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# REAL ESTATE ALERT

## IN THIS ISSUE

### A VICTORY FOR PROPERTY OWNERS RECEIVING EXORBITANT AND DELAYED UTILITY BILLS

On 13 February 2017, in the Gauteng Local Division of the High Court, Judge AJ Yacoob handed down an important judgment which many property owners will consider a much-needed victory. The decision grants relief to property owners who have received exorbitant utility bills after a number of years.

### NEW DEVELOPMENTS IN THE PROPERTY ARENA: ATTIE PRETORIUS TALKS TO PROVOCATE MAGAZINE

Chairman and National Practice Head of our Real Estate team, Attie Pretorius discusses changes in the property law arena with *PROvocate* magazine.

# A VICTORY FOR PROPERTY OWNERS RECEIVING EXORBITANT AND DELAYED UTILITY BILLS

*If a consumer receives a utility bill citing, for the first time, charges older than three years, they cannot be held liable for such amounts, as the charges have prescribed.*

*A consumer cannot acknowledge a debt when the creditor withholds particular and necessary details of the debt or when only the creditor has the ability to quantify the debt and fails to do so.*



On 13 February 2017, in the Gauteng Local Division of the High Court, Judge AJ Yacoob handed down an important judgment which many property owners will consider a much-needed victory. The decision grants relief to property owners who have received exorbitant utility bills after a number of years.

Facts of the case: For approximately five and a half years, Argent was charged for their estimated water consumption. Argent duly paid these charges. During this period the Ekurhuleni Municipality failed to take actual readings of the water meter. In 2015, Argent received a bill for the difference between its actual usage and estimated consumption amounting to R1,152,666.98. Relying on prescription, Argent claimed that they were not liable for discrepancies in the costs, which were older than three years at the time when they finally received the bill.

The municipality challenged this argument on the following grounds:

- that the excess water charges, older than three years had not prescribed because the prescription period only commenced when the client was billed by the municipality; and
- the fact that the consumer regularly made monthly payments, based on their estimated consumption, amounts to an acknowledgement of its debt and as such it interrupts the prescription period.

The municipality lost on both of these points.

Precedent set by this judgment:

- If a consumer receives a utility bill citing, for the first time, charges older than three years, they cannot be held liable for such amounts, as the charges have prescribed.
- Where a consumer has made regular monthly payments based on their estimated consumption, their monthly payments do not interrupt the prescription of the actual water consumption.
- It is not the duty of the consumer to read meters and determine their actual consumption. A consumer will not be considered to have acknowledged a debt of which they do not know the particulars. In other words, a consumer cannot acknowledge a debt when the creditor withholds particular and necessary details of the debt or when only the creditor has the ability to quantify the debt and fails to do so.
- The prescription period commences when the municipality should have become aware of all the relevant facts, such as the actual water consumption, which give rise to its claim against the consumer and not only when the municipality read the meter and the invoice was issued. The municipality could have taken an actual reading of the meter at any time.

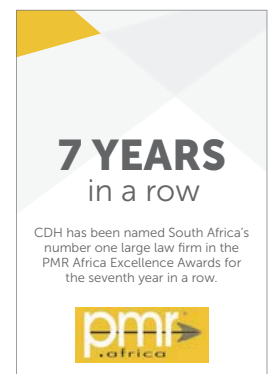
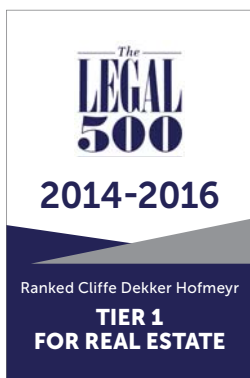
# A VICTORY FOR PROPERTY OWNERS RECEIVING EXORBITANT AND DELAYED UTILITY BILLS

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*Judge Yacoob held that the municipality has a duty to carry out such readings and invoice consumers at its convenience but at reasonable intervals.*

- This means that the prescription period commences when the municipality should have taken actual readings and invoiced the consumer. Judge Yacoob held that the municipality has a duty to carry out such readings and invoice consumers at its convenience but at reasonable intervals.
- Where no records of regular actual readings are available to ascertain how much of a bill for several years has prescribed, the industry standard should be applied: average the consumption out over the months between the two readings and then use that average to calculate the consumer's liability for the remaining period.

*Nicholas Gangiah and Fatima Gattoo*



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# Attie.

Chairman and National Practice Head of CDH's Real Estate team, Attie Pretorius was recently featured in SAPOA's property advocate magazine, [PROvocate](#). In the article, Attie taps into his 37 years of property law experience, explaining how the role of property lawyers has evolved during his career. Attie also provides readers with valuable insights into new developments within South Africa's property arena, touching on each of the below topics:



Restructuring the 99 year long-term lease around Waqf laws.



Large listed property funds looking to diversify in Europe, Australia and US.



Inner city conversions of old office buildings into residential apartments.



Inclusionary housing election promises.



Current issues faced by sectional title schemes and the new legislation that seeks to put an end to these issues.



Shortage of available land to develop and the introduction of a state and parastatal land registry.

**Our Real Estate team is externally praised for its depth of resources, capabilities and experience.**

*Legal 500 EMEA 2014–2016* ranked Cliffe Dekker Hofmeyr in Tier 1 for real estate.

*Best Lawyers International 2013–2016* listed us for real estate.

*Property & Construction Team Of The Year 2014* awarded to our Real Estate practice in the African Legal Awards.

*The Legal 500 EMEA 2015–2016* recommended **Attie** for real estate.

*Best Lawyers International 2013* listed him as the Johannesburg Real Estate Law Lawyer of the Year and listed him for real estate law from 2014–2016.

*Who's Who Legal 2012–2014* identified Attie as a leading lawyer in real estate and in 2014 he was listed in *The International Who's Who of Business Lawyers*.

**Attie** received a Lifetime Achievement Award for Excellence in Real Estate Law at the inaugural SA Professional Services Awards 2014.



TO READ THE FULL PROVOCATE ARTICLE, [CLICK HERE.](#)

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