



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Virginia Sarrahwitz v Hermanus Maritz N.O. and Another**

**CCT 93/14**

**Date of hearing: 10 November 2014**

**Date of judgment: 4 June 2015**

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today, the Constitutional Court handed down a judgment concerning the protection of vulnerable purchasers who pay the full purchase price for residential property but are denied transfer by a seller's intervening insolvency. The judgment protects vulnerable purchasers who will become homeless if transfer of the property does not take place.

Ms Sarrahwitz entered into an agreement with Mr Posthumus to purchase a house. She borrowed money from her employer and paid the full purchase price in one lump sum. The house was not registered in her name despite the numerous attempts she made over the years to obtain transfer. Mr Posthumus was later declared insolvent and the property became part of his insolvent estate. Mr Maritz was appointed as trustee of the insolvent estate. After failed negotiations with Ms Sarrahwitz, he elected not to transfer the house to her.

Ms Sarrahwitz launched an application seeking transfer of the property into her name in the Eastern Cape High Court, Port Elizabeth (High Court), arguing that she was entitled to this in terms of the Alienation of Land Act. The High Court held that her sale agreement was regulated by the common law, that the house vested in Mr Posthumus' insolvent estate and that she was not entitled to transfer. Ms Sarrahwitz's applications for leave to appeal to the Full Court of the High Court and the Supreme Court of Appeal were dismissed for lack of prospects of success. Ms Sarrahwitz then applied for leave to appeal to the Constitutional Court.

The majority judgment of this Court was written by Chief Justice Mogoeng (Moseneke DCJ, Khampepe J, Leeuw AJ, Madlanga J, Nkabinde J, Tshiqi AJ, Van der Westhuizen J and

Zondo J concurring). The Court noted that the Land Act entitles a vulnerable purchaser of residential property who pays the purchase price in two or more instalments over a period of one year or longer to demand transfer of that property if the seller becomes insolvent. However, an equally vulnerable purchaser who somehow manages to make a once-off payment or pays the purchase price within a year is not entitled to transfer in those circumstances. Transfer is precluded even if the failure to do so would render the vulnerable purchaser homeless. The Court held that the Land Act was therefore inconsistent with Ms Sarrahwitz's constitutional rights of access to adequate housing, dignity and equality.

Consequently, the Court rectified the Land Act by reading in words to confer a right on a vulnerable purchaser to take transfer of residential property, for which the full purchase price was paid in one lump sum or in less than a year, in the event of the seller's intervening insolvency. This right to transfer will only arise when the purchaser is likely to become homeless should transfer not take place. The Court ordered the trustee to transfer the house to Ms Sarrahwitz. The appeal was upheld and the order of the High Court set aside.

In a concurring judgment by Cameron J and Froneman J, they agreed with the outcome of the main judgment but with some reservation, including the main judgment's use of the right to equality. This reliance risks future interpretation that any beneficial distinction the Legislature draws in extending consumer protections will be struck down as irrational if all persons are not protected. The judgment would have found that the Constitution does not protect against homelessness in absolute terms, but does afford protection by providing that no one may be evicted from their home without an order of court made after considering all relevant circumstances. The Constitution further provides that legislation may not permit arbitrary evictions. Thus, the more appropriate and simpler remedy in this matter is found in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act.