



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

T Odendaal v P K Ferraris

The Supreme Court of Appeal (SCA) today has held that where a residential property whose improvements lack necessary statutory authorisations is sold subject to a 'voetstoots' clause, the buyer will generally not be able to challenge the sale, because the voetstoots clause will normally cover the defect. It ordered the eviction of Mr Patrick Kevin Ferraris from a residential property at Sunridge Park, Port Elizabeth. The property is owned by Ms Talita Odendaal. Ferraris was ordered to leave the property by no later than 30 November 2008.

Ferraris purchased the property from Odendaal in 2006. After occupying the property but before registration of transfer he discovered a number of defects in the property. These included the following:

- (a) the jacuzzi was faulty and the swimming pool leaked – despite the estate agent's assurances to the contrary;
- (b) the roof over one of the bedrooms leaked;
- (c) the wood panelling in the dining room had borer beetle in it, which caused dust to accumulate on it daily.
- (d) the municipality had not authorised the building of the outbuilding over a sewer;
- (e) the carport contravened the Municipality Zoning Scheme Regulations.

Ferraris then refused to pay the purchase price until he was able to investigate to full extent of these defects and the cost to repair them. He argued that he was entitled to a reasonable time to complete the investigation. Odendaal, on the other hand, maintained that a *voetstoots* clause in their agreement protected her from liability for the defects.

The SCA held that Ferraris had not established that Odendaal deliberately concealed the defects from him. It held that all the defects, including the lack of statutory authorisation for the outbuilding and the carport's construction of the municipal regulations, were latent defects, which fell within the ambit of the *voetstoots* clause – and thus relieved Odendaal of any liability for them.