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### **Deliberate non-disclosure of defects may leave seller liable**

When viewing the smallholding that our reader ended up buying, the owner pointed out that the roof had two leaks.

He said he would fix one himself and told our reader that it was her responsibility to have the other one mended.

She asked two contractors for a quote, but both told her that the damage was irreparable and that the roof would have to be replaced. The seller said he could not be held liable for replacing the roof.

The borehole pump broke down shortly after our reader moved in and the seller said he was also not liable to fix this.

She would like to know from our panel of experts if the seller could be held liable for any of the expenses to the roof and borehole system.

Warren Jack from the Warren Jack Property Group in Port Elizabeth says in terms of the Alienation of Land Act No 68 of 1981, any agreement for the alienation of immovable property must be contained in a written document and signed by the buyer and the seller.

“It is important that the buyer must ensure that the sale agreement protects his or her rights through the inclusion of all undertakings and guarantees given by the seller during the negotiations.”

According to Jack, it may also be in the interest of the buyer to have the property inspected by an expert prior to making an offer.

He says, with regard to the reader’s transaction, it appears that the problem with the roof is substantially more serious than the seller led on.

“To determine whether the reader has a claim against the seller to pay for the replacement of the roof and borehole pump system, she will have to ascertain whether the seller knew about the actual extent of the problems and whether he deliberately concealed it,” says Jack.

Grant Howard from Kaplan Blumberg attorneys in PE says the reader may be able to rely on a recent High Court judgment for relief.

“In this case, the court found that due to the nature of the structural defects to the roof and the resulting leakages it would have been impossible for the seller not to have had knowledge of the defects at the time of signing the contract.”

Howard says based on the evidence and relying on reports by experts, the court found that the defects did exist in the property at the time of entering into the contract.

He says the question the court then had to consider was whether the seller was aware of these defects at the time of contracting.

“On taking into account that the seller had lived in the house for many years and that the seller had conceded to having knowledge of certain leaks, the court found that the seller had deliberately refrained from disclosing the full extent of the defects to the purchaser.”

Howard says the court accordingly found in favour of the purchaser and ordered the seller to pay the cost of the repair work.

He concludes that the reader may be able to use this precedent to support her claim that the seller must pay for the replacement of the roof and the borehole pump system.

Send your property related questions to [coetzee@fullstopcom.com](mailto:coetzee@fullstopcom.com).

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