

DISPUTE RESOLUTION AND REAL ESTATE ALERT



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CLEARANCE CERTIFICATES: SELLERS NO LONGER HELD RANSOM FOR FUTURE MUNICIPAL DEBTS

The courts have come to the rescue once again, clarifying and confirming a seller's duty to settle outstanding municipal debt prior to receiving a property rates clearance certificate. In short, municipalities can no longer hold a seller ransom by refusing to issue a clearance certificate until the rates have been paid up to the end of the municipality's current financial year.

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The municipality claimed that once its financial year commenced the seller became liable to pay the rates fixed for that financial year and that it was entitled to withhold the rates clearance certificate until it had received payment of the rates for that financial year.

The SCA held that having regard to the fact that the Rates Act defines financial year as “the period starting from 1 July in a year to 30 June the next year”, the section could only be interpreted to mean that the rates are payable within the period of the financial year and not on 1 July.



The courts have come to the rescue once again, clarifying and confirming a seller's duty to settle outstanding municipal debt prior to receiving a property rates clearance certificate. In short, municipalities can no longer hold a seller ransom by refusing to issue a clearance certificate until the rates have been paid up to the end of the municipality's current financial year.

In terms of s118 of the Local Government Municipal Systems Act, No 32 of 2000 (Systems Act) a seller requires a rates clearance certificate before transfer of the property to the purchaser, which certificate must be lodged in the Deeds Office with the transfer documents. The recent judgment, *Nelson Mandela Bay Municipality v Amber Mountain Investments 3 (Pty) Ltd* (576/2016) [2017] ZASCA 36 (29 March 2017), provides much needed clarity regarding the issuing of clearance certificates and ensures that many sellers will save thousands, if not millions, of rand during the sale of their properties. In this case, the Supreme Court of Appeal (SCA) was asked to make an order that the municipality refund the seller a sum of R1,066,532 for overpayment of its municipal rates obligations to the municipality. The seller had made the payment, albeit reluctantly, in a dire need to receive a property rates clearance certificate.

The municipality claimed that once its financial year commenced the seller became liable to pay the rates fixed for that financial year and that it was entitled to withhold the rates clearance certificate until it had received payment of the rates for that financial year.

The SCA was not quick to dismiss the municipality's claim and took into serious consideration the fact that municipalities

mainly rely on rates for income in order to render the necessary services to their communities, and that the court had a duty to consider the relevant legislation and laws which the municipality relied upon. In doing so, the SCA paid particular attention to the Local Government: Municipal Property Rates Act, No 32 of 2000 (Rates Act) emphasising that in terms of s13(1)(a) a rate becomes payable “as from the start of a financial year” and not on a particular date. The SCA held that having regard to the fact that the Rates Act defines financial year as “the period starting from 1 July in a year to 30 June the next year”, the section could only be interpreted to mean that the rates are payable within the period of the financial year and not on 1 July.

The SCA also noted that in terms of the Rates Act the owner of the property is liable for the payment of the municipal rates. Following its interpretation of the Rates Act and taking into consideration other relevant legislation, the SCA firmly held that s118 of the Systems Act is clear and unambiguous that a clearance certificate is issued in respect of municipal debts which have become due in the two years preceding the date of application for the clearance certificate and does not apply to future municipal debts when the seller is no longer the owner of the property.

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