



Legally Speaking...

GOOD NEWS FOR COMMERCIAL PROPERTY INVESTORS!

Some good news for property investors is that the cost of any "new and unused" commercial building (or improvement) commenced after 1 April 2007 may now be written off at 5% per annum – i.e. over 20 years. There are several technical issues relating to what can be claimed and when, and it is important that sales agreements of commercial property split the purchase price between the land and the buildings – take proper advice upfront. Note that the "provision of residential accommodation" is specifically excluded.

EMPLOYEE SUSPENSION: WHEN IS IT ALLOWED?

When can you suspend employees accused of misconduct, pending the holding of a disciplinary enquiry? In general, only "in exceptional circumstances", where there is "reasonable apprehension that the employees will interfere with investigation or repeat the misconduct".

Be careful however not to suspend "arbitrarily", or for "an inordinate period". The Labour Court, in awarding compensation to a suspended employee recently (despite the fact that the suspension had been on full pay and had therefore not caused any financial loss), commented:

"There is however a need to send a message to employers that they should refrain from hastily resorting to suspending employees when there are no valid reasons to do so. Suspensions have a detrimental impact on the affected employee and may prejudice his or her reputation, advancement, job security and

fulfilment. It is therefore necessary, that suspensions are based on substantive reasons and fair procedures are followed prior to suspending an employee. In other words unless circumstances dictate otherwise, the employer should offer an employee an opportunity to be heard before placing him or her on suspension."

THE "POTHOLE PLAGUE," AND SUING FOR DAMAGES

The plague of potholes infesting many of our roads is not just an inconvenience to drivers – the danger of serious injury and damage is high. If you suffer any loss from an accident caused by defective public roads or pavements, take advice immediately on suing whichever authority is responsible for the road's maintenance.

In three recent cases, the relevant authorities were held to be negligent and liable for damages: -

1. One case concerned a R7.6m claim by a cyclist seriously injured when he tried to avoid a large pothole;
2. Another, a vehicle that rolled due to the height of the tarred surface above the shoulder (claims exceeding R10m);
3. The third, a person who injured herself after tripping over a "depression" in a city pavement.

Of course you must still use all public thoroughfares with due care – the cyclist was held to have also been negligent, and was accordingly awarded only 60% of his damages. But the courts have sent a clear signal to government departments and municipalities that they have a duty to keep our roads and

other public areas in a reasonable state of repair.

BONDHOLDERS – CHECK YOUR RENTAL EXEMPTION CLAUSES NOW!

A creditor in possession of a debtor's property (whether in terms of a pledge or a mortgage bond) is obliged to collect rentals for the property if possible, and to apply that income in reduction of the debt. The debtor will have a claim for any rentals not so collected.

That only applies to a creditor in actual possession of the property. So in a recent Supreme Court of Appeal case, a bank was found not to be liable for a failure to collect rentals on a building - but only because it did not have physical possession.

Which was fortunate for the bank, as the clause in its bond that it relied on as "relieving it of any liability should it fail to collect rentals", was held to be ineffective for that purpose. Bondholders (and pledge holders) should have their exemption clauses checked immediately.

CELLPHONE USERS – YOUR NEW RIGHTS

When you take out a cell phone contract offering you a "free" or reduced-price cell phone, you have no idea what percentage of your payments relates to the actual service, and how much to the handset subsidy.

- That all changes shortly - new regulations effective from 17 August 2008 require that Handset subsidies must be clearly indicated upfront
- Cancellation penalties have to be spelled out in the contract
- Monthly billing must be "transparent and easily understandable".

FOR MORE INFORMATION CONTACT:

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- Fees for renewals, upgrades and connections will no longer be chargeable, and contracts cannot be renewed automatically - you will have to be given a month's notice of proposed renewal terms, to enable you to re-negotiate them.

NEW SHARES TRANSFER TAX APPLIES TO CC INTERESTS

Share transfers (listed and unlisted shares) and cessions of dividend rights are, from 1 July 2008, subject to STT ("Securities Transfer Tax"). STT replaces both Stamp Duty on unlisted securities and UST ("Uncertificated Securities Tax") on listed shares.

The rate of 0.25% is unchanged, but the new tax applies to members' interests in close corporations (previously exempt), and there are various other new provisions relating to trigger events and liability for payment etc - so take advice in doubt.

DOING HOME RENOVATIONS OR ADDITIONS? YOU HAVE NO NHBRC COVER!

Before you build your dream home, don't forget to ensure that your builder is registered with the National Home Builder's Registration Council. But note that when you are only undertaking additions or renovations (big or small), builder registration is not required - and you have no NHBRC cover.

That's the effect of a recent High Court judgment concerning the addition of a second storey to a house - only the building of "new homes" is covered by the relevant legislation.

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