VAN HUYSSTEENS
COMMERCIAL ATTORNEYS
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"The only way you can beat the lawyers is to die with nothing" - WILL ROGERS

LATENT DEFECTS IN PROPERTY – WHEN THE VOETSTOOTS CLAUSE WILL NOT PROTECT YOU

In general, when buying or selling property, a Seller is liable for all latent defects (hidden defects) rendering the object of the sale (the property) unfit or partially unfit for the purpose for which it was intended to be used. When a contract of sale contains a voetstoots clause (buying "as is"), a Purchaser has an added burden of proof – firstly, proving the existence of the latent defect and secondly, proving that the Seller was aware of the defect and had fraudulently not disclosed same.

In Banda v Van der Spuy (2013) a thatch roof that leaked prior to the sale of a house and continued leaking after the sale, gave rise to a dispute between the Seller and the Purchaser. There were two reasons for the leaks in the roof:-

1. The roof poles could not support the weight of the thatch roof and as a result the roof was gradually collapsing, leaving openings through which rainwater poured; and
2. The pitch of the roof was incorrect and the thatch started rotting.

A leaking roof is a latent defect which renders the house unfit for habitation. The Seller was aware of the first reason for the leaking roof but unaware of the second reason. The Court found that it did not matter that the Seller was unaware of the second reason. The Seller's conduct was fraudulent, since the existence of the defective leaking roof was concealed from the Purchaser. Here, the voetstoots clause did not protect the Seller.

The Court found that the Seller made repairs to the roof, but did not believe that these repairs were adequate. This fact, together with the fraudulent conduct of the Seller in not disclosing the absence of a valid roof guarantee, as well as dishonesty with regards to the duration of the guarantee, convinced the court that the Seller did have knowledge of the structural defects in the roof and was obliged to disclose these facts to the Purchaser.

Accordingly, the Purchaser, having successfully proved both aspects, was successful with his claim for a reduction in the purchase price of the house. The court awarded the Purchaser the difference between the purchase price and the value of the house with the defective roof.

Law & Laughter

Attorney: "Can you describe the individual?"
Witness: "He was about medium height and had a beard"
Attorney: "Was this a male or a female?"
Witness: "Unless the Circus was in town I'm going with male."

WHY IS THE COMPANIES OFFICE (CIPC) FAILING

The 2 year "transitional" period to convert a company's constitutional documents to a single Memorandum of Incorporation ("MOI") expired on 1 May 2013, with the result that the Companies and Intellectual Property Commission ("CIPC") experienced a massive influx of MOI's in the final days of April this year.

According to a "Notice to Customers" distributed on 11 October, this rapid influx of MOI's (coupled with what is referred to as "intermittent system problems") negatively affected the turnaround times for document lodgements at CIPC, pushing back the already lengthy 40 day turnaround time with a further 80 days. Therefore, a MOI will now take at least 120 days to be processed through the CIPC's system. In practice, this has been found to be Business Days, which results in a shocking 6 month wait after lodging any MOI amendments before receiving a response from their office.

Adding to customers' understandable frustration is the fact that the CIPC has now done away with a Help Desk at its offices, avoiding any direct contact in the process, and refusing to acknowledge receipt of amendment documents manually lodged. As a result, a customer's only recourse seems to be a (unattended) mailbox where numerous email queries are sent only never to be answered. Using the telephonic help line or attempting to make an appointment with anyone person directly, similarly falls on deaf ears.

It appears that a lack of knowledge and proper training fuels this administrative nightmare, as many of the MOI amendments lodged are simply rejected when the content is not understood or the document is large enough to warrant an actual read through. A ring-fenced company's MOI as well as a MOI creating preference shares is continuously rejected (which takes around 8 months) for example, until a person in management is reached who seems to understand the workings of the Companies Act. Only then, a further 6 months later, will such a MOI reach the final leg of registration. Even a simple name change (which requires an amendment to the MOI) takes a minimum of 4 months to see the light of day.

It seems that without any form of recourse against a struggling and ineffective government department, customers have no choice but to be patient and remain hopeful that a total collapse of the institution's functions does not become a reality.

Contact Van Huyssteens

T +27 12 349 2306
F +086 6151 183

Address:
De Haviland Crescent Nr. 5,
III Villaggio Nr.12, Torino Suite
Persequor Park
Pretoria, South Africa

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