

THE HOUSING CONSUMER PROTECTION MEASURES ACT

HUBBARD v COOL IDEAS 1186 CC (580/12)

INTRODUCTION

The purpose of the Housing Consumer Protection Measures Act 95 of 1998 (the Act) is to afford protection to housing consumers. It does this by establishing the National Home Builders Registration Council (the NHBRC) and the requirement that home builders be registered as such.

THE LAW

Section 10 of the Act provides that no person shall carry on the business of a home builder or receive any consideration in terms of any agreement with a housing consumer in respect of the sale or construction of a home unless that person is a registered home builder with the NHBRC. The section further provides that no home builder shall construct a home unless they are registered as a home builder with the council.

Before a homebuilder can register as such, the NHBRC must be satisfied that certain minimum criteria are met, the purpose of these being to protect housing consumers.

THE FACTS

In 2006 the housing consumer and developer entered into a written building agreement in terms of which the developer was to construct a residential dwelling on land purchased by the housing consumer. The actual construction of the dwelling was sub contracted to a builder who was registered with the NHBRC. The developer was not registered with the NHBRC.

A dispute arose and the matter was referred to arbitration. The housing consumer complained about various structural aspects of the construction and claimed damages for remedial work required to be performed to her house. The developer opposed the claim and instead claimed payment of the outstanding balance for the work already performed as well as interest on that balance.

The arbitrator made an order in favour of the developer and the developer thereafter applied to the High Court to have the arbitrator's award made an order of the court. The housing consumer opposed the application in the High Court on the basis that she had discovered that the developer had not been registered in terms of the Act.

The housing consumer argued that in terms of section 10 of the Act, the developer was not allowed to carry on the business of a home builder or to receive any consideration in terms of any agreement with a person defined as a housing consumer. She further argued that making the arbitration award an order of the court would amount to an order of the performance of an act prohibited by the legislature.

The High Court found in favour of the developer. The housing consumer then approached the Supreme Court of Appeal (SCA) in order to appeal the decision of the High Court.

HELD

The SCA held that section 10 of the Act is aimed at protecting the housing consumer from unscrupulous and/or unskilled home builders. The court also held that the fact that the developer had appointed a registered sub-contractor to complete the work would not assist them as, section 10 (7) of the Act requires both contractors to be registered home builders. The SCA thus held in favour of the housing consumer. This was confirmed by the Constitutional Court in 2014.

Non-compliance with section 10 of the Act does not invalidate/ nullify the agreement entered into by the housing consumer and the home builder. Its effect is to disentitle the home builder from receiving any consideration for work done as a home builder.

CONCLUSION

Developers or contractors who intend to construct homes for housing consumers must register with the NHBRC in order to be entitled to claim any remuneration or payment. This is the case even where they have sub contracted the construction to contractors who are themselves registered with the NHBRC.