



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: YES/NO.  
(2) OF INTEREST TO OTHER JUDGES: YES/NO.  
(3) REVISED.

16/10/2014  
DATE

  
SIGNATURE

Case No: 50490/2012

Date heard: 15 September 2014

Date of judgment: 16 October 2014

In the matter between:

TWIN CITY BOSBOKRAND (PTY) LTD

Applicant

and

THE MUNICIPAL MANAGER  
BUSHBUCKRIDGE LOCAL MUNICIPALITY

First Respondent

THE MEC FOR THE DEPARTMENT OF AGRICULTURE,  
RURAL DEVELOPMENT AND LAND ADMINISTRATION –  
MPUMALANGA PROVINCIAL GOVERNMENT

Second Respondent

THE DIRECTOR: LAND ADMINISTRATION AND LAND  
USE – DEPARTMENT OF AGRICULTURE, RURAL  
DEVELOPMENT AND LAND ADMINISTRATION –  
MPUMALANGA PROVINCIAL GOVERNMENT

Third Respondent

<b>THE MEC: DEPARTMENT OF ECONOMIC DEVELOPMENT ENVIRONMENT AND TOURISM – MPUMALANGA PROVINCIAL GOVERNMENT</b>	Fourth Respondent
<b>THE REGISTRAR OF DEEDS</b>	Fifth Respondent
<b>ROUX PROPERTY DEVELOPMENT AFRICA CC</b>	Sixth Respondent
<b>RIDGE MALL (PTY) LTD</b>	Seventh Respondent
<b>THE SURVEYOR GENERAL</b>	Eight Respondent

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**JUDGMENT**

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**A.M.L. PHATUDI J:**

[1] In the main application, Twin City Bosbokrand (Pty) Ltd (Twin City) is the applicant. Ridge Mall (Pty) Ltd (Ridge Mall) is the seventh respondent. During the exchange of pleadings, Ridge Mall caused issue of the application in terms of Rule 35(12) of the Uniform Rules of this Court. Twin City was required to produce for inspection and copying of certain documents referred to in the Rule 35(12) application. Pursuant to the alleged non-compliance by Twin City, Ridge Mall issued an application in terms of Rule 30A. Ridge Mall sought to compel Twin City to make available such documents. Counter thereto, Twin City caused

issue of application in terms of Rule 30(2)(c) contending that Ridge Mall's Rule 30A application is an irregular step that warrant an order setting aside such application. There are therefore two interlocutory applications that are before this court. The aforesaid applications are intertwined and cannot effectively be dealt with separately.

[2] On the 30 November 2012, Ridge Mall caused issue of a notice in terms of Rule 35(12) of the Uniform Rules of this court. On the 15 February 2013, Twin City replied to the said Rule 35(12) notice. In the Rule 30A application, Ridge Mall intended to compel Twin City to make available the documents referred to in paragraph 7, 20, 25, 26 and 27 of the Rule 35(12) notice.

[3] In the said paragraphs of the Rule 35(12) notice, Ridge Mall requested:

Paragraph 7:

“Contracts” and “consents/authorisations”

Paragraph 20:

The “transaction with the sixth respondent.”

Paragraph 25:

The “records and decision of the first, second and third respondents.”

Paragraph 26:

The "Files of (the fourth) respondent and the "copies of documents relevant to such property."

Paragraph 27:

The "Files available and the copies of all the documents"

All these documents, files and records requested are as referred to in Twin City's founding affidavit in the main application.

[4] In response to the said paragraphs referred to, Twin City stated:

AD. Paragraph 7:

The contracts concluded referred to in this paragraph are

12.1 The Deed of Sale ... attached as Annexure AP18 ... already in possession of the seventh respondent

12.2 The engineering Services Agreement concluded between the first respondent and the sixth respondent

AD. Paragraph 20:

The "transaction" refer to in this paragraph does not constitute a document referred to within the ambit of Rule 35(12), and the seventh respondent is not entitled to a copy thereof.

AD Paragraph 25:

The “records” of the first, second and third respondents referred to in this paragraph do not constitute a document in the context of Rule 35(12) and the seventh respondent (Ridge Mall) is not entitled to copies thereof.

AD. Paragraph 26:

The “file” of the fourth respondent referred to in this paragraph is not in possession of [Twin City] ...

AD. Paragraph 27:

The reference to “files” contained in paragraph 1.3 does not refer to any document which fall within the ambit of Rule 35(12) but to documents in possession of the third respondent.

[5] At the commencement of the hearing, counsel for Ridge Mall placed on record that Ridge Mall no longer persist with the relief sought in prayers 1.1 to 1.3 of the notice of motion. In short, they no longer require document set out in paragraphs 7, 20 and 25 of their rule 35(12) notice. Counsel further submits that Ridge Mall does persist with the relief sought in relation to

‘The “copies of documents relevant to such property” referred to in paragraph 26 of the Rule 35(12) notice relating to the statement made by the landscape architect and practising environmentalist of Twin City, Mrs Lizelle Gregory:

*"I confirm that I personally attended the offices of the fourth respondent in Nelspruit, inspected the file of such respondent in respect of the subject property, i.e. portion 35 (a portion of portion 3) of the farm Dwarsloop 248 KU and obtained copies (our emphasis) of documents relevant from the Fourth Respondent"*

The "copies of all the documents" referred to in paragraph 27 of the Rule 35(12) notice relating to the statement made by the attorney representing Twin City, Mr Jan Adriaan Venter:

*"I confirm that I personally attended the offices of the Third Respondent in Nelspruit, that I inspected and perused some of the files available and which pertain to the subject property and also had discussions and consultations with a local colleague in Nelspruit involved in a similar investigation on behalf of the third party who favoured me with copies of all the documents he and his client have obtained from enquiries and attendances at the office of the First and Third Respondents"*

[6] It is common cause that some of the documents and or files requested have already been provided to Ridge Mall. Abandonment of certain prayers by Ridge Mall took Twin City by surprise. The relief sought is now limited to copies of all the documents of which Mrs Lizelle Gregory obtained copies which Mr Venter was favoured with.

