



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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Stemmet and Another v Mokhehi and Another (681/2022) [2023] ZASCA 127 (04 October 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal with costs against the majority decision of the Free State Division of the High Court, Bloemfontein per Matshaya AJ with Mbhele AJP concurring and Daffue J dissenting (the full court), which had dismissed an appeal against the decision of the magistrate's court. The matter concerned the prescription of a claim which Mr and Mrs Mokhehi (the respondents) had instituted against Mr and Mrs Stemmet (the appellants). The claim involved latent and undisclosed defects which the respondents discovered some time after they had purchased the appellants' property situated in Fichardt Park, Bloemfontein (the property).

The facts of the matter were briefly as follows. After payment of the purchase price by the respondents, the property was transferred to the respondents on 22 July 2013, on which day the respondents took occupation of the property. Several months after taking occupation, but prior to 24 June 2014, the respondents noticed some defects with the property, which defects included structural cracks in the walls. On 24 June 2014, the respondents lodged a claim with Absa bank (Absa), which were their insurers. On 12 August 2014, Absa declined the claim on the basis that 'the defects were old and gradual, had been previously patched and were caused by the expansion and retraction of the clay upon which the property was built'. On 19 July 2017, the respondents issued summons against the appellants in the magistrate's court for damages. The respondents relied on delict in the form of fraudulent non-disclosure of the defects and/or the fraudulent concealment of the defects, which induced them to purchase the property, which they would not have done had they been aware of the defects. The summons was served on the appellants on 27 July 2017. In reply, the appellants raised a special plea of prescription. They averred that the respondents were aware of the defects by June 2014, by which time, the running of prescription had already commenced. As summons was only served on 27 July 2017, the claim had prescribed.

The question before the SCA was when did the respondents become aware of the existence of the defects and the damages arising therefrom to satisfy s 12(2) of the Prescription Act 68 of 1969 (the Act); and did they, at that stage, know the identity of the person responsible for their damage, to satisfy the requirement in s 12(3) of the Act?

In regard to knowledge of the identity of the debtor, the SCA found that the respondents could not have had any doubt that it was the appellants. It was from the appellants that they had purchased the property, in seemingly perfect condition, newly painted and neat. Within a few months, the doors began jamming, cracks began appearing and continued to emerge and worsen as time went on until it reached the point that the property was 'falling apart'. The SCA found further that at that stage, it would not matter to the

respondents what the cause of the defects was. The cause of the defects as later determined in the opinions of experts, was not required at that stage to complete the cause of action. That was a matter for evidence.

The SCA found further that from the common cause facts, it was clear that, as early as June 2014, the respondents were in possession of sufficient facts to cause them, on reasonable grounds, to believe that there had been attempts by the appellants to cover up latent defects in the property. The attempt to patch up the cracks would have immediately led to a reasonable belief that the respondents had fraudulently misrepresented the facts to them. That apprehension was sufficient to complete their cause of action against the appellants. They thus had knowledge of sufficient facts which would have led them to believe that the defects existed when they purchased the property from the appellants, and that they were fraudulently concealed by the appellants.

It followed, the SCA held, that the conclusion of the majority in the full court that the respondents only had the necessary knowledge of the minimum facts, on becoming aware of the cause of the defects, was at odds with established applicable legal principles. It also did not take account of the material facts, including the first respondent's evidence. Accordingly, the appeal succeeded.

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