

M.C. MONTHLY



The newsletter with a difference

Aug/Sept 2015

REMEDIES BESKIKBAAR IN GEVALLE VAN OORSKRYDING

REMEDIES AVAILABLE IN CASES OF ENCROACHING

In die saak van *Fedgroup Participation Bond Managers (Pty) Ltd vs Trustee of the Capital Property Trust (verwys na as 'CPT')* (20165 / 2014) [2015] ZASCA 103 moes die hof besluit of die oorskrydende eienaar kan eis dat die gedeelte van die aangrensende eiendom waarop hy inbreuk maak na hom oorgedra moet word.

Die feite van die saak was dat Fedgroup en CPT eienaars van die aangrensende kommersiële eiendomme is.

Fedgroup se gebou ('n onvoltooide struktuur) het oorskry op 'n gedeelte van CPT se eiendom. Nadat onderhandelinge tussen die partye gefaal het, het Fedgroup 'n aksie gebring vir 'n bevel dat die gedeelte oorgedra moet word, asook 'n bykomende gedeelte van CPT se eiendom, aangesien Fedgroup die gedeelte benodig het vir optimale ontwikkeling van hul gedeelte.

Die hof het bevind:

- Die algemene remedie is dat die grondeienaar kan eis dat die struktuur verwyder moet word van die eiendom waarop dit oorskry, en dat ons gemenerereg nie voorsiening maak vir die oordrag van die gedeelte waarop oorskry word nie.
- Die hof kan, in sy diskresie, die eienaar vergoed, onderhewig aan die gewilligheid van die geaffekteerde om die eiendom waarop oorskry word af te staan aan die oorskryder.
- Verder was daar geen goedgekeurde bouplanne vir Fedgroup se onvoltooide struktuur nie en het die hof bevind dat dit nie 'n party sal wees tot die voortsetting van die onregmatige optrede nie.



In the case of *Fedgroup Participation Bond Managers (Pty) Ltd vs Trustee of the Capital Property Trust (referred to as 'CPT')* (20165 / 2014) [2015] ZASCA 103 the court had to decide whether the encroaching owner can claim that the portion of the neighbouring property on which he encroaches be transferred to him.

The facts of the case were that Fedgroup and CPT were owners of neighbouring commercial properties.

Fedgroup's building (an incomplete structure) encroached on a portion of CPT's property. After negotiations broke down between the parties, Fedgroup brought an action for an order that the portion be transferred to it, and also that an additional portion of CPT's property be transferred to it as it needed the portion for optimal development of its property.

The court held:

- The standard remedy for the land owner is to claim removal of the structure that encroaches, and our common law does not provide for transfer of the encroached portion to the encroacher.
- The court can, in its discretion, award compensation, depending on the willingness of the affected owner to give up the part of the property affected by the encroachment.
- Furthermore there were no approved building plans for Fedgroup's structure and the court held that it will not countenance or be party to perpetuating unlawful conduct.

Written by/Geskryf deur: Sonja du Toit

M.C. VAN DER BERG^{INC}
ATTORNEYS, CONVEYANCERS & NOTARIES

Your Property Attorneys

DIE VERSKIL TUSSEN 'N SPESIALE VOLMAG EN 'N ALGEMENE VOLMAG

'N Spesiale volmag verleen bevoegdheid om 'n spesiale (dit wil sê een) regshandeling namens die gewer te verrig. Hierdie handeling moet duidelik gespesifiseer word. 'n Spesiale volmag word slegs as ondersteunende dokument in die Aktekantoor ingedien, en nie vir registrasiedoeleindes nie. 'n Voorbeeld van 'n spesiale volmag sal wees waar 'n verkoper aan 'n persoon die mag verleen om 'n spesifieke eiendom namens hom te verkoop.

'n Algemene volmag verleen die bevoegdheid om 'n verskeidenheid (dit wil sê meer as een) handelinge namens die gewer te verrig. 'n Algemene volmag moet in die Aktekantoor geregistreer word en kan aangewend word vir verskeie transaksies. Iemand sal bv vir 'n ander persoon 'n algemene volmag gee om al sy sake namens hom te hanteer, indien hy bv immigrer en iemand benodig om sy sake in SA namens hom te behartig.

