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BARKING DOGS DRIVING YOU BATTY? NOISY NEIGHBOURS AND THE INTERDICT OPTION

"Nuisance usually involves repeated infringement of the Plaintiff's property rights. An objective weighing up of the interests of the various parties, taking into account all the relevant circumstances is required in these matters" (from judgment below)

If the dog-next-door's incessant barking is destroying your quality of life, read on. A recent High Court case illustrates our law's approach to protecting you from noisy neighbours generally.

The Chihuahua's Tale

- In a rustic township development boasting a wide variety of free-roaming wild animals (giraffe, kudu, warthog and the like), a management rule provided that no pets or farm animals were allowed in any public place, street or private property
- However the owners' committee granted special permission to a resident, who had been left temporarily homebound after a car accident, to keep a miniature chihuahua. That permission came with a warning that it could be withdrawn if complaints were received
- When the neighbours did indeed complain of continual barking from early in the morning, the committee duly revoked its permission to keep the dog. It then applied to Court to interdict the dog's owner (and his mother, a fellow occupant of the house) from keeping the dog

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- The Court was unable to decide a dispute around whether or not the occupants were bound by the management rule in question. Nevertheless it granted the interdict on the general principles of nuisance, commenting that the neighbours "are entitled to the peaceful and undisturbed use of their property and the enjoyment of the nature thereof" and that the occupants "may not exercise their rights of enjoyment of their property including their ownership of a pet in such a manner or fashion that it encroaches on neighbours' (in the broad sense) rights"

- However, swayed no doubt by reports of the resident's fragile mental state (including a possible suicide attempt) the Court made the interdict a conditional one – the dog can stay provided it is kept inside the house and is not left unattended, and provided the owner takes "active steps" to ensure that it doesn't become a nuisance to other owners.

4 things to try before you rush off to court

1. Taking the legal route without warning will probably be seen by the dog's owner as a declaration of war, and there will be no winners there. So start off with a friendly approach. Aim for a win-win scenario with help from a step-by-step advice article like WikiHow's "How to Deal With a Neighbor's Barking Dog" here.

2. If that proves fruitless, a "neighbours at war" nightmare is still avoidable if you can agree on mediation or arbitration - ask your lawyer to arrange it. If you live or work in a "community scheme" like a sectional title or Home Owners Association development, apply for low-cost dispute adjudication by the new Community Schemes Ombud Services.

3. Or you can ask your local municipality to help by enforcing whatever by-laws it has to regulate the keeping of animals, excessive barking, unreasonable noise etc.

4. SAPS usually responds only to serious violations of our anti-noise laws but if you can arrange for a warning visit from a blue uniform that might solve your problem once and for all.

Going to court should be a last resort – here's how the Judge in this case began his judgment: "It is to be deprecated that a High Court is burdened with such a dispute as the present one and it is equally deplorable that the parties cannot themselves resolve an issue of this nature". Getting on the wrong side of a tetchy Judge is never going to be a smart move.

Whatever you do, don't suffer in silence – our law will help you!

CREDITORS: WHEN CAN YOU USE A LIQUIDATION APPLICATION TO COLLECT DEBT?

"Creditors have better memories than debtors" (Benjamin Franklin)

When you are struggling to recover your money from a recalcitrant debtor company, applying for its liquidation can be a very powerful collection tool. Suddenly the directors are faced with the imminent prospect of completely losing control of their company, its business and its assets to a liquidator. If the directors are just fighting a rearguard action to delay paying you, a liquidation (or "winding-up") application should immediately focus their minds on finding a way to settle the debt.

But be warned – this only works with undisputed debt. A recent SCA (Supreme Court of Appeal) case illustrates.

A R9m claim disputed

- Company A (a provider of finance to the agricultural industry) made 3 loans to company B, totaling just under R9.2m

- When B failed to repay the loans, A applied to the High Court for B's liquidation

- B defended the application, alleging that –

    - A's representative knew that B's representative (let's call him "C") had no authority from B

to enter into the loan agreements

- The loans were made solely for the benefit of C's personal farming activities, not for company B's benefit at all

- The loan agreements were void and unenforceable as "simulated transactions" (B dropped an earlier allegation of fraudulent collusion between the company representatives).

