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Dispute Resolution ALERT

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The enrichment lien: Terms and conditions apply

In *Brooklyn House Furnishers (Pty) Ltd v Knoetze & Sons* [1970] 3 All SA 332 (A), the court explained the concept of a "lien" as a right which a purchaser may have over the seller's property to retain physical control of that property, whether movable or immovable, as a means of securing payment of a claim relating to the expenditure of money or something of monetary value by the possessor on that property, until the claim has been satisfied. This can be extended to enrichment liens, which enable a *bona fide* possessor to claim expenses for necessary and useful improvements and retain the property until the claim for compensation has been satisfied.



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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

The enrichment lien: Terms and conditions apply

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However, it is important for purchasers to note two important aspects relating to enrichment liens: firstly, an enrichment lien is merely security for a debt and does not afford the lien holder a right to execute in respect of the property subject to the lien and, secondly, the lien is dependent on the existence of an underlying enrichment claim.

In *Crystal Ball Properties 27 (Pty) Ltd and Another v Mbalati NO and Others* [2022] JDR 3516 (GJ), the court was confronted with a case in which an offer to purchase a property was concluded between the seller and purchaser. The purchaser, however, failed to make payment for the property by the agreed upon dates, and further failed to rectify this breach, therefore, the seller requested that the purchaser vacate the property and approached the court to evict the occupants of the property. Refusing to vacate the property, the purchaser claimed to exercise a lien over the property as security for the payment of monies expended on repairs and improvements made to the property after they took occupation.

Prior to the transfer of the property being effected, the purchaser asked if he could make certain alterations to the property. The seller agreed to alterations which were necessary insofar as the offer to purchase was concerned, however, further alternations would be subject to the fact that should the offer to purchase fall through, the purchaser will be required to make good on any of the changes that were not acceptable to the seller. The renovations to the residence cost approximately R13 million.

In defence, the purchaser argued that section 15(1)(b) of the Alienation of Land Act 68 of 1981 preserves a purchaser’s right to claim for necessary expenditure and improvements and, therefore, a seller is not entitled to stipulate in a deed of alienation that the purchaser shall not make alterations and additions to the property before transfer takes place.



Cliffe Dekker Hofmeyr

2023 RESULTS

Chambers Global 2022 - 2023 ranked our Dispute Resolution practice in **Band 2: Dispute Resolution.**

Chambers Global 2018–2023 ranked us in **Band 2** for Restructuring/Insolvency.

Tim Fletcher ranked by **Chambers Global 2022 - 2023** in **Band 2: Dispute Resolution.**

Clive Rumsey ranked by **Chambers Global 2019 - 2023** in **Band 4: Dispute Resolution.**

Tobie Jordaan ranked by **Chambers Global 2022 - 2023** in **Band 4: Restructuring/Insolvency.**

Lucinde Rhoodie ranked by **Chambers Global 2023** in **Band 4: Dispute Resolution**

Jackwell Feris ranked by **Chambers Global 2023** as an upcoming dispute resolution lawyer.

Kylene Weyers ranked by **Chambers Global 2023** as an upcoming restructuring/insolvency lawyer.

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The court held that a prohibition of the nature put forward by the purchaser would amount to a drastic incursion into the freedom of parties to contract. As such, the court found that the parties' contractual arrangements would preclude the purchaser from relying on any form of enrichment lien. Further to this, it was found that there was no agreement that the seller would be required to compensate the purchaser for the costs incurred in the alterations and additions if the offer to purchase fell through.

Due to the fact that the purchaser could not establish a right of retention over the property, and that they could not, in fact, rely on an enrichment lien, since no such provision was made in the offer to purchase, the court granted an eviction order.

The above judgment, therefore, makes it clear that when relying on an enrichment lien, even in the event where a purchaser can establish that an enrichment lien exists, the purchaser's right of retention will be limited to exercising control over the property as security for the payment of the amounts alleged to be due in respect of the enrichment claim, and the lien does not give the purchaser the right to occupy the property indefinitely. This highlights the importance of parties knowing the terms and conditions to which they are contracting.

Corné Lewis and Tiffany Alves

The **LEGAL 500** EMEA

2022 RESULTS

The Legal 500 EMEA 2022 recommended our **Dispute Resolution practice** in **Tier 1** for dispute resolution.

The Legal 500 EMEA 2022 recommended **Tim Fletcher** as a leading individual for dispute resolution.

The Legal 500 EMEA 2022 recommended **Kgosi Nkaiseng** and **Tim Smit** as next generation lawyers for dispute resolution.

The Legal 500 EMEA 2022 recommended **Rishaban Moodley, Jonathan Witts-Hewinson, Lucinde Rhodie, Clive Rumsey, Desmond Odhiambo, Mongezi Mpahlwa, Corné Lewis, Jackwell Feris** and **Kylene Weyers** for dispute resolution.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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