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<u>IS A CAVEAT AGAINST A PROPERTY REASON FOR CANCELLATION OF THE SALE AGREEMENT</u>?

In the case of Anioma Property (Pty) Ltd v DMFT Developers and Others (2023), DMFT (the purchaser) bought property from Anioma (the seller). The purchaser paid the full purchase price to the transfer attorneys but refused to pay the transfer costs on the basis that the seller failed to disclose the caveat on the property in full and also failed to mention that the property is prone to hijackers.

The caveat was one that the seller had registered themselves to stipulate that the property could not be transferred without the consent of the court, as there had been a fraudulent attempt to liquidate them.

The seller sought an order for specific performance. In order for the court to award specific performance, they had to determine the following:

1. Was the agreement misleading when it referred to the caveat and it left out certain facts;
2. Was there a legal duty on the seller to disclose the nature of the caveat;
3. Was the non-disclosed fact so material that it would invalidate the agreement between the parties.

The court held that non-disclosure is misrepresentation by silence. When there is a legal duty on someone to disclose a material fact, and such fact is omitted it constitutes misrepresentation. A legal duty to disclose usually arises when the relevant facts is within the exclusive knowledge of one party. The court found that the caveat was not exclusive information to the seller, as the information is readily available with an enquiry at the deeds office. The court also held that a reasonable person would have done the due diligence that is necessary, especially when the purchase price is substantial (as it was in this case).

The court concluded that the disclosure of the caveat was not a material issue and DMFT was ordered to pay the outstanding transfer costs and the cost of the application.

The lesson to learn from this case is that full disclosure to the purchaser of all facts pertaining to the property is imperative to avoid conflict later on in the transaction.