

The Doctrine of Notice: When Does a Purchaser Have to Respect an Existing Personal Right?

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INTRODUCTION

In South African property law, ownership and other real rights are generally acquired only upon registration in the Deeds Office. A limited exception exists in the Doctrine of Notice, which applies where a purchaser acquires property with knowledge of an existing but unregistered personal right relating to that property. In such circumstances, a court may compel the new purchaser to give effect to that right. The Supreme Court of Appeal clarified this doctrine in *Bowring NO v Vrededorp Properties CC 2007 (5) SA 391 (SCA)*.

BACKGROUND: REAL RIGHTS VS PERSONAL RIGHTS

Property rights are divided into real and personal rights. Real rights bind the world, while personal rights bind only the parties to a contract¹. In *Bowring*, the SCA confirmed that where property is acquired with knowledge of such a prior personal right, the Doctrine of Notice may require the purchaser to give effect to it.

BACKGROUND FACTS

Vrededorp purchased two properties from *Stand 160 Selby (Pty) Ltd ("Selby")* including:

1. a right to transfer of a subdivided portion of a railway siding and;
2. a right to register a servitude over the remainder.

Before transfer occurred, the Seller (*Selby*) was liquidated, and the liquidator sold the land to Investec who later sold and transferred the land to a Trust, which knew of Vrededorp's rights. Vrededorp sought transfer and registration of the servitude. The SCA had to decide whether:

1. those rights could be enforced against the trust,
2. whether transfer could be claimed directly from subsequent purchaser, and;
3. whether non-joinder of prior parties defeated the claim.

THE COURT'S REASONING:

The court confirmed that the rights in question are personal rights aimed at acquiring real rights (*iura in personam ad rem acquirendam*)². Ordinarily, such rights do not bind third parties unless registered.

The SCA held that a purchaser who acquires property with knowledge of an existing personal right may be compelled to cooperate in registration³.

IF THE SAME PROPERTY IS SOLD TWICE:

Ownership passes to the party who first receives transfer; if the second purchaser purchased the property with knowledge of the earlier sale, the first purchaser may seek relief.

In *Bowring*, the Trust argued that even if it knew about *Vrededorp's* earlier right, *Vrededorp* could not demand transfer directly from the Trust. The Trust argued that only the original seller could be sued, because there was no contract between *Vrededorp* and the Trust⁴. The SCA rejected this argument. Brand JA held that the Doctrine of Notice is an equitable doctrine and its application must depend on what is fair in the circumstances⁵.

Requiring Vrededorp to first set aside the Trust's ownership and then obtain transfer through earlier owners would have been unnecessarily complex. Because the Trust had knowledge of Vrededorp's rights, fairness justified allowing Vrededorp to claim transfer directly from the Trust.

In respect of non-joinder, the Trust also argued that the case should fail because the previous owners (*Stand 160 (Pty) Ltd and Investec*) were not joined as parties to the case⁶.

A party need only be joined if it has a direct and substantial interest in the order. The Trust failed to show that the previous owners' rights would be materially affected, so their non-joinder did not defeat Vrededorp's claim.

WHEN THE DOCTRINE OF NOTICE APPLIES

The court explained that the Doctrine of Notice most commonly arises in two situations.

a) Unregistered Servitudes

Where A and B agree that a servitude will be registered over B's land in favour of A, A initially holds only a personal right to compel registration of the servitude⁷.

If B sells the land to C before registration, C would ordinarily not be bound. However, if C had knowledge of A's right at the time of purchase, C may be compelled to cooperate in registration by virtue of the Doctrine of Notice⁸.

b) Successive Sales

Where A sells a property to B and later sells the same property to C, ownership passes to the party who first receives transfer. If C takes transfer without knowledge of the earlier sale to B, C's ownership is generally secure. If C purchased with knowledge of the prior sale, B may be entitled to challenge the transfer⁹.

The SCA confirmed that, where equity requires, a first purchaser may in appropriate circumstances claim transfer directly from a later purchaser. The Doctrine of Notice does not turn a personal right into a real right; it prevents a purchaser with knowledge of that right from defeating it by relying on registration.

CONCLUSION

In *Bowring*, the SCA confirmed that the Doctrine of Notice is rooted in fairness where property changes hands. It applies where a purchaser acquires property with knowledge of an existing personal right relating to that property. Accordingly, a purchaser who acquires property with knowledge of the existence of such a personal right, may be compelled to give effect thereto.¹⁰

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¹*Shackleton Credit Management (Pty) Ltd v J.J.N and Others* (1975/2013) [2024] ZAECQBHC 40 (14 May 2024) para 6 & 7.

²*Bowring NO v Vrededorp Properties CC* [2007] SCA 80 (RSA) para 17.

³Supra note 2 at para 16.

⁴Supra note 2 at para 13.

⁵Supra note 2 at para 18.

⁶Supra note 2 at para 12.

⁷Supra note 2 at para 7.

⁸Supra note 2 at para 8.

⁹Supra note 2 at para 11.

¹⁰Supra note 2 at para 26 (1).