
SOUTH AFRICA / JUDGMENT

Bondev Midrand (Pty) Limited v Puling and Others (58/2014) [2015] ZAGPPHC 1127 (27 October 2015) [2015] ZAGPPHC 1127

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhubele

CASE / FILE NUMBER

58/2014

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IN

THE HIGH

COURT OF SOUTH

AFRICA

GAUTENG

DMSION, PRETORIA

Case

Number: 58/ 2014

Date: 27/10/2015
In
the matter between.
BONDEV
MIDRAND (PTY)
LIMITED
(Registration
Number: 2000/027600/
77)
Applicant
and
PULING
PULING
(ID NUMBER:
[7.....])
First Respondent
TAPIWANASHE
PULING
(ID
NUMBER: [7.....])
Second Respondent
THE
REGISTRAR OF DEEDS,
PRETORIA
Third Respondent
FIRSTRAND
BANK
LIMITED
Fourth Respondent

JUDGMENT

MAKHUBELE AJ

INTRODUCTION

- [1] In this application, the applicant, a property developer, seeks amongst others an order to compel the first and second respondents ('respondents') to take the necessary steps to re-transfer to it the property described as Erf [.....] M. E. E. [.....], Township, Registration Division J.R, Gauteng ("Midstream") , held by deed of transfer T60293/ 2007 . The re-transfer will be against payment of an amount of R510 000.00 (five hundred and ten thousand rand) , less certain specified costs.
- [2] The application is opposed by the respondents. They filed an affidavit and raised a special plea of prescription in terms of the provisions of section 10(1) read with 11(d) of the Prescription Act, 68 of 1969 as well as other defences on the merits of the application.

BACKGROUND

FACTS

- [4] The following background facts are common cause between the parties.
- [5] The respondents are married to each other out of community of property. On 18 August 2006, they entered into an agreement of sale of immovable property with the applicant in respect of a vacant stand known as Erf [.....] ("the property") situated at Midstream for a price consideration of R510 000.00.

- [6] Clause 11 of the agreement reads as follows:

"

11. BUILDING PERIOD

The PURCHASER undertakes to erect buildings on the PROPERTY to the reasonable satisfaction of the SELLER within (18) months of date of proclamation, failing which the SELLER shall be entitled (but not obliged) to claim that the PROPERTY be retransferred to the SELLER at the cost of the PURCHASER against repayment of the original purchase price to the PURCHASER, interest free. "

- [7] The property was transferred to the respondents on 08 May 2007 by Deed of Transfer number T07186507 ("the title deed"). The transfer was subject to several conditions, amongst which is condition B that reads as follows:

"SUBJECT to the following condition imposed and enforceable by BONDEV MIDRAND (PROPRIETARY) LIMITED) (No. 2002/ 027600/ 07), namely:

The Transferee or his Successors in Title will be liable to erect a dwelling on the property within 18 (EIGHTEEN) months from 16 November 2006, failing which the Transferor will be entitled, but not obliged to claim that the property is transferred to the Transferor at the cost of the Transferee against payment by the Transferor at the cost of the Transferee against payment by the Transferor OF THE ORIGINAL PURCHASE PRICE, INTEREST FREE. The Transferee shall not within the said period sell or transfer the property without the Transferor's written consent. This period can be extended at the discretion of the Developer. "

- [8] The respondents did not erect a dwelling on the property within the 18 months period referred to in the title deed .
- [9] On 06 December 2012, the applicant addressed a letter to the first respondent in which he was advised, amongst other things that he should commence building by 30 January 2013, failing which legal action would be instituted to enforce the provisions of clause 11 of the original Offer to Purchase. He was also advised that judgment was granted in favour of the applicant in the matter of Lodhi 2 Properties CC and Lodhi 3 Properties CC versus Bondev Developments (Pty) Ltd (Witwatersrand Division) Case number 2005/ 8878.

