

Failure to Disclose Defects: Understanding Voetstoots Clauses

By **Alicia Powel** (Senior Associate),
and **Tyrelle Toorn** (Candidate Attorney)

21 February 2025

INTRODUCTION

In the field of property sales, it is crucial to comprehend the legal ramifications of defects and their disclosure.¹ In sale agreements, the inclusion of a “voetstoots” clause indicates that the property is sold “as is”, and the seller does not provide any guarantees or warranties regarding its condition.² This clause, however, has its limitations, especially in cases where defects are hidden or fraudulently misrepresented.³ This article examines the significance of disclosing defects, the limitations of the voetstoots clause, and the pertinent case law that highlights these principles.

VOETSTOOTS CLAUSES: AN OVERVIEW

A voetstoots clause signifies that the buyer agrees to accept the property in its current condition, including all its flaws and defects, and does not hold the seller accountable for any problems that occur after the conclusion of the sale.⁴ This clause aims to protect sellers, however it does not give sellers free rein to hide defects.⁵ The seller’s honesty and transparency in disclosing known defects are crucial for maintaining the integrity of the voetstoots clause.

SECTION 55(2) OF THE CONSUMER PROTECTION ACT (“THE CPA”)

According to Section 55(2) of the CPA, all goods sold, including those under a voetstoots clause, must meet specific criteria:

- goods must be fit for their intended purpose;
- goods must be of good quality and free from defects;
- goods must be durable for a reasonable period, considering their usual use and circumstances of supply; and
- goods must comply with relevant standards and regulations.

These prerequisites guarantee that purchasers obtain products that align with reasonable standards, irrespective of any disclaimers such as voetstoots clauses.

THE IMPORTANCE OF DISCLOSING DEFECTS

Revealing defects, particularly latent ones, involves not only a legal duty but also an ethical responsibility.⁶ When a defect is latent, it cannot be easily seen or recognized during an inspection.⁷ Whereas patent defects are those defects that are apparent and readily observable upon inspection. To maintain trust and avoid future legal disputes, sellers must inform potential buyers of such defects.⁸ Irrespective of the voetstoots clause, a failure to disclose known defects can result in claims for damages, misrepresentation, or fraudulent non-disclosure.⁹

CASE LAW: *BANDA V VAN DER SPUY*

*Banda v Van der Spuy*¹⁰ serves as a significant case that demonstrates the boundaries of the voetstoots clause. The case concerned the sale of a property that had a leaking thatch roof. Before selling the property to the appellants, the respondents had repaired the roof, however the leaks persisted. The appellants sought to lower the purchase price, asserting the *actio quanti minoris* (a price reduction due to defects).

The appellants’ claims were unsuccessful at first because they were unable to demonstrate that the respondents had knowledge of and concealed the defects. However, upon appeal, the Supreme Court of Appeal considered whether the respondents were aware of the defects and had concealed them fraudulently. According to expert witnesses, the leaks were caused by a roof support structure that was not effective and a roof pitch that was insufficient. The respondents knew about the issue of the support structure but not about the roof pitch. The court deemed the addendum to the sale agreement, which referred to a contractor’s roof guarantee, misleading because the guarantee was already expired.

The court concluded that the first respondent had deliberately avoided understanding the full extent of the defect. This, combined with the fraudulent guarantee, implied that he did not genuinely believe the repairs were adequate and should have disclosed the defect to the appellants.

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CONCLUSION

The *Banda v Van der Spuy* case underscores the vital necessity of revealing defects in property sales.¹¹ Although the voetstoets clause offers some protection for sellers, it does not protect those who knowingly hide or misrepresent defects.¹² To avoid legal consequences and maintain the integrity of property transactions, sellers should place a premium on transparency and honesty. The principles demonstrated by this case highlight the need for complete transparency and remind us that ethical factors should steer all property transactions.

¹Pearton 2012 Voetstoets-Sale of Immovable Property, *The Law of Legend* 1-2.

²*Ibid.*

³*Ibid.*

⁴*Ibid.*

⁵Ilze Mattheus 2013 *The Effect of the Consumer Protection Act on the Voetstoets clause in the South African law and comparison to the Belgian law.*

⁶Ilze Mattheus 2013 *The Effect of the Consumer Protection Act on the Voetstoets clause in the South African law and comparison to the Belgian law* 15-18.

⁷*Ibid.*

⁸*Ibid.*

⁹*Ibid.*

¹⁰*Banda and Another v Van der Spuy and Another (781//2011) [2013] ZASCA 23; 2013 (4) SA 77 (SCA) (22 March 2013).*

¹¹Pearton 2012 Voetstoets-Sale of Immovable Property, *The Law of Legend* 4.

¹²*Ibid.*



Alicia Powell
(Senior Associate)



Tyrelle Toorn
(Candidate Attorney)