U is welkom om ons te kontak indien u advies benodig rakende die tipe volmag wat 'n kliënt benodig, en sal ons u ook graag met die opstel daarvan bystaan.



THE DIFFERENCE BETWEEN A SPECIAL POWER OF ATTORNEY AND A GENERAL POWER OF ATTORNEY

A Special Power of Attorney will grant the power to perform a special (in other words one) duty or task on behalf of the grantor. This duty or task must be specified. An example of a Special Power of Attorney would be where the seller authorises a person to sell a specific property on his behalf.

A General Power of Attorney will grant the power to perform a variety (thus more than one) duties or tasks on behalf of the grantor. The General Power of Attorney must be registered in the Deeds Office since it may be usefully applied to multiple transactions. A general power of attorney will for example be granted to a person, if the grantor thereof has immigrated and needs someone to take care of his business in SA.

You are welcome to contact us if you need advice regarding the type of power of attorney a client might need, and we will gladly assist you in drafting the document.

Written by/Geskryf deur: Annelé Odendaal

MCADemy TRAINING

Our training schedule for August and September at our MCademy Facility, based at: c/o Saxby & Frederik Streets, Eldoraigne, Centurion, is as set out below: The training is free of charge and bookings must be made with **Liza Louw: MCademybookings@mcvdberg.co.za or contact her at 012 660 6109 to reserve your seat.**

CENTURION – ROOKIE3REALTORS

5 Aug 09:00 – 13:00 ENG Capital Gains Tax & Transfer Procedure c/o Saxby & Frederik Streets, Eldoraigne, Centurion.

CENTURION – ROOKIE2RECRUIT

13 Aug 09:00 – 15:00 ENG Defects, CPA, Subject-To Transactions & Existing Lease Agreement c/o Saxby & Frederik Streets, Eldoraigne, Centurion.

CENTURION – INFORMATION EVENING – SELLERS & PURCHASERS – NO AGENTS

20 Aug 19:00 – 21:00 ENG General information on selling and purchasing a property c/o Saxby & Frederik Streets, Eldoraigne Centurion.

CENTURION – THEME TRAINING

27 Aug 09:00 – 11:00 ENG Why is your transaction delayed – Understanding the process c/o Saxby & Frederik Streets, Eldoraigne Centurion.

PTA EAST – THEME TRAINING

09 Sept 09:00 – 11:00 ENG Why is your transaction delayed - Understanding the process Nedbank Menlyn Maine Auditorium.

CENTURION – ROOKIE 1 TRAINING 2015 (2 DAYS)

15 & 16 Sept 09:00 – 16:00 ENG Basic Rookie Training c/o Saxby & Frederik Streets, Eldoraigne Centurion.

WERKNEMER VAN DIE MAAND

Louise Rohlandt is werksaam by ons firma sedert Junie 2013.

Sy is aanvanklik aangestel as Administratiewe Assistent, maar haar potensiaal is raakgesien en sy is bevorder tot aktetkster in die verbandkansellasie afdeling.

Haar sonnige geaardheid maak haar baie gewild onder haar kollegas en kliënte. Louise is die trotse ma van 'n 7-jarige dogter. Ons hoop dat sy nog lank deel sal wees van die MC-span!



ONWETTIGE BEWONERS EN UITSETTING

Ons word gereeld gevra wat die verkoper of verhuurder van 'n eiendom mag en nie mag doen wanneer 'n huurder onregmatig okkupeer. 'n Huurder word beskou as 'n onwettige bewoner wanneer hy nie sy kontrakbreuk herstel nie en steeds aanbly in die eiendom, ten spyte van kansellering deur die verhuurder. Die verhuurder voorsien die huurder van skriftelike kennis van sy voorneme om te kasselleer om sodoende die huurder 'n redelike tydperk te gee om die eiendom te ontruim. Die huurder kies dan om die kennisgewing te ignoreer en bly aan in die eiendom.

