

THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal  
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***Pheiffer v Van Wyk (267/13) [2014] ZASCA 87 (30 May 2014)***

The Supreme Court of Appeal handed down judgment today in an appeal from the North Gauteng High Court. During October 2001 the first respondent (van Wyk) concluded an oral agreement with the appellant, Pheiffer, for the purchase of a property payable against registration of the property in Pheiffer's name. The property was jointly owned by van Wyk and his wife (the second respondent). Pheiffer was then given occupation of the property, to which he effected R2 million worth of improvements.

Despite numerous indulgences Pheiffer failed to raise the finance necessary to purchase the property, with the result that the van Wyks purported to cancel the agreement. In June 2012 the van Wyks concluded a new agreement with the third respondent, Marde, represented by the fourth respondent. In terms of this agreement, the van Wyks were obliged to grant undisturbed possession of the property to the third respondent on signature of the agreement. When Marde attempted to take occupation of the property from Pheiffer, who was still in occupation, it was met with an urgent spoliation application which was granted against it. The van Wyks were as a result interdicted from transferring the property to the third respondent.

When the van Wyks sought to evict Pheiffer, he inter alia raised an improvement lien as a defence. On that defence the high court, in the absence of any dispute regarding the form of

security to be tendered to defeat the alleged lien, exercised its discretion and ordered Marde to file security for such and ordered that Pheiffer vacate the property. In February 2013 Marde filed a bank guarantee, undertaking to pay Pheiffer for the improvements effected to the property. Dissatisfied, Pheiffer appeal that order with the leave of the high court.

On appeal, the issue was whether the security tendered by Marde – not being the owner of the property and thus with no enrichment claim lying against it – is sufficient to defeat Pheiffer's enrichment claim in respect of improvements effected to the van Wyks' property.

This court outlined the nature of a court's discretion to deprive the lien holder of his possession on tender of security for any improvements effected to a property. Once the possessor has fully quantified and proved his claim, he will be entitled to payment in respect of the improvements to the property. As soon as sufficient security has been tendered, he then has no basis to continue occupying the property and must vacate it. In the light thereof, this court held that the high court correctly exercised its discretion.

In the result, the guarantee filed by Marde is sufficient to cover Pheiffer's enrichment claim for improvements to the property against the van Wyks up to the sum of R2 million. Furthermore, the guarantee has been furnished by an interested party, the purchaser of the property who will enjoy the benefits of the improved property. There is thus no reason why the enrichment lien cannot be secured by the guarantee put up by Marde. All that is required from Pheiffer is for him to submit to Marde a written demand for the payment of such sums that have been granted by the court and a certified order of court that he has obtained judgment to that effect.

The appeal is accordingly dismissed with costs, but the order of the high court is set aside and replaced with an order holding that Marde's bank guarantee is sufficient security for Pheiffer's enrichment claim in respect of improvements to the property, and directing Pheiffer to vacate the property.