

DISPUTE RESOLUTION ALERT

IN THIS ISSUE

DON'T LET YOUR MONEY GO UP IN FLAMES: HOW TO ENSURE YOU ARE PROTECTED IN THE EVENT THAT A FIRE ORIGINATES OR SPREADS FROM YOUR PROPERTY

In January in Cape Town, the gale force December winds finally cease to blow leaving the city sweltering in 30-degree temperatures without reprieve. Add to the hot, dry January days, a drought of not insignificant proportion and we have on our hands a recipe for severe fire disaster in this, Cape Town's fire season.

DON'T LET YOUR MONEY GO UP IN FLAMES: HOW TO ENSURE YOU ARE PROTECTED IN THE EVENT THAT A FIRE ORIGINATES OR SPREADS FROM YOUR PROPERTY

Failure to take heed of the law could result in liability for all of the damages incurred by fire on neighbouring properties.

It would be improper to hold an owner liable when he or she is not in a position to access the property to ensure compliance with the Act.



In January in Cape Town, the gale force December winds finally cease to blow leaving the city sweltering in 30-degree temperatures without reprieve. Add to the hot, dry January days, a drought of not insignificant proportion and we have on our hands a recipe for severe fire disaster in this, Cape Town's fire season.

If you own property in an area prone to veld or forest fires, it is essential that you are familiar with the onerous consequences and obligations of the law on this particular topic. Failure to take heed of the law could result in liability for all of the damages incurred by fire on neighbouring properties.

The National Veld and Forest Fire Act, No 101 of 1998 (Act) contains a provision, at s34, which places a rebuttable presumption of negligence onto the owner of property from which a fire spreads to neighbouring properties. This means that if a fire originates on, or spreads to, your property, and you cannot prove that you have taken reasonable steps to prevent the spread of that fire to neighbouring properties, you can be held liable for all of the neighbours' damages.

It is important at the outset to clarify the meaning of "owner" in terms of the Act. The Act states that the word "owner" in this context includes lessees or any other person who controls the property. The question arises as to what happens if the

owner rents out the land to a lessee who is then in control of the property. This was answered by the Supreme Court of Appeal in *MTO Forestry v Swart* [2017] ZASCA 57, in which the SCA made it clear that the liable party would be that person or persons in active control of the property. It would be improper to hold an owner liable when he or she is not in a position to access the property to ensure compliance with the Act.

The Act provides a simple mechanism for avoiding liability, namely, being a member of a Fire Prevention Association (FPA). FPAs are groups of land owners that prevent and manage wildland fires in a specifically defined area. Being a member of such an association immediately rebuts the presumption of negligence in the instance of the spread of veld or forest fires. All FPAs must be registered with a central body and can be found online at www.fpasa.co.za.

The Act, at s17, places a further burden onto property owners to acquire equipment and have available personnel to fight fires on land in which a veldfire may



CLICK HERE to find out more about our Dispute Resolution practice.

DON'T LET YOUR MONEY GO UP IN FLAMES: HOW TO ENSURE YOU ARE PROTECTED IN THE EVENT THAT A FIRE ORIGINATES OR SPREADS FROM YOUR PROPERTY

CONTINUED

The court states that it would be concerned if the Warbos was a man-made fire hazard, as opposed to the reality that it is merely a piece of vegetation which occurs naturally and just happens to burn readily.



start or burn or from whose land it may spread. These obligations are not onerous and are legislated for good reason. The Act does however provide that these obligations can be outsourced to an agent appointed by the landowner.

In the event that a landowner does not belong to an FPA, the presumption of negligence can still be rebutted by showing reasonable measures which have been taken to combat the origin or spread of veldfires. This could include, for example, the establishment and maintenance of fire breaks, the permanent presence of suitably qualified fire prevention personnel, and manned watch towers.

In fact, while the legislation may seem onerous, it is interpreted reasonably by the courts. In the judgment in *MTO Forestry v Swart*, the court found the Respondent was not liable to the Appellant, his neighbour, on the basis that the *Warbos*, a particularly flammable, ground-covering plant which is more flammable than the indigenous vegetation in the area, was a naturally occurring resource in the area (despite being an invader species). The court states that it would be concerned if the *Warbos* was a man-made fire hazard,

as opposed to the reality that it is merely a piece of vegetation which occurs naturally and just happens to burn readily.

The onus on a Defendant in a case of the spread of a veldfire is to establish the reasonable steps taken to combat the spread of veldfires. This begs the question as to what the courts consider to be reasonable in such an instance. Appellate Judge Leach stated in the aforementioned case that "when considering the steps which a reasonable person would have taken and the standard of care expected, the bar, whilst high, must not be so high as to be out of reasonable reach."

He continues:

"a reasonable [...] landowner is not obliged to ensure that in all circumstances a fire on its property would not spread beyond its boundaries. They would only be obliged to take reasonable steps in the circumstances to guard against such an event occurring. If a landowner took such steps and a fire spread nevertheless, it cannot be held liable for negligence just because further steps could have been taken."

Andrew MacPherson and Nick Muller

Tim Fletcher was named the exclusive South African winner of the **ILO Client Choice Awards 2017** in the litigation category.



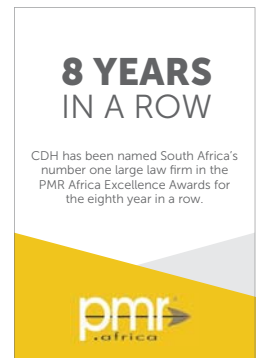
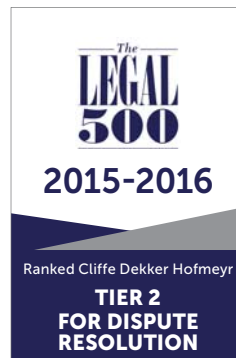
Best Lawyers 2018

SOUTH AFRICA

NAMED CDH

LITIGATION

LAW FIRM OF THE YEAR



CHAMBERS GLOBAL 2017 ranked us in Band 1 for dispute resolution.

Tim Fletcher ranked by CHAMBERS GLOBAL 2015–2017 in Band 4 for dispute resolution.

Pieter Conradie ranked by CHAMBERS GLOBAL 2012–2017 in Band 1 for dispute resolution.

Jonathan Witts-Hewinson ranked by CHAMBERS GLOBAL 2017 in Band 2 for dispute resolution.

Joe Whittle ranked by CHAMBERS GLOBAL 2016–2017 in Band 4 for construction.



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

Timothy Baker
Director
T +27 (0)21 481 6308
E timothy.baker@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

Tracy Cohen
Director
T +27 (0)11 562 1617
E tracy.cohen@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

Janet MacKenzie
Director
T +27 (0)11 562 1614
E janet.mackenzie@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.rhodie@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

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

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

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

BBBEE STATUS: LEVEL THREE CONTRIBUTOR

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.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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

©2017 2147/FEB

