

NOTE: This is the "Attorney" version of the LawDotNews (law.news) newsletter and is transmitted to attorneys before the newsletter is transmitted to their clients. The "Client" version will omit all comment in red font.



DU PLOOY Inc.

LEADING THE WAY IN PROPERTY LAW



With Compliments

Unit 7
Visiomed Office Park
269 Beyers Naude Drive
NORTHCLIFF

Tel: 011 431-3739
Fax: 011 431-3829
e-mail : johann@dslaw.co.za
Web site : www.duplooyinc.co.za

Forward email

Online Printable Version

KEEPING YOU IN TOUCH

law.news



Property Buyers: A R25m Cautionary Tale

- *The R25 million damages claim*
- *The auctioneer's "patter" – do your own homework!*
- *The bottom line: Buyer Beware!*

POPI – New “Personal Information” Protection In The Pipeline

- *Businesses take note*
- *The clock is ticking*

Domestic Violence: When Can SAPS Arrest?

- *Abused wife, police 1: Abusive husband 0*
- *Sometimes, no warrant needed*
- *“E-tags” to monitor offenders?*

Unsafe Sex: HIV-AIDS Counsellor Jailed For 6 Years

The January Websites: How to Actually Keep Your 2014 Resolutions

PROPERTY BUYERS: A R25m CAUTIONARY TALE



Property can be a great investment. Just be sure to do your homework, and seek professional advice, before you buy.

The R25 million damages claim

Take for example a recent High Court case in which the auction buyer of a prime Camps Bay property claimed damages of R25m both from the seller and from the auctioneer. Its R25m loss was, said the buyer (a company), caused by misrepresentations and non-disclosure which induced it to buy the property for a price of R44 million (R40m plus R4m auctioneer's commission) – R25m more than the R19m it would otherwise have paid.

The nub of the buyer's case was its allegation that the auctioneer and seller had misrepresented to its director, both verbally and in the auction brochure, that there were “approved building plans” in place suitable for the fulfilment of the director's dream to develop a restaurant and boutique hotel on the property.

Only 6 months after the sale, said the director, did she learn for the first time that no building plans had in fact been passed. Her subsequent attempts to have plans approved failed, and two years later there were still unresolved issues around zoning scheme height restrictions, heritage demolition permits and environmental authorisations - her dream was shattered, and her company was down R25m.

The auctioneer's “patter” – do your own homework!

It wasn't disputed that the auctioneer had in his pre-auction “patter” said that “development plans” had been approved and that a buyer could “go right ahead”, and could “start developing here as soon as possible”.

Clear as that sort of statement may seem, the Court's decision – which was to find against the buyer and dismiss its claim - is a stark reminder to do your own homework when it comes to the technicalities of buying property. The Court found that -

- No express representations as to the passing of building plans had been made, nor was it a misrepresentation to suggest that “development approvals” had been given - no doubt a very fine distinction to the average buyer, but critical in this case.
- SDP or “site development plan” drawings had in fact been approved, but they were not “building plans”, they merely showed the extent to which the City Council had removed and amended title deed restrictions and granted departures so that a building of the kind described in the brochure could be built – another fine technical distinction no doubt to any lay buyer, but again critical in this case.
- The agent appointed by the buyer to bid for it at the auction was aware that no building plans had actually been passed (although everyone it seems expected plan approval to be “a mere formality”).
- The buyer had on the facts failed to prove its damages.
- The final nail in the buyer's coffin was the Court's finding that the auctioneer and the seller were, in the absence of any proof of fraud on their part, protected by (respectively) a disclaimer in the auction brochure and an exemption clause in the conditions of sale.

The bottom line: Buyer Beware!

The director's main mistake seems to have been that she had, in the Court's words, “paid very little attention to matters of detail”. Don't make the same mistake. Before

you buy, have your lawyer vet the sale agreement (“conditions of sale” if it is an auction) and check for title deed and zoning restrictions, planning requirements, indeed for anything that might negatively impact on the property’s value to you.

NOTE FOR ATTORNEYS: Judgment in *Dormell Properties 658 (Pty) Ltd v Rowmoor Investments 513 (Pty) and Another (1072/2010) [2013] ZAWCHC 152* is on the [Saflii website](#).

POPI – NEW “PERSONAL INFORMATION” PROTECTION IN THE PIPELINE



“Civilization is the progress toward a society of privacy” (Ayn Rand)

“POPI” (the Protection of Personal Information Act) gives us important new protections against misuse of our “personal information” - widely defined to cover not just our names, identities and contact details, but also a wide spectrum of private information including things as diverse as race, religion, gender, sexual orientation, medical, financial and employment history etc. It even extends to information relating to our “personal opinions, views or preferences”, other people’s opinions about us, and private or confidential correspondence.

Businesses take note

You will be responsible for compliance with POPI’s stringent requirements in regard to the collection, usage, storage and disclosure of personal data, and you risk severe penalties (and substantial damages claims) for any contravention.

Your responsibility extends to virtually every kind of personal information obtained by or held by you, including for example information relating to your clients/customers, your suppliers, your employees, visitors, and so on.

The clock is ticking

POPI has been signed into law, but it hasn’t yet come into effect - that only happens when a “commencement” date is chosen and announced later. You will also have at least a year after commencement to comply, but the clock is ticking and there are requirements here that will mean embedding compliance procedures into all your business systems. In other words, you need to start now on identifying what personal data you hold, why and under what authority you hold it, and how secure it is.

We’ll let you have some practical advice on how to go about actually preparing for compliance in future newsletters, particularly once POPI commences, the Information Regulator is appointed, and the regulations are promulgated.