[10] On 04 February 2013, the applicant's attorneys addressed a letter to the respondents in which they were reminded about the title deed condition to erect a building within 18 months from 17 March 2007. The respondents were also reminded about "various letters of demand to yourselves to submit building plans and to commence with the erection of buildings on the property".

They were also advised that the principle of re-transfer of property was confirmed by the courts « in the Witwatersrand Local Division in the matter of Lodhi 2 Properties vs Bondev Developments (Pty) Limited under case Number: 2005/ 8878 and by the Appellate Division under reference 2007(6) SA 87 (SCA)"

The attorneys also advised the respondents in the same letter that no further extensions would be granted to them and that the applicant

had given them instructions to proceed with the process to re-transfer the property and that documents in this regard would be

submitted to them for signature in due course.

[11] The respondents replied by email dated 05 February 2013 and indicated, amongst other things, that they had an arrangement with

the applicant to consolidate the property with stand number [.....] that belonged to them and that they had no intention to build on the property. They also advised the applicant's attorneys that the building plans for erf [.....] were approved "with the consolidation plans"

[12] The applicant's attorneys responded to the respondents by email dated 21 February 2013. The respondents were advised, amongst other things, that the applicant would not grant consent to consolidate the properties and would not grant an extension of the building period.

POINT IN LIMINE

Prescription

[13] In their answering affidavit, the respondents contend that the relief sought by the applicant is specific performance of the obligations arising from the sale agreement.

[14] The recordal of the obligations in the title deed does not extend the time period within which obligations were to be performed, which is three

(3) years in terms of the provisions of section 11(d) of the Prescription Act, 1969.

[15] The agreement was entered into on 18 August 2006. The obligation, or debt, concerned the erection of buildings to the reasonable satisfaction of the applicant within 18 months of proclamation, which was 07 March 2007.

[16] The 18 months period after 07 March 2007 expired on 8 September 2008. The applicant's cause of action arose on this latter date and was completed on 07 September 2011. Consequently, the applicant's claim was extinguished by prescription.

[17] The building period of 18 months was not extended between 07 March .and 07 September 2011. The only extension alleged is by letter dated 06 December 2012, and by this time the claim had already been extinguished.

DEFENCES ON THE MERITS

[18] On the merits, the respondents contend that there was a tacit term in the sale agreement that the Home Owners Association ("HOA")

would determine the "reasonable satisfaction " of the buildings and to this effect, the respondents submitted their building plans that were not only approved, but the stand in question was consolidated with another one ([.....]) that belongs to them.

The Ekurhuleni Local Municipality has also approved the building plans. Under the circumstances, the applicant cannot rely on the provisions of the re-transfer clauses in the sale agreement and the title deed.

[19] The alternative argument is that the applicant's failure to claim re- transfer within a reasonable time, failing to object to the development plans that were submitted to the HOA and causing the HOA to approve the plans, amount to negligent misrepresentation that it (applicant) would not enforce the retransfer provisions .

In effect, the applicant waived its right to reclaim the property.

[20] The respondents allege that applicant's conduct caused them to act to their detriment.

It was submitted in their answering affidavit that they would have taken appropriate steps to develop the property to avoid forfeiting R500 000.00 that they believe is the difference in the purchase price due to increased value of the property since they purchased it. This issue was however not pursued in argument.

[21] The applicant filed a replying affidavit and denied that its right to reclaim the property had prescribed. Its claim constitute a "Lex Commisoria"

[22] According to the applicant, the fact that the right to reclaim the property was recorded in the title deed means that it is a real right, and as such, it is not subject to prescription as it is not a debt. Applicant submitted that the right remains in place until the condition has been complied with or until waived.

It has not waived its right to claim re-transfer of the property and the condition still stands as it has not been complied with

[23] Applicant further contends that the respondents have always admitted and acknowledged their obligations and as such, the claim has not prescribed.

