Land Dispute – Plot 334/335 of Springvale Farm, Rosetta

4.1. Summarise the facts, dates, times and places relevant to your complaint.

In October 2021 we put in an offer of R1,675 000 on the house that was presented to us as plot 334 Lake Drive, Rosetta.
The house had been built by the sellers (Andre and Avril Schiermeier) and completed in the last half of 2018.

We used the conveyancer's, AG Jenkins Attorneys, to help process the paperwork. Once the Offer to Purchase had been signed (**See Attached "Document 1"**), we started the bond application process. We had a cash deposit of R730 000 and ABSA approved us for a R945 000 bond. (**See Attached "Document 2"**)

In November 2021 we accepted and signed the offer with ABSA and they sent out an Assessor to do the property valuation. ABSA then notified us that the bond had been approved based on the Assessor's valuation. (**See Attached "Document 3"**)
Once this was all cleared by ABSA, AG Jenkins Attorneys started the process of the sale. As first time home owners we followed the process, supplied and signed all the requested documents as we were instructed to do so by ABSA and AG Jenkins Attorneys.
We signed the bond documents with Randles Attorneys in December 2021 (**See Attached "Document 4 and Document 5" - signed copies are with Randles Attorneys, we have not received copies**) and the transfer of the property was complete by the end of January 2022. (**See Attached "Document 6 to Document 9"**)

On 1st February 2022, the Schiermeier's handed us the keys to the house and told us the plans for the house were in the cupboard. (**See Attached "Document 10"**)

In May 2022, an Estate Agent arrived at our gate and asked us why a house had been built on his client's (Anne Coventry) land. We explained that the previous owners had built and we had just recently bought the house. He explained that the plot we were on was in actual fact 2 plots (334 and 335) and that his client owns plot 335. The house is built mainly on plot 335 and our title deed says we own plot 334. (**See Attached "Document 11 and Document 12"**)

As first time home buyers we did not realise the square meterage of the property on the title deed (1800m2) was smaller than what we were actually living on and paid for (3200m2). At R1,675 000.00, we paid market value for a 3200m2 property with a 3 bedroom house.

The owner of the plot 335, Anne Coventry has asked for compensation for her land. (**See Attached "Document 13"**)

Upon investigation we found that :-

- The sellers of the property had built the house using the previous owners plans which had expired in 2014. (**See Attached "Document 14 and Document 15"**)
- The seller did not build the house according to the plans they claimed they used. (**See Attached "Document 16"**)
- The house was built without any building permissions.
- The house does not have a NHBRC certificate, which is required by law.

We were put in touch with a mediator for AG Jenkins, Pat Dewes.
We contacted the Sellers (**See Attached "Document 17"**) and received a response from their attorney in July 2022.
They say they did not know that they had built on the wrong land and blamed the previous land owner. (**See Attached "Document 18 to Document 20"**)
Pat Dewes, organised a meeting for all parties to negotiate without predjudice. (**See Attached "Document 21"**) A date in December 2022 was decided, all parties and the relevant attorney's gathered to discuss. Unfortunately no resolution was reached and blame was pushed onto why ABSA had approved the bond. (**See Attached "Document 22 and Document 23"**)

In December 2022, we met with Gavin Maclahlan, CEO at Randles Attorney's to discuss our case as we had signed our bond agreement with him.
This was the first time we were shown the original Subdivisional Diagrams which clearly marks out the separate plots. (**See Attached "Document 24"**)
He requested our story in writing and would notify an ABSA manager to investigate further. We have followed up since with no response from ABSA on that side. (**See Attached "Document 25"**)

In March 2023, after realising no one was going to get back to us, we had a discussion with the NHBRC, where they confirmed that there was no certificate attached to the property or either plots 334 and 335. We were informed that the bank should not have approved our bond according to the below law:

Section 18(1) of the The Housing Consumers Protection Measures Act 95 of 1998 states that a financial institution cannot lend money to a person to purchase a new home from a builder if:

- ***The home builder is not registered with the council;***
- ***The home has not been enrolled with the council; and***
- ***The relevant fees have not been paid to the council.***

After gaining advice from Legal Aid, we contacted the ABSA Dispute and Resolution center with our case and received a reference number. Mavis Mudzimu dealt with our case over a few phone calls where she acknowledged that a NHBRC certificate was required but not attached. She never asked for our story in writing or any of the above attached documents.
After 10 working days, Mavis phoned to say that ABSA could not help. After a few days of calling Mavis to get their response in writing, we received the attached response from ABSA. (**See Attached "Document 26"**)
As you will see it seems they have not understood our case or do not care to.

As first time home owners we followed all the things required and put all the money we had into our deposit, as suggested by ABSA.

On our title deeds (**See Attached "Document 10"**) it reflects we own a piece of land that is 1800m2 and valued at around R300 000, when in actual fact we have paid R730 000 (deposit), plus 12 months bond repayments and a 20-year bond agreement to pay R945 000 plus interest.
Not forgetting our house insurance which will not have paid out for any incidences during this time and our bond protector insurance will not have paid out if we had to claim.

The money that was used for the deposit came from an inheritance from Louise's deceased parents, who had worked hard their whole lives to ensure their children were looked after when they were gone. We are currently stuck in such a position that if we died today our daughter would have no inheritance of any kind, generations of hard work would be lost due to incompetence.

We do not have any more money to put into this property and as you will see through the attached documents, we have paid full market value for a 3 bedroom house on a 3200m2 plot as well as the costs associated when buying a house at this value.
Why should we be required to then pay even more and put our costs above market value, all because the people who were supposed to protect us, the consumer, did not.

We have now spent countless weeks and hours over the last 12 months researching (the laws that ABSA were supposed to have followed) in order to save our dream house from being demolished and losing everything we have invested.
If ABSA had followed the due process they were supposed to, the outstanding NHBRC certificate would have flagged the problem and prevented us from entering into the agreement.
The law is there to protect the buyer and to prevent this kind of situation from happening and so obviously everyone has failed us along the way.

This land dispute has been hovering over our heads for over a year now, bringing huge anxiety and stress our entire occupancy. ABSA has turned our dream of owning our own home into a nightmare by not following the law and procedures in processing our home loan.

As of yet we have not submitted anything to the media or proceeded with legal action. This will be the next step if a resolution is not found by the Banking Ombudsmann, as suggested by Legal Aid.

Regards,
Andrew and Louise Radue