Dispute Resolution

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South Africa

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Court rules that a surviving spouse of a deceased member cannot be evicted from a retirement village scheme

The Gauteng High Court in Johannesburg has granted relief to a 78-year-old widower who faced eviction from his marital home in a retirement village. In *NG Kerk Brackenhurst Aftreebehuising NWO v H.J.B. and Another* (2024/026737) [2026] ZAGPJHC the court dismissed an application by a retirement village to evict a widower, with the latter arguing he could not benefit from his deceased wife's life rights in the scheme as his particulars and signature were not on the initial, signed agreement. The court's focus was on the contract between the widower's deceased spouse and the applicant. The court employed a contextual, purposive approach to the interpretation by considering the intention of the deceased's will as well as the wording in the agreement to find that the non-compliance was not fatal to the respondent. Although finding that the agreement, on a contextual basis extended the life rights to the deceased's spouse, as an exercise the court also looked at whether the respondent could be evicted under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act), which inquiry also failed to grant relief to the applicant.

Facts

In August 2010, the deceased, Adriana Catharina Botha, concluded an agreement with NG Kerk Brackenhurst Aftreebehuising NWO (the applicant), which operates retirement villages, and acquired a life right to occupy a unit in the retirement village for the duration of her life. At the conclusion of the contract, she was divorced and therefore had not filled out the section on the agreement which pertained to a spouse. However, in March 2019, the deceased married Heynike Jurie Badenhorst (the respondent), who moved in with her shortly thereafter. His occupation was known to and accepted by the applicant and the management of the retirement scheme. On 4 September 2023, Botha died. After her death the respondent remained in the unit, but shortly thereafter the applicant requested that the respondent vacate the premises, alleging that he had no right to reside there given his details were not formally captured on the agreement. After refusing to vacate, the applicant launched an application under the PIE Act to evict the respondent.

Issues before the court

In its inquiry, the court had to consider two issues. Firstly, when properly interpreted, whether the agreement entitled the respondent to continue occupying the unit despite not being recorded as a spouse in the agreement and, if not, whether it would be just and equitable under the PIE Act to evict him.

Contractual interpretation

In addressing the contractual issue, the court undertook a contextual approach in interpreting the agreement and stated that: "*interpretation is a unitary exercise in which the language used must be considered in the light of its context and purpose which not only considers both the purpose*" and context surrounding the contractual clause.

The court looked at the fact that the applicant knew that the respondent was residing with the deceased and did not object or insist that the agreement be formally amended to reflect the respondent's particulars. The court also looked at the wording of the agreement and held that although it allowed the cancellation of particulars of a spouse, it did not expressly deal with the situation where the holder had been unmarried at the conclusion of the agreement but married after its conclusion. The applicant tried to argue that the deceased was supposed to terminate the agreement and then conclude a new agreement with the respondent's details. However, the court found that neither the wording of the agreement nor the governing document of the scheme supported this contention. Furthermore, the court also considered the statutory framework under the Housing Development Schemes for Retired Persons Act 65 of 1988, which governs retirement schemes and under section 7(1) confers a right of occupation to the spouse of the person who holds an interest in the scheme. Given the above and the context surrounding the matter, the court ultimately found that the clause in the agreement served merely an administrative purpose, and non-compliance did not prevent, preclude or restrict the respondent from benefiting from the deceased's life right, therefore making him a lawful occupier.

PIE Act consideration

Although the applicant failed in the first inquiry, the court still conducted an analysis under the PIE Act to determine whether, if on a strict application of the agreement the respondent was found to be an unlawful occupier, it was just and equitable to evict the respondent. The court considered that the respondent was 78 years old, in poor health, had limited income and did not have the means to secure alternative accommodation. The court also considered the fact that he had resided in the home for several years and it had become his primary residence. However, the court also considered the prejudice which may occur given the respondent's continued residence, which included the delay in winding up the deceased estate, the inability to sell the property and the prejudice it would have on the heirs of the deceased. However, given that the application was not brought by the executor of the deceased estate, the court found that the prejudice was mainly towards the applicant, and of a more financial and administrative nature.

Final finding

The court dismissed the applicant's eviction application, finding that it would not be just and equitable to evict the respondent. This case serves as a reminder to retirement housing schemes that reliance on a strict, literal interpretation of a contractual provision may not be enough to justify an eviction, especially where the surrounding circumstances, as well as the clause itself, do not expressly indicate compliance as a prerequisite for the housing interest to be extended to the holder's spouse. Retirement schemes should therefore ensure that the particulars of an interest holder's spouse are properly recorded and updated.