Respondents only repudiated their obligation to erect a building during 2014 when they advised the applicant that they had no intention to build a dwelling on the stand. Instead, they wanted to build a swimming pool.

[24] Applicant further contends that if prescription is applicable, then it was interrupted by the extension that was granted during 2012.

[25] With regard to the approvals granted by the HOA, the applicant contends that it is not bound by them because the two companies are separate legal entities.

The consent of the applicant is required to consolidate properties. The applicant has made it clear that it will not grant the consent .

The applicant further contends that the Municipality too has no locus standi to consent to or waive any of the applicant's rights.

WRITTEN AND ORAL SUBMISSIONS

[26] This matter was heard together with a similar application in the matter between Bondev Midrand (Pty) Limited v Petrus Kgosi Ramokgopa [1] ("Ramokgopa matter")

The applicant in the both matters is the same entity and is represented by the same counsel, Mr. Horn.

[27] The Respondents in the both matters raised a special plea of prescription. The applicant's response to the special plea is the same and as such, it was agreed that the arguments in this regard be heard together. Although the style, extent and manner of presentation of the matters were different, the substance of the submissions by counsel for the respondents on the special plea is the same.

Applicant' s submissions

[28] On my request, it was agreed amongst the parties that Mr Horn would make his submissions in response to the special plea in both matters, followed by counsel for the respective respondents, whereafter he would reply to their submissions.

I indicated to all involved that I would write similar judgments in as far as the issue of prescription is concerned.

I have already summarized the submissions of Mr. Horn with regard to the point in limine in my judgment

in the Ramokgopa matter. I reproduce them hereunder for the sake of convenience and reading sense of this

judgment.

" [19] On behalf of the applicant, Mr. Horn filed main as well as supplementary heads of argument that were handed in during the hearing.

[20] In his heads of argument, he described the nature of the right conferred on the applicant by the title deed condition as a personal servitude. He argued that in terms of Section 7(1) of the Prescription Act, it is extinguished by prescription if it has not been exercised for an uninterrupted period of 30 years.

He referred to the Supreme Court of Appeal judgment of Maya JA in the matter of Willow Waters Home Owners Association (Pty) Ltd v Koka 1768113(2014) ZASCA 220 112 December 2014)

("Willow Watters matter") and in particular paragraph 16 thereof with regard to the test to determine whether a right or condition in respect of land is real. The two well-known requirements are (a) the intention of the person who creates the right must be to bind not only the owner of the land, but also the successors in title; and (b) the registration of the condition must subtract something from the dominium of the land against which it is registered . After examining the authorities, Maya JA ruled that a condition in the title deed that prohibited transfer of a

property without a clearance certificate or consent of the Home Owners Association was a real or personal right and as such enforceable not only on the insolvent, but the trustees of the insolvent estate.

[21] He also referred me to the matter of Lorenz v Mel le and Others 1978

(3) SA 1044 to support his argument that the condition in the Deed of Transfer created personal servitudes.

He also referred me to the judgment of Du Plessis J in the matter of Bondev Developments (Pty) Ltd v Mosikare and Others(50391/2008} [2010} ZAGPPHC 305 (22 April 2010))

("Mosikare matter") where a similar clause in the title deed, was held to constitute a limitation on the respondents' rights of ownership. The claim for retransfer of the property was granted.

He argued that I would have to make a finding that Du Plessis J was clearly wrong if I disagree with his submissions.

[22] He argued further that the fact that the title conditions were registered by the Registrar is an indication that they are real rights and if I find otherwise I would have to hold that the Registrar was wrong to register them. In this regard he referred me to paragraph 30 of the judgment of Maya JA .

He also referred to the matter of National Stadium v Firststrand Bank (670/10) ZASCA/64 (1 December

2010) to support his contention that the title condition matured to real rights upon registration.