[7] Rule 35(1) of the Uniform Rules provide that

'Any party to any action may require any other party thereto, by notice in writing, to make discovery on oath within twenty days of all documents and tape recordings

relating to any matter in question in such action (whether such matter is one arising between the party requiring discovery and the party required to make discovery or not) which are or have at any time been in the possession or control of such other party. Such notice shall not, save with the leave of a judge, be given before the close of pleadings.'

Rule 35(12) provides that

'Any party to the proceeding may at any time before the hearing thereof deliver a notice as near as may be in accordance with Form 15 in the First Schedule to any other party in whose pleadings or affidavits reference is made to any document or tape recording to produce such document or tape recording for his inspection and to permit him to make a copy or transcription thereof. Any party failing to comply with such notice shall not, save with the leave of the court, use such document or tape recording in such proceeding provided that any other party may use such document or tape recording.'

[8] The word "document" is not defined in the rules. The word document is defined in the Shorter Oxford English Dictionary as

'Something written, inscribed, engraved ... which provides evidence or information or serves as a record; Prove or support by documentary evidence; record in documents.'

[9] It is common cause that Twin City is in possession of a copy or copies of documents relevant to property referred to in paragraph 26 of the Rule 35(12). It is further common cause that Mr Venter is in

possession of all the documents and files he perused that pertain to the subject property. Ridge Mall is entitled to peruse and to make copies of all of the documentation which Mr Venter was favoured with.

[10] Rule 30A (1) provides that

'where a party fails to comply with these rules or with a request made or notice given pursuant thereto, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days, to apply for an order that such rule, notice or request be complied with or that the claim or defence be struck out.'

[11] Ridge Mall has no any other remedy available other than to invoke the provision Rule 30A(1) in order to obtain an order compelling Twin City to comply with the request made in terms of Rule 35(12). Ridge Mall's application in terms of Rule 30A is, in my view, not an irregular step. I am not persuaded by Twin City's submission that Ridge Mall is compelling a better answer. I, however, cannot agree more with counsel's submission that Rule 30A notice cannot be used to compel the other party to produce a better answer. In this instance, the provisions of Ridge Mall's Rule 30A find application. I see no point why Twin City persisted in opposing the application. Twin City did a good thing by not persisting with its application that the format Ridge Mall used in inconsistent with the rules.



[12] Considering my findings in relation to Ridge Mall's application, I find no merit in Twin City's application in terms of Rule 30(2)(c). Twin City's application in terms of Rule 30(2)(c) stands to be dismissed.

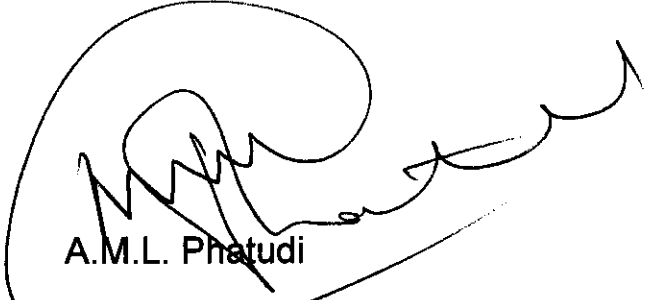
[13] Costs follow the event. Ridge Mall succeeds with its application in terms of Rule 30A and the dismissal of twin City's Rule 30(2)(c). Ridge Mall is thus entitled to its costs.

In the result, I make the following order:

Order:

1. Twin City's Rule 30(2)(c) application is dismissed with costs.
2. The respondent, Twin City Bosbokrand (Pty) Ltd (the "respondent"), is ordered and directed to produce for inspection and copying, within ten (10) days of receipt of this order by the attorney of record of the respondent, the following documentation itemized in the notice of terms of Rule 35(12) of the applicant, Ridge Mall (Pty) Ltd (the "applicant"):

- 2.1 The “copies of documents relevant to such property” referred to in paragraph 26 of the Rule 35 (12) notice;
  - 2.2 The “copies of all the documents” referred to in paragraph 27 of the Rule 35 (12) notice.
3. The respondent is directed to pay the costs of the application relevant to the Rule 35 (12) proceedings, including the costs incumbent upon the employment of two counsel.



A.M.L. Phatudi  
Judge of the High Court

On behalf of Ridge Mall

(Pty) Ltd "Applicant"

:

Van Der Wal Slade Ramabulana

Suite 5, Monpark Building

Monument Park

Pretoria

Adv. P. G. Cilliers SC

Adv. C. Woodrow

On behalf of the Twin City

Bosbokrand (Pty) Ltd

"Respondent"

:

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Lady Brooks Building 14 – 12 Str

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Menlo Park

Pretoria

Adv. J.A. Venter