Lucinde Rhoodie and Zahaa Safodien

Still getting spam calls? South Africa tightens Direct Marketing Regulations

South Africans, increasingly frustrated by unsolicited calls, should be experiencing meaningful relief following the Minister of Trade, Industry and Competition's introduction of significant amendments to the Regulations under the Consumer Protection Act 68 of 2008. The Consumer Protection Act Amendment Regulations, 2026, published in the *Government Gazette* on 15 April 2026, are intended to provide stronger measures to regulate direct marketing practices, enhance consumer protection and reduce unwanted marketing communications.

The amendments introduce a more stringent compliance regime for direct marketing activities. All persons and entities engaged in direct marketing are now required to register with the National Consumer Commission's opt out registry before making any contact with consumers. This is not a once-off obligation, as registration must be renewed annually, and is subject to payment of prescribed fees. Importantly, the Regulations make it clear that direct marketing may not be conducted at all unless the marketer is duly registered, and any direct marketing activity undertaken by an unregistered marketer will therefore be unlawful.

This gives consumers greater protection: by registering on the opt-out registry, they can proactively block all electronic direct marketing communications. Once a consumer has registered, direct marketers are prohibited from contacting that individual for marketing purposes.

To support and enforce this, businesses engaged in direct marketing must perform monthly data cleansing exercises. This will ensure that contact details of consumers who have exercised a pre-emptive block are removed from marketing databases and are not used for any further direct marketing communications.

The Regulations further enhance transparency by imposing stricter communication requirements on direct marketers. All direct marketing communications must clearly identify the sender and include accurate and comprehensive contact details, including the sender's name, electronic and physical addresses. In addition, the opt out registry must be maintained with a high level of accuracy. The Regulations require that registry data is kept up to date, reinforcing accountability and supporting the effective enforcement of consumer opt out rights.

The Regulations introduce a structured fee framework applicable from 2026, adding a financial dimension to compliance for direct marketers. The prescribed fees are as follows:

- R2,574 for initial registration;
- R1,930.50 for annual renewal; and
- additional monthly data cleansing fees calculated per data entry.

These fees are set to increase on a three-year cycle, meaning businesses that engage in high-volume direct marketing will need to factor these costs into their compliance and budgeting processes on an ongoing basis.

The Regulations operate alongside, and do not replace, the requirements of the Protection of Personal Information Act 4 of 2013 (POPIA). Importantly, a consumer's registration on the opt out registry does not constitute consent for the purposes of POPIA. In many instances, particularly where the individual is not an existing customer, direct marketers will still be required to obtain explicit, prior consent before engaging in any marketing activities. Compliance with POPIA therefore remains a critical and separate obligation.

These amendments materially raise the compliance threshold for direct marketing in South Africa, while at the same time providing consumers with more stringent mechanisms to limit unsolicited communications. The position in other countries is largely similar, with a centralised opt out registry as a well-established international model. The mandatory marketer registration plus the annual fee distinguishes the Minister's new approach. What is clear is that businesses that engage in direct marketing must urgently review their current practices, including their registration status, consent frameworks, database management processes and internal compliance controls, to ensure alignment with the regulatory framework and to mitigate legal and regulatory risk.

The burning question is whether this will make a difference to consumers. International experience is that do-not-call registries have reduced legitimate telemarketing, but we know that large volumes of spam calls originate outside our country and are therefore not subject to our regulations. It is also not clear whether technical measures at the network level have been implemented to identify marketers who are not following the rules. It is evident that a registry without robust enforcement will tend to bind only the compliant.

This is clearly a step in the right direction, but the ultimate question is whether it works or whether we are just being given traffic lights but no policing.

Tim Fletcher and Kgatlhiso Mofokeng

Attractive property descriptions, limited legal remedies

Property marketing language often paints a compelling picture for prospective purchasers. While the use of such language may influence a prospective purchaser's interest in a property, courts have consistently warned individuals to proceed with the purchase of immovable property with caution. The decision in *Fitzpatrick and Another v Latsky NO and Others* (13451/2017) [2026] ZAWCHC 80 (25 February 2026) serves as a timely reminder that promotional descriptions do not constitute warranties as to a property's integrity or safety, and prospective purchasers remain obligated to conduct their own inspections prior to the purchase of the property.