[23] In conclusion, Mr Horn argued that the respondents would have to distinguish between conditions B and C in the title deeds. In terms of the Willow Waters matter, Condition C (enforceable by the Home Owners Association) was found to be a real right .

Mr Horn argued that Condition B (enforceable by Bondev, the applicant) is as much a real right as C. Therefore, the applicant's rights will prescribe in 30 years.

He conceded though that prescription was not an issue in the Willow Waters matter. "

Respondents'

submissions

[29] The respondent in this matter was represented by Wagner SC. He did not refer me to any authorities in his written heads of argument on the plea of prescription.

[30] In his oral submissions, Mr Wagner pointed out that the conditions in the Offer to Purchase Agreement[2], paragraph 11 (building period) , and the one in the title deed are different and that the applicant conceded this in its replying paragraph by stating that the two conditions are "separately enforceable"[3]

[31] He argued further that it was unclear which of the two rights (between the purchase agreement and the Deed of Transfer) the applicant seeks to enforce, whether both of them or one or the other in the alternative.

[32] He went on to highlight the differences between the agreement of sale (contract) and the Deed of Transfer. He submitted that the undertaking to erect a building in the contract created real rights whereas in the Deed of Transfer it is an obligation to erect a building.

In the contract, the building is required to be to the satisfaction of the seller , whereas the Deed of Transfer does not say so.

[33] Mr Wagner went on to submit that on the basis of the argument raised by the counsel for the applicant, it would appear that the claim is based on the condition as recorded in the Deed of Transfer.

[34] In this regard, Mr Wagner submitted that the application or enforcement of the condition would require a three stage process. The first stage is the first 18 months period. In this period, the applicant has a right to expect that the respondents construct a building to its satisfaction. The respondents were obliged to build.

In this period, the applicant had no right to claim re-transfer of the property. He accepted, for argument's sake that the condition is a real right, but that it comes to an end at the end of 18 months and that the extension of the time period does not matter as building after this period would not assist with compliance.

[35] Objectively, so the argument went, it would be impossible to perform for later purchasers if they purchase the property after the 18 months period.

In this regard, Mr Wagner agreed with the submission of Mr. Manala in the Ramokgopa matter that the condition cannot bind further

purchasers. It can only do so if there were further agreements.

[36] The second stage of the enforcement process according to Mr Wagner was what he referred to as the right to decide. In terms of both conditions (in the purchase agreement and the deed of transfer), the applicant is entitled, but not obliged to claim retransfer of the property. The respondent's position at this stage becomes problematic. Mr Wagner submitted that he is neither obliged to build or retransfer the property.

The applicant's right to decide whether to enforce the condition is not a real right because this right does not have its object as a thing.

The respondent cannot wait an eternity for the applicant to decide. The right to decide, according to Mr. Wagner is a debt.

He submitted further and also supported the argument of Mr Manala that it is not a real right because it forms part of the title deed. The right to chose is an ancillary right to other registrable right.

He went on to submit that the law cannot allow the applicant to sit for 30 years before deciding whether to enforce his right or not.

[37] In this matter, the applicant knew that he had a right to enforce the title condition on 08/ 01/ 2008. That right prescribed during 2012.

The applicant had three possible causes of action; claim re-transfer of the property, decide not to enforce the condition or do nothing.

The applicant chose to do nothing.

[38] A decision to enforce this claim is unenforceable. The debt was extinguished and it ceased to exist.

[39] The third stage kicks in if the applicant chooses to enforce the condition after 18 months. He has a right to claim transfer of the property.

It can be a real right. However, the facts of the matters before me, according to Mr Wagner differ from the facts of the matter that served before Du Plessis J. For instance, in the matters before me there is no removed seller because the respondents are first purchasers.

Mr Wagener also highlighted a contradiction between the judgments of Du Plessis J and Dodson AJ on the question of whether building after the expiry of the 18 month period would assist the transferee to comply with the title condition B.

