



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

Case number: 271 /06

FRANCIS LESLIE BOWRING NO

APPELLANT

and

VREDEDORP PROPERTIES CC

FIRST RESPONDENT

THE REGISTRAR OF DEEDS

SECOND RESPONDENT

From: The Registrar, Supreme Court of Appeal

Date: 2007-05-

Status: Immediate

On 31 May 2007 the SCA endorsed an extension of the application of the doctrine of notice with regard to successive sales of the same property, by allowing the first purchaser to recover the thing sold directly from the second purchaser who acquired the property with knowledge of the first sale. The matter originated from an agreement of sale between the respondent, Vrededorp Properties CC, and a company, Stand 160 Selby (Pty) Ltd. In terms of the agreement Vrededorp purchased an as

yet undivided portion of an immovable property, situated in Loveday Street, Selby, Johannesburg, from Stand 160. Subsequent to the sale Stand 160 was finally wound up and the liquidator sold and transferred the whole property, inclusive of the undivided portion, to Investec Bank who in turn sold and transferred the whole property to the appellant, the Francis Leslie Bowring Trust. Vrededorp thereupon successfully sued the Trust in the Johannesburg High Court for an order compelling subdivision and transfer of the undivided portion which it had purchased from Stand 160.

It was common cause between the parties that both Investec and the Trust had knowledge of the prior sale of the undivided portion to Vrededorp when they acquired the property as a whole from their respective predecessors in title. In consequence it was not disputed by the Trust that, by operation of a settled doctrine of our law, known as the doctrine of notice, Vrededorp was entitled to claim subdivision and transfer of the undivided portion. The Trust's defence was, however, in essence, that the doctrine of notice does not allow a first purchaser to claim transfer directly from the subsequent purchaser. What the doctrine entitles the first purchaser to do, so the Trust argued, is to claim cancellation of the transfer to the second purchaser and then to claim against the seller, an order to pass transfer into the first purchaser's name.

The SCA decided, however, that this defence could not be sustained. Despite the absence of any direct precedent in our case law, so the court held, there is no reason in principle why a first purchaser should not be allowed in a suitable case – such as the present – to claim transfer directly from the second purchaser who acquired the property

with knowledge of the first sale. The High Court's order compelling the Trust to subdivide and transfer the undivided portion of the property to Vrededorp, was therefore confirmed. The appeal was, however, partially successful in that that part of the High Court's order which compelled the Trust to pay the expenses pertaining to the subdivision and transfer of the property, was set aside.