Defending the claim – what a debtor must prove

The SCA confirmed that, in order to defend a liquidation application, an alleged debtor needn't prove that its defence to the claim will succeed at trial. On the contrary, all it has to prove is that it disputes the alleged indebtedness on grounds that are both –

1. Reasonable and

2. *Bona fide* (genuine, in good faith, without intention to deceive).

The court will decide, on the basis of the documents filed with it, whether or not the alleged debtor has raised facts which, if proved at a trial, would constitute a good defence. If the defence is "not unreasonable" and if "a lack of *bona fides* cannot readily be inferred from the papers", the liquidation application is likely to be dismissed.

A clear lesson for creditors

"In essence", held the Court, "the matter serves as a stark reminder that winding-up proceedings are not designed for the enforcement of a debt that the debtor company disputes on *bona fide* and reasonable grounds".

So whilst a liquidation application can be a formidable weapon to use against a problem debtor, if you apply on the basis of a disputed debt you are probably just wasting your time and money, putting yourself in the wrong unnecessarily, and risking an adverse costs order (on a punitive scale if you are found to have "abused the court process").

BUYING AND SELLING PROPERTY: WHO PAYS THE TAXMAN?

Note: What follows is of necessity just a general summary of some complex provisions, there are various exemptions and exceptions (such as possible zero-rating of going concern sales), and many traps for the unwary. So take specific advice on your particular circumstances.

Whether you are the buyer or the seller of property, one of you is going to be paying SARS for the privilege, and you risk a very unpleasant and unbudgeted surprise if you don't clarify before you enter into the sale exactly who is liable for what.

Both the status of the seller and the nature of the sale are key here. In broad terms –

1. **The seller is liable to pay VAT** if it is a "vendor" (registered or obliged to register for VAT) selling the property in the course of its business activities. Common examples include sales by property developers and speculators, and sales of commercial buildings. As a seller, make sure that your sale agreement obliges the buyer to pay you the VAT on top of the purchase price because VAT is deemed to be included in the price if not otherwise specified. You must pay SARS regardless of whether or not you have to dig into your own pockets to do so

2. **The buyer pays transfer duty** in all other cases, the most common examples being private sales of residential property. As a buyer, work this into your cost projections, the current transfer duty rates being as per this table –

Transfer Duty Rates	
Value of Property	**Rate**
R0 – R750,000	0%
R750,001 – R1,250,000	3% on the value above R750,000
R1,250,001 – R1,750,000	R15,000 + 6% of the value above R1,250,000
R1,750,001 – R2,250,000	R45,000 + 8% of the amount above R1,750,000
R2,250,001 – R10,000,000	R85,000 + 11% of the amount above R2,250,000
R10,000,001 and above	R937,500 +13% of the value exceeding R10,000,000

SUBMIT YOUR 2017 BUDGET TIPS!

Minister of Finance Pravin Gordhan makes his Budget Speech on 22 February and would like to hear your thoughts and ideas for the 2017 National Budget.

Go to "Budget Tips" to submit your suggestions, and to the National Treasury website for more.

YOUR FEBRUARY WEBSITE: SMALL BUSINESS IDEAS FOR 2017

"Whosoever desires constant success must change his conduct with the times" (Niccolo Machiavelli)

The most successful small businesses are always going to be those that best adapt to change by seizing the new opportunities that it always brings.

So what's in store for us in 2017? For an overview of some scenarios, and for some very interesting thoughts on how we can profit from them this year, see "South African small business opportunities in 2017" on the Cherryflava website.

Dipping into the dictionary

"Adulting", n. "The practice of behaving in a way characteristic of a responsible adult, especially the accomplishment of mundane but necessary tasks"

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