Dodson AJ held that it would not assist them. He decided the matter on the basis of the extension that was granted to the transferee and held that on the facts, the applicant's claim had not prescribed [4] •

This contradicts what Du Plessis J said when he criticized the conclusion of Fabricius J that such a clause would not be enforceable against a purchaser (and subsequent purchasers) after 18 months.

In this regard, Dodson AJ is in agreement with Fabricius J.

[40] Mr Wagner went on to submit that he is not suggesting that necessarily the right to claim re-transfer is a real right, but he agrees with the judgment of Van Deventer[5] that Mr Manala has referred to. He agreed with the submission that that there is a difference between the Condition that is enforced by the applicant and the one in favour of the Home Owners Association. The latter is performance in perpetuity.

[41] Finally, he submitted that the

judgment

of Maya JA in the matter of Willow Waters Home Owners Association[6] would not assist this court. The condition in favour of the Home Owners Association will always be there.

He also submitted that the court could have regard to both judgments of Du Plessis J and Fabricius J.

However, starting to build a house on the 19th month cannot be a defence to a claim for re-transfers and in this regard, Du Plessis J is incorrect. According to Fabricius J, a purchaser cannot get out of non-compliance if he does not build within 18 months .

The right to claim re-transfer does not exist until a decision is made. The decision to enforce the condition is not a real right.

[42] In reply, Mr Horn submitted that the applicant is not trying to compel the respondents to build a dwelling, but that it is the Deed of Transfer that compels them to do so.

[43] He further submitted that the obligation to build could not be transferred to new owners. In any event, so the argument went, the Home Owners Association cannot issue a clearance certificate if no dwelling was built, unless the applicant consents to the transfer.

[44] He also submitted that the holder of any right is not obliged to enforce it. It is an election to enforce.

DEFENCES ON THE MERITS OF THE APPLICATION RAISED BY THE RESPONDENTS

[45] The respondents raised two other defences; namely, (a) that the Home Owners Association consented to

consolidation of two stands that belong to the them, including the one that forms the subject matter of

this application, and (b) , in the alternative, that the applicant should be estopped from enforcing the title condition to claim

retransfer of the property.

Applicant's

submissions

[46] The thrust of Mr. Horn's argument with regard to the defence of consent to consolidation is that the applicant and the Home Owners Association are two different entities, and that in fact, the Rules of the Home Association that the respondents rely on were not yet in existence because the township had not yet been proclaimed. Furthermore, the Rules recognize the authority of the applicant in extension of the building period and consolidation of stands. Furthermore, in terms of conditions of the Local Authority, only one dwelling may be erected in a stand. In this regard, there is a conflict on the conditions with regard to consolidation.

[47] He went on to argue that to resolve the conflict, the condition in the Deed of transfer trumps the approval of consolidation of the stands by the HOA.

[48] On the defence of estoppel, Mr Horn argued that no facts were pleaded to support this. What has been communicated to the debtors is in the letters that were sent to them. They responded by email and stated that they had no intention to build, but intended to consolidate the stand with another one they owned. Building after the expiry of the building period is not going to assist the respondents as they are already in mora. He referred to the judgment in the matter of Bondev v Rasalanavho.

Respondents'

submissions

[51] In his heads of argument, Mr Wagner submitted that there are disputes of facts with regard to the defences relating to consent to consolidation and estoppel. He submitted that the version of the respondents is not of such a nature that it can be rejected out of hand.

The test in this regard is a stringent one and not easily satisfied. He referred to the matters of Mathewson v Van Niekerk (2012) ZASCA 12, para 7 and National Scrap Metal (Cape Town) (Pty) Ltd and Another v Murray & Roberts Ltd and Others 2012 (5) SA 300 (SCA) para 22.

On the correct approach to resolve disputes of facts, Mr Wagner referred to the well established rule in the matter of Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd [1984] ZASCA 51; 1984

(3) SA 623 (A). He submitted that I have to accept the version of the respondents, alternatively, refer the matter to trial or to evidence to resolve the factual disputes.