NOTE FOR ATTORNEYS: The Protection of Personal Information Act (Act 4 of 2013) is available via a link on the [Government Information website](#).

DOMESTIC VIOLENCE: WHEN CAN SAPS ARREST?



If you, a colleague, friend or relative are a victim of “domestic violence” (not just physical harm, the term also includes emotional, verbal and psychological abuse) turn to our law and to SAPS for help.

Firstly, the Domestic Violence Act provides quick, easy and effective protection from abusers. You can apply for a protection order at your local magistrate’s court, and that will be accompanied by a warrant authorising arrest of the perpetrator in the event of a breach of the order. Note that this isn’t the same as laying a criminal charge, which you can do as well if necessary.

Secondly, per a recent SCA (Supreme Court of Appeal) decision, the police can in

appropriate cases lawfully arrest an offender even without a warrant, and even if no protection order has actually been obtained.

Abused wife, police 1: Abusive husband 0

The facts were these –

- A wife, whose husband had a history of assaulting and verbally abusing her when drunk, was advised by the police to “open up a domestic violence” case.
- She went to the magistrate’s court and obtained a provisional protection order restraining the husband from assaulting or threatening to assault her. It seems that for whatever reason no final order was thereafter obtained.
- SAPS officers arrested the husband after he arrived home drunk and abused and assaulted his wife (firstly by trying to pour a pot of presumably boiling water over her head, thereafter by stabbing her with a “sword” and by threatening her with a spade) in front of her 11 year old child and a friend.
- The husband was detained for 10 days (on the authority of a magistrate) on a charge of contravening a protection order.
- When that charge was dropped, he sued the police for unlawful arrest.

Sometimes, no warrant needed

The husband was awarded damages of R200,000 for unlawful arrest, but this High Court order was set aside on appeal, the SCA finding that the arrest was perfectly lawful in the circumstances. Specifically, held the Court, our law authorises arrest without warrant, with or without a protection order in place, of anyone “reasonably suspected of having committed an act of domestic violence.....which constitutes an offence in respect of which violence is an element.” Violence clearly being “an element” here, no warrant was needed for the arrest to be lawful.

“E-tags” to monitor offenders?

A final thought – ask about the recently-announced “GPS electronic monitoring device” which, strapped to an offender as a non-removable bracelet, is said to alert victims via a receiver “when the perpetrator comes within a set distance of them.” The receiver reportedly gives the victim “a panic button that can be used to alert officials to impending danger”. Presumably this “e-tag” system will be used mostly, perhaps exclusively, for repeat offenders. And whether it will be widely available (and if so, when) isn’t clear - but it can’t hurt to ask.

NOTE FOR ATTORNEYS: Judgment in *Minister of Safety and Security v Katise (328/12) [2013] ZASCA 111* is on [Saflii](#).

SAPS provide a guide for victims, with practical advice, notes on assistance available, a statement of commitment to victims, and a list of contact numbers, on the “Domestic Violence” page of their [website](#).

The Correctional Services Minister’s recent statement on monitoring devices is reported in “Electronic monitoring of offenders to help domestic violence victims” on the South African Government News Agency [website](#).

UNSAFE SEX: HIV-AIDS COUNSELLOR JAILED FOR 6 YEARS



Knowingly exposing another person to the risk of HIV infection amounts to attempted murder.

That it seems is the bottom line in a recent High Court decision, confirming on appeal a sentence of 6 years imprisonment imposed on a 32 year old HIV positive man who, with full knowledge of his status, nevertheless had unprotected sex with an HIV negative woman.

The man, who was employed as an HIV-AIDS counsellor at a government clinic, met the woman when she came to the clinic for an HIV test (she tested negative). Thereafter a relationship developed between

them, they had consensual sexual intercourse on two occasions, and subsequently the woman tested positive for HIV.

Confirming the man's conviction on a charge of attempted murder, the Court held that it was not necessary for the prosecution to prove that the man had actually transmitted HIV to the woman: "It was sufficient for a conviction on the count of attempted murder, to establish that the appellant, knowing that he was HIV positive, engaged in sexual intercourse with the complainant, whom he knew to be HIV negative, without any preventative measures."

NOTE FOR ATTORNEYS: Judgment in the matter of *Phiri v S (A 400/2012) [2013] ZAGPPHC 279* is on [Saflii](#).

THE JANUARY WEBSITES: HOW TO ACTUALLY KEEP YOUR 2014 RESOLUTIONS



92% of us fail to keep our New Year Resolutions (see below).

The question is: **why** do we fail? And what can we do to join the elite 8% of achievers?

1. Forbes Magazine has four practical suggestions in its article "Just 8% of People Achieve Their New Year's Resolutions. Here's How They Do It" at <http://www.forbes.com/sites/dandiamond/2013/01/01/just-8-of-people-achieve-their-new-years-resolutions-heres-how-they-did-it/>.
2. Quirkology's "New Year's Resolutions Experiment" has more advice – some of it gender specific which could be useful - at http://www.quirkology.com/UK/Experiment_resolution.shtml.
3. Or for a whole new approach, try the "Have a System, Not a Goal" idea and apply it to each of your resolutions – see the Barking Up the Wrong Tree blog at <http://www.bakadesuyo.com/2013/12/how-to-fail-at-almost-everything-and-still-win-big/>.



Have a Healthy, Happy and Successful 2014!

Note: Copyright in this publication and its contents vests in DotNews - see copyright notice below.

Disclaimer

LawDotNews is a general information sheet and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. Always contact your legal adviser for specific and detailed advice. The articles contained herein are not, unless the contrary is specifically stated,

written by any partner or full time employee of the sender of this newsletter, nor do the partners or staff of the sender necessarily claim any expertise in all of the fields of law or practice dealt with therein.