Background

In *Fitzpatrick*, the purchasers sought to hold the seller and the estate agent liable after discovering defects in a residential property following transfer. The property had been marketed using favourable descriptions such as "*beautiful*" and being in "*stunning condition*". However, upon occupation, a wooden deck collapsed, revealing latent structural defects and non-compliance with applicable building regulations.

In the matter, the purchasers alleged, among other things, that the favourable marketing descriptions used in the viewing process amounted to misrepresentation in that they relied on these favourable descriptions of the property when deciding to proceed with the purchase.

The dispute raised a recurring question in property transactions: to what extent can prospective purchasers rely on the language used during the marketing and viewing of a property for sale when defects emerge after the sale has been concluded and transfer has taken place. The Western Cape High Court answered this question decisively in favour of the defendants (the sellers and estate agent), reinforcing long-standing principles regarding sales puffery, buyer inspections and the limits of post-sale liability.

Sales puffery is not a legal guarantee

Central to the court's reasoning for the judgment was the established distinction between actionable representations of fact and "*sales puffery*". Puffery refers to general commendatory or promotional statements, often subjective in nature, used to market goods or property. Words such as "*stunning*" or "*beautiful*", in most cases, fall within this category.

The court confirmed that such descriptions do not amount to representations concerning a property's structural integrity, safety or compliance with regulatory requirements. These words express the opinion of the estate agent or owner and cannot reasonably be understood as guarantees that a property is free from latent defects. The court's reasoning makes it clear that disappointment arising from a mismatch between marketing language and post-purchase reality does not translate into legal liability.

However, this principle needs to be applied on a case-by-case basis. While it is generally accepted that words such as "*stunning*" and "*beautiful*" constitute puffery as they are a subjective aesthetic opinion (and would not amount to a misrepresentation), descriptors such as "*pristine/original/perfect*" may imply verifiable factual content on the part of the seller and/or estate agent.

The scope of liability remains limited

It remains a requirement for estate agents to disclose material facts of the property for sale within their personal knowledge; however, they are not expected to conduct technical investigations or identify defects that would not be apparent to a layperson.

Similarly, when immovable property is sold subject to a voetstoots clause, a purchaser bears a heavy burden to establish that the seller had actual knowledge of a latent defect and deliberately concealed it with fraudulent intent. In *Fitzpatrick*, the court found no basis to infer such knowledge or intent and accordingly the plaintiffs were not successful with their claims.

This case highlights the risk for a prospective purchaser in placing undue reliance on property marketing descriptions when making purchasing decisions. Attractive wording may encourage interest, but it does not shift legal responsibility or reduce the need for due diligence on the purchaser's part.

South African courts have consistently held that prospective purchasers are expected to take reasonable steps to protect their own interests. This includes properly viewing a property, asking relevant questions and, where appropriate, ensuring inspections by suitably qualified professionals before making an offer to purchase. Where buyers elect not to do so, the law is slow to intervene once defects come to light, particularly in the absence of fraud or deliberate misrepresentation by the seller.

What this means for you

Fitzpatrick is not a departure from existing authority but is rather a contemporary confirmation of a settled legal position. For prospective purchasers, the decision reinforces that favourable marketing language should be approached with caution and understood for what it is: an invitation to view, not a guarantee of condition.

Ultimately, while the law continues to guard against fraud and dishonesty, it does not insulate buyers from the consequences of failing to properly inspect property before committing to the purchase.

Claudette Dutilleux, Gabriella Schafer and Sthembiso Chauke

Chambers Global 2026 Results

Dispute Resolution

2022–2026 ranked our practice in **Band 2**: Dispute Resolution.

2018–2026 ranked our practice in: **Band 2**: Restructuring/Insolvency.

2026 ranked our Kenya practice in **Band 5**: Dispute Resolution.

Individual Rankings

Tim Fletcher: 2025–2026 as an "**Eminent Practitioner**", a category in which lawyers are ranked as highly influential lawyers and exceptional individuals.

Lucinde Rhoodie: 2023–2026 in **Band 4**: Dispute Resolution and in **Band 4**: Restructuring/Insolvency.

Natascha Harduth: 2023–2026 in **Band 4**: Restructuring/Insolvency.

Desmond Odhiambo: 2026 in **Band 4**: Dispute Resolution.

Clive Rumsey: 2025–2026 in **Band 5**: Dispute Resolution.

Anja Hofmeyr: 2025–2026 in **Band 5**: Dispute Resolution.

Jackwell Feris: 2026 in **Band 5**: Dispute Resolution.

Corné Lewis: 2026 as an "**Up & Coming**" dispute resolution lawyer.

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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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