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Court victory over historical municipal debt

Property owners who have been forced to pay thousands of rand in historic debt on their newly acquired properties may soon be able to lodge claims to recoup their money.

The Constitutional Court has ruled that the Bill of Rights prohibits arbitrary deprivation of property, which would happen if municipal debts without historical limits were imposed on new owners of a municipal property.

The judges, in a unanimous judgment delivered yesterday, ruled that new owners cannot be held responsible for previous owners' debts.

The ruling, delivered by Judge Edwin Cameron, was hailed as a major victory for property owners, developers, estate agents, conveyancing attorneys and banks.

To avoid unjustified arbitrariness in violation of the Bill of Rights, the court held that section 118 of the Local Government Municipal Systems Act, which states owners are only liable for two years of debt, "must be interpreted so that the charge it imposes does not survive transfer to the new owner", the ruling stipulated.

The court also ruled that should municipalities wish to recover arrears from property owners, they would have to register the arrears against the property title deeds.

It held that section 118 "is well interpreted, so that the charges do not survive the transfer. A mere statutory provision, that a claim for a specified debt is a 'charge' upon immovable property does not make that charge transmissible to successors in title of the property", the court said.

Tshwane and Ekurhuleni municipalities have been trying to hold new owners responsible for debt dating back 30 years.

Property debt specialist Peter Livanos, who, among others, took the case to the Constitutional Court, yesterday said he would be meeting his legal counsel this week to see what steps could be taken by property owners to recoup their money.

Livanos said he had spent about R11 million since 2000 in legal costs. "I had four permanent counsels and was forced to go to court over and over again over the years to get transfer of properties and connection of services, because the municipalities were demanding that this historic debt be paid before transfer could be effected and before connecting services."

Over the years, most municipalities ignored and defied court orders, and he often had to apply for court orders against them, Livanos said.

In a few cases, he had obtained contempt of court orders before the municipalities had complied.

Livanos said he could not quantify the amount of money paid in old debt, but he had been receiving about 30 calls a week from attorneys all over the country.

"I made a promise to them and to myself to get this matter resolved. It has caused a lot of misery and lots of money has been wasted, and I feel vindicated today," he said.

"Recently, however, most municipalities complied because of the pending Constitutional Court case," he said.

Dean Hodgson, the principle agent at Hodgson Properties, said the ruling would allay fears of debt for new buyers.

"In today's tough economic climate, buyers and investors don't have the cash flow to pay for an unknown debt," he said.

It had been unfair in the first place that a municipal clearance certificate did not link rates with the water and electricity bills.

"So getting a rates clearance certificate does not necessarily mean the property does not owe on water and electricity, so the municipality could slam you with this big bill down the line," said Hodgson.

Myles Wakefield, the chief executive of Wakefield Real Estate, said he was delighted with the ruling. "It's untenable that a new buyer should be responsible for the debt of a previous owner. This is a fair, equitable decision, another great one by the Constitutional Court, and the right one for our property market."

Berry Everitt, the chief executive of property group Chas Everitt International, said new home owners would no longer have to worry about having their municipal services cut off, or even having their property attached and sold in execution if they could not pay.

Carol Reynolds, the area principal for Durban Coastal at Pam Golding Properties, said the ruling was much-needed relief from an unreasonable situation.

"Buyers can now rest assured that they will not become embroiled in debt that is not of their making," she said.

The Msunduzi municipality said it was aware of the judgment and was obliged to comply with it.

When asked to comment on the implications of the judgment on the city in terms of the collection of historical debt, eThekweni Municipality spokesperson Tozi Mthethwa said: "The Constitutional Court did not rule that Section 118(3) of the Local Government: Municipal Systems Act, 2000 is constitutionally invalid. The court ruled that the debt will not pass onto the successor in title."

She also said the judgment didn't impact on the eThekweni collection processes, adding that it provided clarity to strengthen the process.

"eThekweni Municipality adheres to the guidelines set by the credit control and debt collection policy and by-law and will continue to collect outstanding debt as permitted," said Mthethwa.

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