

DISPUTE RESOLUTION AND EMPLOYMENT ALERT



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VALIDITY OF EMOLUMENTS ATTACHMENT ORDERS

The Next Exciting Instalment

The Constitutional Court has ruled that, with effect from 13 September 2016, no emoluments attachment order may be issued unless the court has authorised the issuing of such order after satisfying itself that it is just and equitable to do so and that the amount is appropriate.

VALIDITY OF EMOLUMENTS ATTACHMENT ORDERS

Validity of Emoluments Attachment Orders

In a previous alert published on 10 July 2015, we cautioned employers against paying further amounts under emoluments attachment orders without ensuring that the orders complied with the new requirements stipulated then by the Western Cape Division of the High Court.

The Constitutional Court undertook some nifty judicial tailoring of sections 65J(2)(a) and (b) of the Magistrates' Courts Act by deleting an "or" here, adding an "and" there and replacing a "will" with a "may".

The Constitutional Court has ruled that, with effect from 13 September 2016, no emoluments attachment order may be issued unless the court has authorised the issuing of such order after satisfying itself that it is just and equitable to do so and that the amount is appropriate.

In a previous alert published on 10 July 2015, we cautioned employers against paying further amounts under emoluments attachment orders without ensuring that the orders complied with the new requirements stipulated then by the Western Cape Division of the High Court. That court held that the order must have been issued by a Magistrate in open court and, where it arises from an agreement regulated by the National Credit Act, the order must have been issued in the area in which the employee resides or works.

Yesterday the Constitutional Court undertook some nifty judicial tailoring of sections 65J(2)(a) and (b) of the Magistrates' Courts Act by deleting an "or" here, adding an "and" there and replacing a "will" with a "may". The remodelled s65J(2) will now read as follows:

"65J. Emoluments attachment orders

...

- (2) An emoluments attachment order shall not be issued:
- (a) unless the judgment debtor has consented thereto in writing or and the court has so authorised after satisfying itself that it is just

and equitable that an emoluments attachment order be issued and that the amount is appropriate, whether on application to the court or otherwise, and such authorisation has not been suspended; or

- (b) unless the judgment creditor or his or her attorney has first:
 - (i) sent a registered letter to the judgment debtor at his or her last known address advising him or her of the amount of the judgment debt and costs as yet unpaid and warning him or her that an emoluments attachment order will be issued if the said amount is not paid within ten days of the date on which that registered letter was posted; and
 - (ii) filed with the clerk of the court an affidavit or an affirmation by the judgment creditor or a certificate by his or her attorney setting forth the

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The court ruled expressly that the order has effect from 13 September 2016 and only applies to future orders.

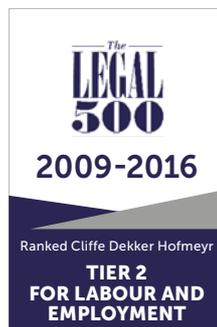
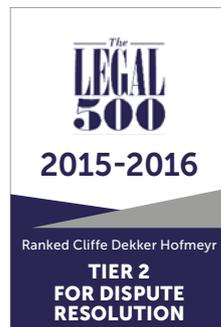
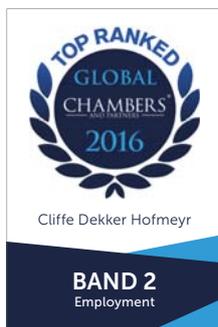
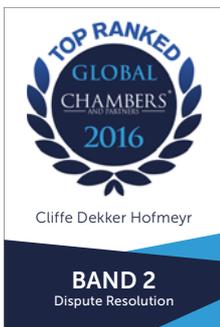


amount of the judgment debt at the date of the order laying down the specific instalments, the costs, if any, which have accumulated since that date, the payments received since that date and the balance owing and declaring that the provisions of subparagraph (i) have been complied with on the date specified therein; and

(iii) been granted an order of court authorising that an emoluments attachment order be issued after satisfying itself that it is just and equitable that the order be issued and that the amount is appropriate.”