'n Onwettige bewoner mag deur die eienaar uitgesit word en sal hierdie prosesse deur in die Landdroshof of Hooggeregshof plaasvind. Die bepalings en prosedures van die Voorkoming van Onwettige Uitsetting en Onregmatige Besetting van Grond, Wet 19 van 1998 ("Die PIE Wet") moet gevolg word. Die hofproses begin met 'n Ex Parte hofaansoek waarin die versoek om uitsetting aangevra word in terme van artikel 4(2). Die huurder kry kennis van die hangende aksie teen hom. Die huurder ontvang hierdie kennisgewing ten minste 14 dae voor die verhoor en kennisgewing word ook aan die munisipaliteit oorhandig. Die hofaansoek word dan vergesel met die Kennisgewing in terme van artikel 4(2). Hierdie tydperke is egter nie die enigste tydperke wat in ag geneem moet word wanneer u die kliënt adviseer nie en moet die beskikbaarheid van die aanhoor van die aansoek in terme van die hofrol ook in ag geneem word. Op datum van aanhoor van die aansoek, neem die hof die volgende faktore in ag:

1. Is die huurder 'n onregmatige okkupeerder?
2. Is daar redelike gronde vir die uitsetting?
3. Alternatiewe akkommodasie
4. Ouderdom

Die hof sal dan 'n besluit kan neem of hul die uitsettingsbevel sal toestaan, al dan nie, en is dit 'n kriminele oortreding indien 'n verhuurder 'n huurder uitsit sonder sodanige bevel. Die reg kan ook nie in eie hande geneem word nie. Die verhuurder kan byvoorbeeld nie die water laat afsluit of slotte vervang nie.



UNLAWFUL OCCUPANTS AND EVICTION

We are often asked what an owner or a landlord can and cannot do when there is an unlawful occupant in the property. A tenant can be regarded as an unlawful occupant if he still occupies the premises, regardless of the owner's notice to cancel where the tenant did not rectify his breach. The landlord provides written notice to the tenant of his intention to terminate the lease agreement, and provides a reasonable time to vacate the premises. The tenant ignores the notice mentioned above and continues to occupy the premises.

An unlawful occupant may be evicted by the owner after following the required procedures in the Magistrates Court and/or High Court. The procedures and provisions of The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act ("The PIE Act") must be followed. The court procedures will begin with an Ex Parte application whereby request for eviction is sought in terms of section 4(2) of the act. The tenant will receive a notice of the pending legal proceedings against him. This notice will be served on the tenant 14 days before the court proceedings start and a copy of the abovementioned notice will also be handed to the municipality. The Notice in terms of section 4(2) will accompany the Application for eviction in court.

Please however take note that these time periods are not the only factors to consider when advising the client, the ever exhausted court roll must also be taken into account.

On the date of hearing, the following will be taken into consideration by the court:

1. Is the tenant an unlawful occupant?
2. Are there reasonable grounds for the eviction?
3. Alternative accommodation
4. Age

The Courts will decide whether or not to grant the eviction order as it is a criminal offence to evict a person without an eviction order. The law cannot be taken into one's own hands. The lessor cannot, for example, cut off the water supply or replace the locks on the premises.

Written by/Geskryf deur: Nicole Rokebrand

My Pa het altyd gesê dat hoe meer dinge verander, hoe meer bly dit dieselfde. Ek moet eerlik wees dat ek dit, en baie ander goed wat my Pa gesê het, nie mooi verstaan het nie.

In ons industrie verander dinge gedurig en dit beteken per se dat dit nie meer dieselfde is nie. Vandaar die noodigheid om 'n stelsel soos die CPD punte daar te stel.

Die aanvang van die EAAB se CPD punte inisiatief het agente die afgelope tyd redelik besig gehou. Ek het verskeie komplimente en klagtes gehoor. Meeste van die klagtes het te doen met administratiewe aangeleenthede. Ek wil tog 'n beroep op agente doen om net so bietjie geduld aan die dag te lê. Dit is 'n grootse poging wat die EAAB van stapel stuur en dit kan te wagte wees dat daar tandekry probleme gaan wees. Wees verseker dat die bedeling nie geskrap gaan word nie. Dit is dus noodsaaklik dat ons almal saamwerk om dit 'n sukses te maak. Die bedoeling is goed en ek is seker dat die probleme in tyd uitgestryk sal word. Ek en Jo Anne Strydom het onlangs 'n vergadering met Clive Ashpoll en Nomsa Mokwena gehad en ek is in my hart oortuig van die EAAB se toewyding om die hele inisiatief vlot te laat verloop tot die bes moontlike voordeel vir eiendomsagente. My advies is dat indien daar opbouende voorstelle is, dit aan die EAAB deur te gee sodat hulle die nodige aanpassings kan maak ten einde te verseker dat agente waarde in die CPD punte kan vind.

