

Radio

ConCourt ruling on historical debt gives relief to new property owners

New owners cannot be saddled with a previous owners' municipal debt, explains Peter Livanos on today's ruling.

Nastassia Arendse / 29 August 2017 19:05



Picture: Moneyweb

NASTASSIA ARENDSE: Earlier today the Constitutional Court ruled that municipalities cannot hold a new property owner liable for a previous owner's historical municipal debt. For more on what this ruling means I'm joined by Peter Livanos, who is a municipal debt specialist at New Ventures Consulting and Services. Peter, thanks so much for your time.

PETER LIVANOS: My absolute pleasure. Thank you for having me.

NASTASSIA ARENDSE: Let's start off with your interpretation of this ruling. And, if you can also touch on this, how did you get involved in this particular case?

PETER LIVANOS: With pleasure. Basically what happens is when a property gets transferred, one of the first things that a conveyancing attorney applies to a municipality for is a document called "clearance figures" in order to obtain a clearance certificate.

Now, unfortunately there's a massive, massive problem in the industry – that people think that when you get a clearance certificate all your debts have been paid in full. In fact, that's the bare

minimum that needs to be done in order to transfer a property. In fact, if you pay for only the last two years' debt, your transfer attorney will give you a clearance certificate. Now this is where the whole fight is. The debt older than two years is called "historical debt". This is where our fight has basically come from.

What my firm specialises in is the analysing of municipal accounts, especially at the transfer process stage. Our claim to fame is that we've done over 12 000 successful cases to date, and we've saved almost a billion rand over the last 12/13 years, saving ratepayers' money when transferring your properties.

So these customers came to me and they said, "Listen, we've got these large exorbitant municipal arrears". We analysed the municipalities' accounts using our proven system, which has stood up to over 12 000 matters before, we sorted all of these customers' debts out and the properties were transferred.

Then in 2013 the *City of Tshwane vs Mathabathe* judgment came out, which caused absolute havoc in the industry. The municipalities all of a sudden looked at this judgment and said, ooh, we've got god-like powers to transfer this historical debt to an innocent owner. But the judgment didn't say that. I think that was a misinterpretation that was placed on the judgment.

Then what happened is the municipalities unilaterally started disconnecting services to my clients' properties, they denied them consumers' agreements and in many instances they forced them under duress to sign acknowledgements of debt. So these people were in a way blackmailed. That is, if they didn't comply with the municipalities' demands they simply were in the dark.

So these customers ran back to us and said, "Please can you guys help us?" We said absolutely, because we have a standard indemnity that we issue to all of our clients that if I act on a matter for you, I will at my own expense cover the cost and I will fight this to the last degree – which we did in these court cases.

We are not a big, massive corporation or a big corporate. We are a family-run business, and this has cost me and my family in excess of R12/13 million, and we've footed the bill all on our own, and we fought this all on our own. A lot of media institutions, newspapers and radio stations are kind of giving a false story out there; they are giving an impression that a bunch of property owners got together and ganged up against the municipality. No, that's not the case. We did it all on our own, and we did it all for our customers at our own expense.

Three and a half years later I'm so glad that the judgment came out today. In fact, it was a unanimous 11-judge decision. All the judges stood behind us and said what the municipality was wrong, it was unlawful, and they didn't even have to consider the constitutional aspects because the municipality simply misinterpreted our legislation.

NASTASSIA ARENDSE: Peter, we'll have to leave it there, but kudos to you and your team for definitely taking this on. Congratulations again.

PETER LIVANOS: Thank you very much.

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