



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED

Wright J
21 July 2025

Case No A77/2025
909/2014

In the matter between:

BONDEV MIDRAND (PTY) LTD

APPELLANT

and

CHRISTINA MARIA SYBELLA VAN BLERK

FIRST RESPONDENT

THE REGISTRAR OF DEEDS

SECOND RESPONDENT

STANDARD BANK OF SA (PTY) LTD

THIRD RESPONDENT

JUDGMENT

WRIGHT J

[1] The appellant, Bondev develops immovable property. The first respondent, Ms Van Blerk is an estate agent. She sold erven generally, as an agent accredited by Bondev, in the development in question.

[2] Bondev sold an erf to Mr and Mrs Barkhuizen for R390 000. They on-sold it to Pandowe Property Investments CC. Pandowe went into liquidation and its liquidators sold the property to Ms Van Blerk for R310 000.

[3] Without putting too fine a point on it, the agreements of sale contain a clause to the effect that the purchaser was obliged to build on the property by a certain date and if this was not done, the seller had the right to claim re-transfer of the property against payment by the seller of the purchase price back to the buyer.

[4] It may be, and I make no finding thereon, that the right to enforce building is a real right and the right to reclaim the erf for failure to build is a personal right.

[5] It would appear that the various title deeds also contained the same or similar clauses.

[6] Ms Van Blerk, after the property was registered in her name is alleged by Bondev to have done little to build on her erf.

[7] Bondev, worried that an undeveloped erf was a security risk demanded of Ms Van Blerk that she build on the erf. When she apparently balked, Bondev launched application proceedings against her. Bondev sought registration of the erf in its name. In the alternative, Bondev sought payment of R753 147, 95, or such amount as determined by the court. The apparent basis for the alternative claim is that Ms Van Blerk would be unjustly enriched at Bondev's expense unless the alternative claim was granted.

[8] Originally, Bondev's application was unopposed. An order was granted by the court on a default basis on 14 May 2014. The court ordered Ms Van Blerk to transfer the erf to Bondev against payment by Bondev to Ms Van Blerk of R390 000. It would seem that Bondev paid Ms Van Blerk the R390 000.

[9] Acting pursuant to the court order of 14 May 2014, the sheriff signed the necessary documents to effect transfer of the erf back into the name of Bondev. The erf was registered in the name of Bondev.

[10] Ms Van Blerk later obtained a rescission of the order of 14 May 2024. Despite the rescission, the erf is still registered in the name of Bondev. Ms Van Blerk launched a counter-application to have the erf transferred back to her. She sought also related relief.

[11] Bondev, despite it being the registered owner of the erf, persisted in its claim for transfer of the erf to it and Bondev persisted in its claim in the alternative under unjust enrichment.

[12] Ms Van Blerk raised a number of defences, including a defence of prescription to Bondev's main claim.

[13] In the court below, Retief J upheld the defence of prescription raised by Ms Van Blerk to the main claim by Bondev for re-transfer of the erf and effectively, though not expressly, dismissed Bondev's main claim.

[14] The learned judge ordered that Ms Van Blerk pay R390 000 to Bondev and that once she had done so, the erf was to be transferred into the name of Ms Van Blerk.

[15] Bondev now appeals the order of Retief J, with her leave. There is no cross-appeal by Ms Van Blerk.

[16] The affidavits and documents in this matter are many and complex. There are enormous disputes of fact. It is not necessary to detail every factual dispute. On 14 August 2018, before the hearing of the main application and counter-application, Bondev's attorney wrote to Ms Van Blerk's attorney suggesting that there were serious disputes of fact and that the matter should go to trial.

[17] It suffices to refer to two areas of factual dispute.

[18] Firstly, part of Bondev's defence to Ms Van Blerk's prescription point is a document, apparently dated 1 November 2011. Ms Van Blerk is alleged to have signed the document and to have agreed that she would build on her erf by a certain,

extended date. That date, and the validity of the document are central to the defence of prescription. Ms Van Blerk states that she signed the document under mistake. She says that she signed it unaware that there was an error in the title deed for the erf. She says that the document is the result of an intentional misrepresentation by Bondev or its agents. She says that she is entitled to avoid the document and its consequences. If she is correct, the effect may be that the main claim of Bondev has prescribed. If she is wrong, then it may be that Bondev's main claim has not prescribed.

[19] Secondly, the quantification of the enrichment claim of Bondev is something which needs to be canvassed at a trial.

[20] This matter needs full pleadings and discovery by both sides, followed by a trial to get to the truth.

[21] Costs should be reserved. There is too much presently up in the air for this court confidently to make a costs order now.

Order

1. The appeal is upheld.
2. The order of the court of 12 July 2024 is set aside.
3. The notice of motion stands as a simple summons.
4. The notice of counter-application stands as a notice of intention to defend.
5. Bondev is to deliver a declaration by 31 August 2025.
6. Thereafter, the matter proceeds as a trial action.
7. Costs reserved.


Wright J


Van Der Westhuizen J

I agree/disagree


Kooverjie J

I agree/disagree

HEARD : 21 July 2025

DELIVERED : 21 July 2025

APPEARANCES :

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