



DYKES VAN HEERDEN GROUP OF COMPANIES
professionals striving for excellence

NEW COURT CASE: NEW PROPERTY OWNERS ARE NOT LIABLE FOR OLD RATES AND TAXES ACCOUNTS

As you are aware the judgment in the case of *City of Tshwane v Mathabathe* has led to the Municipalities seizing upon the opportunity to demand payment of rates and taxes and other debts not incurred by the new owner but by other persons prior to the new owner taking transfer of the property. This sent shock waves throughout the property industry.

In terms of the Mathabathe case, the Municipalities could, after transfer, demand payment from the new owners of any amounts relating to the property that were outstanding by any previous owners or any persons who incurred any debts in favour of the Municipality.

The good news is that the North Gauteng Division of the High Court in the case of *Mitchell v City of Tshwane* has now ruled that the interpretation of the municipalities of the Mathabathe Court Case is incorrect and has now ruled as follows:-

1. The new property owner after transfer of the property into his name does not become liable to the municipality for any outstanding debts incurred by the seller or any parties prior to transfer;
2. Any outstanding debt not collected at the time of issuing of the Clearance Certificate remains a debt owed by the seller to the municipality. This debt is unaffected by the transfer and as such the municipality can collect such monies from the seller even after the property is transferred into the name of the purchaser.

Unless this judgment is reversed the situation is that new owners are not liable for debts of the previous owners and tenants.

Unfortunately, the court in the Mitchell case still held that the Municipality had a *lien* over the property even in respect of any debts which were incurred prior to the new owner taking transfer of the property. In layman terms, the fact that the Municipality has a *lien*, means that the Municipality can use the property as security for payment of such debts. As the law now stands the Municipality can still proceed against the person who was the owner of the property at the time when the debt was incurred, obtain judgment against such person and then sell the property in execution as such property remains security for the amount payable to the Municipality. This obviously places a purchaser in an unenviable position.

The new owner has recourse against whichever party was responsible for the debt. However such party may not be in a position to pay the debt or may have immigrated. It is therefore still prudent to get a Section 118(3) certificate. A Section 118(3) certificate is a certificate in terms of which the council stipulates all amounts which are owing in respect of the property.

What is interesting is that the Mitchell case did state that the *lien* would be extinguished (no longer be of any force or effect) if the property was sold by way of a sale in execution. Previously the Appeal Court also stated that the *lien* would no longer be of any force or effect in the case of an insolvency.

Any person who was forced by any local authority to pay a debt which was not incurred by them should, in terms of the Mitchell case, request a refund from such local authority as the new owner was not liable for the debts incurred by others.

COMPANIES WITHIN THE DYKES VAN HEERDEN GROUP

DYKES VAN HEERDEN INC

Tel : (011) 279-5000
 Fax : (011) 955-4799
 E-mail info@dvh.net.za
 19 Ontdekkers Road
 Roodepoort 1724, South Africa

 Docex 24, Roodepoort
 Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN (CAPE) INC

Tel : 0861 110 210
 Fax : (021) 910-4911
 E-mail admin@dvh.law.za
 Unit E4/2, Edward IV
 120 – 122 Edward Street
 Bellville 7530, South Africa
 Docex 42, Tygerberg
 Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN (KZN) INC

Tel : (031) 903- 1851
 Fax : (031) 903-1101
 E-mail thomas@kzndvh.za.net
 Nr. 18 Ridge Road
 Amanzimtoti
 Durban 4120, South Africa
 Docex 7, Amanzimtoti
 Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN SLABBERT HOPKINS INC

Tel : 0861 110 210
 Fax : (021) 910-4911
 E-mail capetown@dvhs.law.za
 Unit E4/2, Edward IV
 120 – 122 Edward Street
 Bellville 7530, South Africa
 Docex 42, Tygerberg
 Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN GROUP OF COMPANIES
 professionals striving for excellence