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Attorneys Notaries Conveyancers

1st Floor, 2 Albury Park, Albury Road, Dunkeld West, 2196. Docex 11 Hyde Park. t +27 11 560 7100 f +27 11 759 7960. Stellenbosch Office: t +27 82 287 3173

CONFLICTING NEIGHBOURS

Unlike in a socialist society where public ownership of property prevails, in a free market society the law of property as it relates to individual ownership is usually highly developed.

Although property ownership in general covers tangible things, such as land, houses, cars ownership can also exist over intangible objects such as personal rights, shares in a company and patent rights.

Conveyancer's and estate agents are mostly only concerned with tangible object, such and land and the homes/ structures erected thereon. These type of tangible assets are categorized more particularly as immovable objects as opposed to moveable objects.

An important characteristic of immovable tangible objects are that publicity is given to the ownership of these assets, which occurs in the deeds office.

Ownership is the most extensive and comprehensive private rights a person can have with regards to corporeal things and covers rights to use, enjoy, to derive income from it, to consume, to dispose of or even to destroy.

Distinguish ownership from possession, which is used to denote a factual relationship between a person and a thing, whereas ownership denotes a legal relationship.

Therefore, an owner can do with the object/thing of which he is the owner, as it pleases him within the limits of the law (consider Demolition Certificate from local authority or possible National Heritage Site protection).

Therefore no ownership right is absolute to the extent that it operates in all circumstances and against all entities. Some examples of ways in which an owner can be deprived of ownership are:

- expropriations
- sales in execution by sheriff of the court
- auctions flowing from insolvency
- laws of necessity (braking a window of a nearby house to summons the fire brigade or extinguish a fire)

As conveyancers and estate agents as property practitioners are often concerned with the restrictions on the powers of owners.

Think of nuisances created by a neighbouring owner whereby the neighbours quality of life, his health, comfort, well-being are interfered with by smoke, noise and indecent displays of the neighbour.

Consider trees that become intrusive or their roots cause damage to neighbouring properties or overhanging branches into a neighbouring property causes harm or damage.

An interesting dispute landed before Cape High Court in 2006, being Allacias Investments (Pty) Ltd an Another v Milnerton Golf Club.

The applicants in this matter were all owners/occupiers of properties bordering on the Milnerton Golf Course. They were fed up because their properties were being struck by golf balls being hit by players playing the sixth hole, despite the second applicant having put up a 4.7 metre-high net around his property.

Disputes between neighbours invariably involve, amongst other things, the question whether there has been an abuse of a right and whether, according to the facts, the neighbour whose conduct has been complained of has in fact, with reference to considerations of reasonableness and fairness, exceeded his powers of ownership. It is therefore a question of balancing the right of the owner of a property to do with his property as he likes and the right of the neighbour not to be interfered with.

Objectively and with reference to all the facts and circumstances, had the golf course actually acted wrongfully? In deciding the question a number of factors were considered, such as:

- The applicants live on the golf course so should accept some balls will hit their homes.
- What constitutes an excessive number of golf balls?
- The Milnerton Golf Club has taken precautionary measures - planted trees, the sixth hole is played as a par four except on Wednesdays and Saturdays.

In assessing the reasonableness of the respondent's actions, the following facts were taken into consideration:

1. The fact that the respondent has conducted a golf course in Milnerton since 1925.
2. The applicants' complaint is not that the respondent has recently commenced using the property differently to the way in which it has been used for the past 80 years, i.e. for the playing of golf.
3. The applicants do not suggest that any unnatural or inappropriate activity is being carried out on the golf course. They accept that golf is being played on a locality designed for that purpose.
4. A very important factor is that, at the time when the property was purchased, and in fact at all relevant times hereto, the applicants knew and understood that golf would be played on the property immediately adjacent to their properties and that they would be exposed to the consequences inherent in being in such a position.

What is also clear is that the respondent was prepared to go to great lengths to try and alleviate the problem of which the applicants were complaining of."

The Cape High Court rules that the applicants failed to:

"show that the respondent's conduct is unreasonable in the sense that the number of golf balls exceeds what could reasonably have been expected by them to strike their property in the circumstances of this case. Nor have they shown that the damage caused to their property exceeds what can reasonably be expected in the normal course of a property situated on a golf course."

Second, the applicants also appeared to take relatively inexpensive measures to protect themselves - they did not put up a net, for instance, because it would ruin their view of Table Mountain. The respondent on the other hand did show a willingness to take reasonable measures to minimise the risk of damage by golf balls to the applicants' property.

and concluded that:

" Living next to a golf course brings certain benefits in relation to the environment in which one lives. However, it also entails a real danger that the properties so situated will be susceptible to being hit by golf balls. That is a risk that any reasonable person will accept.

In view of all the factors set out above, I conclude that the respondent has not interfered unreasonably with the rights of the applicants."

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