



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME
COURT OF APPEAL**

FROM The Registrar, Supreme Court of Appeal

DATE 21 September 2020

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Central Developments Tshwane (Pty) Ltd and Another v Body Corporate, Twee Riviere Aftree Oord (635/2019) [2020] ZASCA 107 (21 September 2020)

The Body Corporate of the Twee Riviere Aftree Oord sued the developer of the complex for damages arising from alleged defects in the design and defective workmanship in the construction of the foundations for courtyards and patio walls forming part of the common property. The developer raised a special plea in terms of section 2(7)(e) of the Sectional Title Schemes Management Act 8 of 2011 that the body corporate needed to obtain a special resolution from the sectional title unit owners authorising the commencement of the proceedings and had not done so. The body corporate's response was that it was entitled to seek a special resolution ratifying the commencement of the action. This defence was upheld by the high court and it was afforded an opportunity to obtain such a resolution.

The SCA today dismissed the appeal against that order but on different grounds. It held that the body corporate had the power to sue in its own name to recover damage to the common property in terms of section 2(7)(b) of the Act. The exercise of this right was not qualified by the need to obtain a special resolution. Accordingly the body corporate was entitled to pursue the claims in

the action without first obtaining a special resolution. Section 2(7)(e) related to claims in respect of the scheme such as claims to enforce compliance by the developer with obligations undertaken in terms of the scheme. It was not applicable to claims arising from damage to the common property. The appeal was accordingly dismissed but the special orders affording the body corporate the opportunity to obtain a special resolution were set aside.