



# CHERRY-SINGH | Incorporated

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## Case Law

### Sale of land: voetstoots clause

In *Haviside v Heydricks and Another* 2014 (1) SA 235 (KZP), the Respondents (the Purchasers) discovered sometime after Transfer of ownership that the garage constituted an illegal structure as no plans had ever been submitted to the City Council for approval. The Respondents instituted illegal action for:

- Costs of demolition of illegal structure and replacement thereof with a legal structure; or
- The diminished value of the property.

The Appellant relied on the *voetstoots* clause contained in the agreement of sale, justifying that she was not aware of the illegal nature of the structure as her mother and brother filled the walls of the existing carport without her knowledge.

The Appeal Court concluded that the illegal structure constituted a latent defect to which the *voetstoots* clause applied and that there was nothing to suggest that the Appellant was aware that the building regulations had not been complied with. Accordingly the Appellant was protected by the *voetstoots* clause and the Appeal was upheld with costs

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