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About Khoro

News

Traversing uncharted territory: Does the conclusion of a 'package deal' trigger pre-emptive rights?

The genealogy of pre-emptive rights can be traced back as far as the Digest of Justinian – where D 18 1 75 and D 19 1 21 5, albeit scantly, dealt with the sale of land subject to the condition that the buyer would not sell to anyone other than the seller. Since then, the nature, content and scope of pre-emptive rights have undergone considerable development – ranging from the early Roman Law pactum protimeseos to the Germanic Law näherrecht – and so, too, have the remedies afforded to the grantee upon breach thereof by the grantor.

Purchase price deferments and the potential application of the NCA

The decline of the economy and the attendant downturn in the property market have forced market players to structure and finance their transactions in innovative ways. Although not entirely novel, one such method of financing potential property sales, that is fast gaining traction among sellers, is the deferment of part of the purchase consideration payable. In this regard, the seller effectively finances the deferred portion of the purchase price and charges interest thereon at a rate agreed upon between the parties.

A bridge (and perhaps a shoe) too far...

Despite the ubiquitous application of preferential rights in various branches of our law, the residual rules regarding the nature and scope of the rights and remedies afforded to the grantee, as well as the duties of the grantor, remain somewhat uncertain. The Supreme Court of Appeal sought to provide some clarity in this regard, in the recent case of Brocsand (Pty) Ltd v Tip Trans Resources (Pty) Ltd and Others (Case Number 925/2019) ZASCA 144 (4 November 2020).

Sometimes you just gotta stick to the (business rescue) plan...

The primary rationale behind the introduction of the new business rescue procedure was to afford financially distressed companies the opportunity to restructure their affairs, with the purpose of enhancing their prospects of survival to the general benefit of stakeholders and the economy at large. In theory, one might assume that facilitating the continued existence of a financially distressed company, with the central aim of enhancing its prospects of survival, would be an end worth securing for all stakeholders, however, this is not the case.

Contact Khoro

Location

Johannesburg

Language

English

There is no "lawyer's paradise": Interpreting contracts of insurance

It is well known that insurance contracts need not be reduced to writing to be rendered enforceable, however, given that insurance is, by and large, a risk transferring enterprise it is commonplace to find the terms of the contract reduced to a written agreement (policy). This obviates the need for either party to prove the existence of the contract should a dispute arise, but more importantly, the policy provisions delineate the content and scope of the obligations of both parties to the insurance policy. As a result, the wording employed by the draftswoman will necessarily affect the risk exposure of either party.

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