Intussen kan ons agente-kliente verseker wees van M.C. van der Berg ingelyf en MCadamy se toewyding om die CPD-bedeling te maak werk. Ons het reeds aan die tersaaklike persone ons bereidwilligheid om hande te vat en te help waar ons kan, gekommunikeer.

Geniet die laaste maand van die winter

FREQUENTLY ASKED QUESTIONS?
GEREEDELDE VRAE EN ANTWOORDE?

Do I have to pay my bond originator a professional fee?

No – the service of a bond originator is free. The banks pay the bond originator a professional fee as the bond originators are contracted to the bank.

Moet ek my verbandbemiddelaar 'n professionele fooi betaal?

Nee – die diens wat u van 'n verband bemiddelaar ontvang is gratis. Aangesien die verbandbemiddelaar uitgekonnekteer word aan die bank, is dit die bank se verantwoordelikheid om 'n professionele fooi aan die verbandbemiddelaar te betaal.

Written by/Geskryf deur: Vernée Henning



MC VAN DER BERG INC. & HUIS REMME-LOS @ DAVIS CUP TENNIS

GREAT SUCCESS STARTS WITH SMALL STEPS!

During the International Davis Cup Tie at Irene Country Club between SA & Ireland, Huis Remme-los and MC van der Berg Inc. patrons joined hands during the 67-minute Mandela day drive to play some wheel chair tennis ... for the first time!

The Davis Cup tournament has been running for 114-years now. Davis Cup is a tennis world cup tournament held annually all over the world on an ongoing basis between all the countries affiliated to the International Tennis Federation. Davis Cup is the men's tournament, whilst the Federation (Fed) Cup is the ladies tournament conducted in the same format. The players are the best players of each country and their winning matches count towards their annual world ranking. Just like any other world cup, there are also different categories and play-offs, every country competing to get into the top spot.

Irene country club hosted the Davis cup for the third time. As usual the visiting players were bowled over by typical South African hospitality. Collected at OR Tambo, transported in 14 different vintage Bentleys and Rolce Royces from arrival to departure.

The official draw conducted by the ITF (watched internationally by 2 billion people on television) was held at the Irene Farm in the barn, the press conference was held immediately afterwards outside the barn, after which all the players had to milk cows in



Visit www.remmelos.co.za ; www.tsa.co.za ; www.wheelchairtennis.co.za for more information.

the dairy section ... they all really enjoyed this unique set-up and activities immensely.

Sport enables people to make friends and build bridges and this event was no different! Tennis SA and Irene Country Club embraced us and really went out of their way to make sure that we are comfortable and carefully looked after.

On day one, the first two singles matches were won by Tucker Vorster and Fritz Wolmarans in the best out of 5-match tournament.

On day two, the deciding doubles rubber on centre court was a stiff and nail biting match and was secured by Ruan Roelofse and Dean O'Brien, taking SA to a 2 – 0 lead.

On day three the reverse single rubbers were won by Tucker Vorster and Ruan Roelofse to take South Africa to a 5 – 0 win over Ireland. All the South African players are lower ranked than the Irish players which makes it an outstanding achievement.

The exciting part for us was to have fun and spend time with the Remme-los crowd at an International sports event.

As a result of the experience four "Remme-lossers" decided to try their hand at wheel chair tennis ... we are keenly watching this space ...

The joy, enthusiasm, tenacity and guts witnessed on Saturday amongst the International players, the tennis playing toddlers, juniors, cardio- and wheel chair tennis players alike was an eye opener and humbling experience.

MC van der Berg Incorporated is proud to be associated with Huis Remme-los.

SUDOKU

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