or user of land on which or from which a nuisance is caused is obliged to abate that nuisance

I do not think that another court will come to a conclusion different from that to which I came and that accordingly there is no reasonable prospect on appeal

S W SAPIRE

ACTING JUDGE NORTH GAUTENG HIGH COURT

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