The court ruled expressly that the order has effect from 13 September 2016 and only applies to future orders.

Aadil Patel, Tim Fletcher and Megan Badenhorst



OUR TEAM

For more information about our Dispute Resolution practice and services, please contact:



Tim Fletcher
National Practice Head
Director
T +27 (0)11 562 1061
E tim.fletcher@cdhlegal.com



Grant Ford
Regional Practice Head
Director
T +27 (0)21 405 6111
E grant.ford@cdhlegal.com

Roy Barendse
Director
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com

Eugene Bester
Director
T +27 (0)11 562 1173
E eugene.bester@cdhlegal.com

Lionel Egypt
Director
T +27 (0)21 481 6400
E lionel.egypt@cdhlegal.com

Jackwell Feris
Director
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com

Thabile Fuhrmann
Director
T +27 (0)11 562 1331
E thabile.fuhrmann@cdhlegal.com

Anja Hofmeyr
Director
T +27 (0)11 562 1129
E anja.hofmeyr@cdhlegal.com

Willem Janse van Rensburg
Director
T +27 (0)11 562 1110
E willem.jansevanrensburg@cdhlegal.com

Julian Jones
Director
T +27 (0)11 562 1189
E julian.jones@cdhlegal.com

Tobie Jordaan
Director
T +27 (0)11 562 1356
E tobie.jordaan@cdhlegal.com

Corné Lewis
Director
T +27 (0)11 562 1042
E corne.lewis@cdhlegal.com

Richard Marcus
Director
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com

Burton Meyer
Director
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com

Rishaban Moodley
Director
T +27 (0)11 562 1666
E rishaban.moodley@cdhlegal.com

Byron O'Connor
Director
T +27 (0)11 562 1140
E byron.oconnor@cdhlegal.com

Lucinde Rhoodie
Director
T +27 (0)21 405 6080
E lucinde.rhoodie@cdhlegal.com

Jonathan Ripley-Evans
Director
T +27 (0)11 562 1051
E jonathan.ripleyevans@cdhlegal.com

Willie van Wyk
Director
T +27 (0)11 562 1057
E willie.vanwyk@cdhlegal.com

Joe Whittle
Director
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com

Jonathan Witts-Hewinson
Director
T +27 (0)11 562 1146
E witts@cdhlegal.com

Pieter Conradie
Executive Consultant
T +27 (0)11 562 1071
E pieter.conradie@cdhlegal.com

Nick Muller
Executive Consultant
T +27 (0)21 481 6385
E nick.muller@cdhlegal.com

Marius Potgieter
Executive Consultant
T +27 (0)11 562 1142
E marius.potgieter@cdhlegal.com

Nicole Amoretti
Professional Support Lawyer
T +27 (0)11 562 1420
E nicole.amoretti@cdhlegal.com

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Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

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OUR TEAM

For more information about our Employment practice and services, please contact:



Aadil Patel
National Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Samiksha Singh
Director
T +27 (0)21 481 6314
E samiksha.singh@cdhlegal.com



Ndumiso Zwane
Senior Associate
T +27 (0)11 562 1231
E ndumiso.zwane@cdhlegal.com



Gillian Lumb
Regional Practice Head
Director
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Gavin Stansfield
Director
T +27 (0)21 481 6313
E gavin.stansfield@cdhlegal.com



Katlego Letlonkane
Associate
T +27 (0)21 481 6319
E katlego.letlonkane@cdhlegal.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@cdhlegal.com



Sipelelo Lityi
Associate
T +27 (0)11 562 1581
E sipelelo.lityi@cdhlegal.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Anli Bezuidenhout
Senior Associate
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



Anelisa Mkeme
Associate
T +27 (0)11 562 1039
E anelisa.mkeme@cdhlegal.com



Nicholas Preston
Director
T +27 (0)11 562 1788
E nicholas.preston@cdhlegal.com



Kirsten Caddy
Senior Associate
T +27 (0)11 562 1412
E kirsten.caddy@cdhlegal.com

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