

A voetstoots clause and a leaking roof

Have you heard a seller saying that he cannot be held liable for any defects in the house as there is a voetstoots clause in the contract of sale? It is not that simple.

For one, where the Consumer Protection Act applies, for example where the seller sells the property in the course of his ordinary business, the normal voetstoots clause is as a general rule not enforceable.

For another, the voetstoots clause does not protect a seller who is aware of a defect in the house and fraudulently refrains from disclosing the defect to the buyer.

This is what happened in the case of *Banda and Another v Van der Spuy and Another* 2013 (4) SA 77 (SCA). The purchaser managed to present sufficient evidence to the Court to convince the judges that the seller had indeed been aware of the leaking roof. The Court furthermore found that the seller fraudulently refrained from disclosing this defect. The voetstoots clause was consequently not enforceable by the seller. The purchaser therefore could claim the difference between what he paid for the house and the value thereof with the defective roof.

The voetstoots clause is not as magical as it is sometimes made out to be.

Volker Krüger