

LIMITS ON Withholding municipal clearance certificates

In *City of Cape Town v Real People Housing* (77/09) [2009] ZASCA 159 (30 November 2009), the Supreme Court of Appeal clarified the meaning of section 118(1) of the Municipal Systems Act. This provision gives municipalities the power to block the transfer of ownership of property in certain circumstances.

Section 118(1) provides that a registrar of deeds can register a property transfer only if he or she receives a municipal clearance certificate that confirms that all taxes and fees due in connection with the property 'during the two years preceding the date of application for the certificate have been fully paid'.

The City of Cape Town's credit control and debt collection policy authorised it to allocate payments made by debtors to the oldest outstanding debt associated with a property.

Real People Housing sold several of its Cape Town properties and wanted to transfer ownership to the purchasers. Some outstanding debts associated with these properties were more than two years old. To obtain the necessary clearance certificates, the company attempted to pay the debts that were incurred during the two years preceding its certificate requests. However, citing its debt collection policy, the City insisted that payments would first be allocated to the oldest outstanding debts.

The Supreme Court of Appeal held that the City's refusal to grant Real People Housing the clearance certificates violated the Municipal Systems Act. The effect of the City's debt collection policy was that it would not issue certificates until all debts associated with a property were paid, regardless of when they were incurred. This violated the wording of section 118(1) of the Act. Moreover, the Court noted, section 118(1) had the effect of depriving owners of one of the rights of ownership. Laws that infringe on established property rights must be strictly interpreted,

the Court reasoned, but the City's interpretation of the Act was a wide one and therefore inappropriate. Finally, the Court noted, the Constitutional Court had earlier found that section 118(1) was constitutionally permissible, largely because its deprivation of ownership rights lasted 'for two years only' (see *LGL Bulletin* 2004(5) p 1). As the City's debt collection policy would eliminate this time constraint, it frustrated the terms of the Act. The Court thus held that a municipality is only entitled to withhold clearance certificates for debts incurred in the two years preceding the request for the certificate.

Comment

The Court's decision limits municipalities' ability to use the withholding of clearance certificates to collect revenue. Municipalities must assess their credit control and debt collection policies to ensure that this judgment is implemented. Amendments to their revenue management systems may be necessary. If all debts incurred in the two years preceding the request for the clearance certificate have been settled, municipalities' may not withhold the clearance certificate despite the existence of older, unsettled debts.

This does not mean that older debts cannot be collected. However, the withholding of clearance certificates can no longer be used as leverage. The normal rules of prescription still apply with regard to older debts.



Professor Jaap de Visser
Editor



Hirsh Jain
Intern