

The Voetstoets Clause and Statutory Approval for Building Alterations

Odendaal v Ferraris (422/2007) [2008] ZASCA 85

THE FACTS

The defendant in this matter purchased immovable property from the plaintiff. The defendant alleged that there were certain latent defects in the property in that the carport and an outbuilding did not have the necessary approved statutory plans.

The matter was lodged in the deeds office and came up on prep. The purchaser instructed his bond attorneys not to register the matter due to the alleged latent defects and absence of statutory plans. The seller alleged that the purchaser had breached the contract by instructing his bond attorneys not to register the matter and thereby repudiating the contract. The seller cancelled the contract on the basis of this breach.

The seller then made application to court for the eviction of the purchaser from the property sold. The purchaser opposed the application on the basis that he was not in breach of the agreement and the seller was thus not entitled to cancel the agreement.

The seller alleged that the voetstoets clause protected him against the allegation of latent defects and the absence of approved statutory plans.

THE PREVIOUS LAW

The law prior to this case was examined. The case of *Van Nieuwkerk v McCrae 2007(5) SA 21 W* was discussed. In this case the court held that in the sale of residential property a buyer is entitled to assume that the building on a property was erected in compliance with all statutory requirements. This assumption was held to be implied in any agreement relating to the sale of property. It was further held that it was an implied (or at least a tacit term) of such an agreement that alterations to the building also complied with the statutory requirements.

By **Marius van Rensburg** (Partner)

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WHAT THE COURT HELD

In this case, the absence of the statutory approvals did not render the property unfit for the purpose for which it was purchased.

The absence of a statutory approval for building alterations on the property constitutes a latent defect.

If a purchaser wishes to avoid the consequences of a voetstoets clause he has to show not only that the seller knew of the defect and did not disclose it, but also that he deliberately concealed it with the intention to defraud.

In this case the purchaser had failed to show that the seller had acted fraudulently and thus could not avoid the consequences of the voetstoets clause.

The court further found that the purchaser had no basis to instruct his bond attorneys not to register the matter, that this was a breach and the seller was entitled to cancel the agreement. The Seller was granted the eviction order.

SUMMARY

The importance of this case is that it revisits the issue of approved building plans and ruled that these are to be treated as ordinary latent defects. If the seller is aware of the absence of these plans, he must disclose this as a latent defect. If the seller is not aware of the absence of these approved building plans, he is not able to disclose this and the voetstoets clause will protect him.



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