THE LAW BRIEF

April 2014
Legal update

IN THIS EDITION

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YOUR CAR – WASHED, WAXED AND STOLEN

You leave your precious car for a wax and polish at a car wash, and a thief steals it. Can you sue the car wash for the value of your car?

A case in point:

In a matter recently before the Supreme Court of Appeal, a car owner had left his vehicle (keys inside) at a car wash, agreeing to collect it at lunchtime. However, alerted by a vehicle tracking company and police, the owner discovered that the car had been stolen. The car wash was clearly negligent - the car was parked in the street in a high-crime area, the gate was left open with no access control, and no measures were in place to safeguard customers' vehicles.

Where the truth lies; and the safe keeper's duty

Critically, the Court rejected the car wash owner's evidence that car owners were supposed to wait at the premises for their cars to be cleaned. Instead the Court accepted as true the car owner's evidence that he had by agreement left his car for "safekeeping, returnable on demand". That meant that the agreement was one of "deposit" and

Can you take action?

consequently the car wash had "a legal obligation to exercise reasonable care in respect of the goods entrusted to him" and would be liable for damages if the car was lost or damaged unless it could show that the loss occurred unintentionally and without negligence.

Owner's Risk?

Secondly, the car wash tried to rely on an "owner's risk" clause, but our law requires that such a term should be "pertinently brought to a customer's attention" and in this case it wasn't. Instead of being prominently displayed (on a wall for example) it was "…..placed at an obscure spot on a table in the car wash office".

A timely warning …

The car wash must pay the car owner his damages - a timely warning to such businesses to take legal advice on how best to protect themselves from this sort of liability.

RATES CLEARANCE – A NEW RISK FOR BUYERS?

Property buyers need to be aware of, and protect themselves against, a possible new risk.

In a nutshell, you cannot take transfer of a property until the local municipality issues a "rates clearance certificate" confirming that all rates, service charges, levies etc due on the property have been paid in full.

Your risk comes from the fact that, per a 2013 Supreme Court of Appeal (SCA) decision, the municipality must issue a clearance certificate even if the seller only pays amounts due for a two year period prior to the application for a certificate. In other words, transfer to you can take place even if the seller still owes the municipality for charges pre-dating the two year clearance period.

The result – there could well be "old debt", perhaps a lot of it (R151,324 in the case in question), still attaching to the property as a "charge" or "lien" upon it after you take ownership. And whilst common sense suggests that the municipality should only be able to sue the original owner – i.e. the seller who sold to you – for these old debts, some legal commentators are interpreting the SCA decision to mean that the municipality could instead choose to sue you, as buyer and new owner of the property. If so, you risk liability for any of the seller's old debts that haven't prescribed.

Don't take a chance!

Whether or not this is a correct interpretation of the judgment is the subject of much debate in legal circles, but don't take a chance – insist that the seller provides proof, before transfer, that all municipal debts, old as well as new, have been settled in full. Such a provision must of course be written correctly into your sale agreement so once again – take legal advice before you sign anything!

YOU, YOUR NEIGHBOUR, AND YOUR (SUDDENLY STRONGER) DEMOLITION REMEDY

Yet another court decision – this time in the High Court - underlines the growing readiness of courts to order demolition of any building work carried out without approved plans (or otherwise unlawfully).

In the case in question, a demolition order was confirmed on the application of a neighbour. In other words, this was a case where "private" or "neighbour" law applied, rather than the "public law" matter in which the Supreme Court of Appeal held last year that a court has no discretion but to grant a municipality a demolition order where a structure is illegal for want of approved building plans.

So, if your neighbour has indulged in a spot of illegal construction work, your chances of obtaining a demolition order just got stronger. In this case for example, the offending owner failed to

convince the court that it had any discretion to order an alternative remedy in the form of a compensation order for encroachment on its neighbour's property.

Owners and builders

Don't start up the cement mixer until all necessary building plans have been passed and you have checked for any encroachments or other potential sources of illegality.

Neighbours

Speed can be of the essence here, so take legal advice immediately upon learning of any unlawful (or potentially unlawful) building work next door.

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