[52] Mr Wagner outlined the common cause facts between the parties to support the contention that the applicant consented, explicitly or by conduct, to the consolidation of the stand in question with another one. [52.1] The opportunity for the

respondents to build terminated in September 2008. Starting to build thereafter would not have assisted them

[52.2] He went on to submit that if one has a right that he can exercise, he cannot keep on exercising it over and over again.

The building plan in respect of erf [.....] (the other erf) was completed and submitted for approval. The Home Owners Association

duly approved it. Approval by the Home Owners Association is the only manner in which the applicant can declare that the building is to its "reasonable satisfaction". This was admitted by the applicant.[7]

If this is the case, there is no reason why the approval of erf [.....] (erf in question) by the Home Owners Association cannot be a declaration of reasonable satisfaction by the applicant.

Respondent submits that it is the same method of approval as in the other stand.

[52.3] The argument that the two entities (applicant and the Home Owners Association) are separate entities goes nowhere because that is how it is in terms of the law of agency.

This is the dispute that the court is required to decide.

[52.4] The 2011 approval of the building plans was in respect of both stands.

[52.5] In December 2012, a year later, and after the approval of the consolidated plan, the applicant wrote a letter to the

respondent and reminded them that they have not built a dwelling and that they must start building.

[52.6] The decision in 2011 to approve the building plan was a decision that applicant would not enforce the title condition.

[52.7] In January 2013, there was still no building. The applicant sent a second demand. This is when the respondents wrote back and indicated that they were not going to build. It is irrelevant when the intention not to build was formed.

An email was received during February 2013 in terms of which the respondents were advised that an entity known as Bondev Development

(Pty) Ltd would not give consent to consolidate the stands.

The applicant before court is Bondev Midrand (Pty) Ltd, and has given consent as it appears from the replying affidavit where an admission is made that approval of plans by the HOA is the only method which they can declare their reasonable satisfaction of the building to be erected. [52.8] The applicant did not take any action to claim retransfer until the founding affidavit was signed on 11 December 2013.

However, before the affidavit was signed, a second approval of alterations of the building plans was made on 09 December 2013 by the HOA. This contradicts the applicant's denial that the HOA is not its mouthpiece. Therefore, the HOA is the agent of the applicant.

[53] On estoppel, Mr Wagner submitted that even if it may now appear that the HOA is not the agent of the applicant, it did negligently misrepresent that it was.

[54] Finally, he submitted that the application should be dismissed with costs, including costs of senior counsel; alternatively, the matter must be referred to trial for determination of the disputes.

[55] In reply, Mr Horn referred to the dates of approval of the building plans and pointed out that the first approval was not indicated in the plans. He also argued that reference to Bondev Developments (Pty) Ltd in the email that refused consolidation of the stands and extension of building period was an error.

He also argued that the approval of the building plans that the respondents rely on do not override the conditions of any restrictions that may be applicable on the property.

[56] Finally, he pointed out that the condition in the Deed of Transfer states that the purchaser must erect a building to the reasonable

satisfaction of the seller. The approval by the HOA does not serve that purpose.

He referred to the judgments of Du Plessis J and Dodson AJ. He conceded that the facts are different though.

ISSUES

FOR DECISION

[57] The first issue that I am required to determine is whether, the applicant's claim for re-transfer of the property to itself

constitute a debt as contemplated in the Prescription Act 68 of 1969 ("the Prescription Act") and if so, whether the debt has prescribed in terms of section 11(d) thereof.

The applicant denies that the right is a debt and contends that the question of prescription should be determined by first examining the nature of the right that is conferred by the title condition.

The issue here is whether its registration in the Deed of Transfer means that it is a real right, and is incapable of prescription. An additional or alternative argument is whether the right is a personal servitude that expires after 30 years in terms of section 7(1) of the Prescription Act.

