YOUR NEIGHBOUR BUILDS WITHOUT PLANS - CAN YOU GET A DEMOLITION ORDER?

"The primary remedy therefore is an order for removal of the structure" (extract from the judgment below)

What can you do if your neighbour has started (or finished) building without the necessary municipal approvals?

In a nutshell, our courts will very probably assist you with a demolition order, as a recent High Court decision around a long-running property encroachment illustrates.

The 16 year saga of an encroaching garage

* A couple, owners of a property next to a church Mission, expanded their house in 2004 by building a brick garage.

* They thought they were building on their own land, having in 1998 built a wall along what they genuinely – but mistakenly – thought was the correct boundary between the two properties.

* As we shall see below, their fatal mistake was building their garage without municipal plans or approval.

* In fact the garage was inadvertently built on Mission land, but the Mission was having none of that -

* + First in 2012 it asked the couple – and another neighbour in the same position - to demolish.

* + When the couple refused (the other neighbour complied) the Mission in 2014 laid criminal charges against them for failing to comply with the relevant Act (the National Building Regulations and Building Standards Act). These charges, for purely technical reasons, failed to stick.

* + On pressed the Mission, this time turning to the local municipality for help in 2016. The municipality duly issued a formal Notice requiring demolition of the garage as it had been erected illegally without plans or permission. The couple simply refused to either receive the Notice or to remove the encroaching garage.

* Which brings us to the High Court in 2017, with the Mission applying for a demolition order and the couple asking the Court to rather order the Mission to transfer the relevant piece of its land to them against payment of reasonable compensation.

What about alternatives to demolition?

A court deciding a demolition application has “discretion to reach an equitable and reasonable solution in terms of the common law by ordering payment or compensation rather than removal in cases where the cost of removal would be disproportionate to the benefit derived from the removal”.

In this respect said the Court (emphasis supplied) “the encroaching owner's own conduct plays an important role” and “while one is acutely aware of the financial implications, inconvenience and disruption which the partial demolition will cause the [couple], the upholding of the doctrine of legality, a fundamental component of the rule of law, must inevitably trump such personal considerations.”

Commenting on the couple’s “obstructive behaviour” in this case, and finding that they “are indeed in legal and administrative breach of the law … to allow them to keep the structures where they are, would be to perpetuate the illegality”, the Court ordered the couple to demolish their illegal garage within 90 days.

So if you are the neighbour planning to build…

Whilst the case in question deals with encroachment on another’s land, our courts have applied exactly the same principles to a wide variety of “neighbour dispute” cases – sea view obstructions, failure to observe building lines and the like.

So don’t even think of starting to build without having all necessary municipal plan approvals and permissions in place!

And if you are the objecting neighbour…

The couple in this case put up an argument that the Mission couldn’t demand demolition as it had “acquiesced in their occupation of the relevant land because it did not object when they built the wall on the church ground in 1998, and did not complain when they built the 'offending' garage in 2004 or 2005.”

Factually the Mission’s long history of actively objecting to the unlawful construction put an end to that argument, but the longer you delay in objecting and taking action the greater your risk of facing a similar argument. Take immediate action against any neighbour building unlawfully.