- (a) the applicant has consented to the consolidation of the property in question with another stand, and;
- (b) in the alternative, whether the applicant has negligently misrepresented to the respondents that it would not enforce its rights to claim re-transfer of the property.

WHETHER THE APPLICANT'S CLAIM HAS PRESCRIBED

[59] The special plea of prescription is upheld.

The reasons, which I do not intend to reproduce, appear in my judgment in the similar matter of Bondev v Ramokgopas that was heard together with this matter as I have explained above.

After examining the law (statutory and cases), and applying it to the facts of the matters before me, I came to the conclusion that the applicant's claim constitutes a debt as contemplated in the Prescription Act and that it is a debt that prescribes in three years in terms of Section 11(d) thereof.

[60] I have also considered the judgments [8] in this division where applications for re-transfer of properties were granted. In my view, the

[60] I have also considered the judgments[9] in this division where applications for re-transfer of properties were either granted or refused. I agree with respondents' counsel's

submissions

that it would only be binding on subsequent purchasers if the transferor enters into further agreements with them. This was the rationale of the decisions in the judgment of Dodson AJ in the matter of Bondev V Rasalanavho [10] .This is in line with Section 68 of the Deeds Act. It is also a sensible reading of the title condition because, as I have already stated, the restrictions with regard to selling and transfer to third parties only apply within the 18 month period.

CONSOLIDATION, WAIVER AND ESTOPPEL

[61] Accordingly, it is not necessary for me to decide on the other defences raised by the respondents on the merits of the application.

ORDER

[62] Consequently, I am of the view that the applicant's claim for re- transfer of the property to itself constitute a debt as contemplated in the Prescription Act 68 of 1969 and under the circumstances, it has prescribed in terms of section 11(d) thereof.

[62] I therefore make the following order;

1. The respondents' plea of prescription is upheld with costs, including costs of Senior Counsel.

TAN MAKHUBELE AJ

Acting Judge of the High Court

30 September 2015

APPEARANCES

APPLICANT:

Advocate N.J Horn

Instructed by: Tim Du Toit & CO. Inc

Lynnwood, PRETORIA

RESPONDENT: Advocate S.D Wagener SC

Instructed by: Gerhard Wagenaar Attorneys

Lynnwood Glen, PRETORIA

[1] case number 7819 / 14.

[2] Annexure B2

[3] paragraph s7. 1 , and 27.2 ,Replying affidavit.

[4] Prescription was raised, but Dodson AJ did not decide on it. He assumed, for the benefit of the respondent, that the prescription period was three years.

[5] Van Deventer v Ivorv Sun Trading 77 (pty) Ltd ! 2015) 1 ALLSA 55 ! SCA! where it was held that registration of a right of pre-emption does not convert it into a real right, it only has practical consequences.

[6] Willow Waters Home Owners Association (Pty) Ltd v Koka (768/ 13){2014] ZASCA 220 (12 December 2014)

[7] Replying affidavit

[8] supra

[9] Lodhi 2 Properties Investments CC and Another v Bondev Developments (Pty) Ltd, case number 05/ 8878 (Witwatersrand Local Division), Lodhi 2 Properties Investments CC v Bondev Developments (pty} Ltd 1128/ 06) 12007] ZASCA 85; 12007] SCA 85 ! RSA) ; 2007 (6) SA 8 7 ! SCA! (1 June 2007), Bondev Developments (ptyl Ltd v Plenty Properties 60 (Pty) Ltd and Others 143602 / 08) [2009] ZAGPPHC 346 (2 December 2009), Bondev Development (Pty) Ltd v Mosikare and Others (50391/2008) [2010] ZAGPPHC 305 (22 April 2010)Bondev Midrand ! Ptv)

Limited v Rasalanavho and Others (47616/ 2014) [2015] ZAGPPHC 538 110 June 2015)

[10] Supra.

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