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THE BOND CLAUSE THAT SANK THE SALE

In a recent High Court case, a purchaser had to secure the balance of the purchase price by lodging “undertakings acceptable to the sellers’ conveyancer”.

When, by due date, all the purchaser had come up with was a bank letter of “bond approval”, the seller put the purchaser to terms and in due course cancelled the sale.

The Court, holding that “there is a marked difference between obtaining bond approval and delivering undertakings acceptable to the seller’s conveyancer”, upheld the cancellation.

There are many possible ways to word a bond clause – there may be reference to the provision of a guarantee or of an undertaking, to “pre-approval of a bond”, to “approval in principle of a bond”, “obtaining a bond in principle” and many other permutations. All have different legal effects, and create different rights and obligations that may be critical to protecting your interests.

So make sure that the wording in the bond clause is checked professionally before you sign the agreement – the risk of not doing so isn’t worth it.

WHEN STRIKES TURN VIOLENT – ARE YOU INSURED?

Strikes shouldn’t involve violence and destruction of property, but the reality is that they often do. Losses can be substantial, and the danger is that standard insurance will not cover you for losses due to riot, strike, public disorder etc.

For that you need SASRIA (“Special Risks”) cover. With strike action a constant threat in our daily lives, it makes sense to have it for all assets, personal as well as business.

Good news for victims of such violence is that the High Court has now made it clear that SASRIA cover is not limited to cases of full-scale public disorder. It extends, the Court held, to damage caused in furtherance of a strike, *even where the relevant action was not committed in public* (that is, not “as part of a disturbance of the public peace”).

In the case in question, a truck worth R600.000 was torched by strikers, in an act intended to further the strike, but not as part of a public disturbance. The Court held the cover to be valid, and the insurer had to pay.

SHAREHOLDER REMEDIES AGAINST DELINQUENT DIRECTORS

Company directors by definition control what companies do. So, when directors (or other company officers) go bad, how can they be compelled to compensate the company for a wrong committed by them?

Ultimately the biggest losers are likely to be the shareholders, and the law accordingly provides them with a remedy in the form of the appointment, on application to Court, of a curator. The curator's job is to investigate possible claims by the company against directors and other officers, and if necessary to institute legal proceedings as directed by the Court.

Be careful however, if you are a shareholder seeking the appointment of a curator, that your application is worded so as to give the curator a sufficiently wide mandate to do the job properly. In a recent case, a curator was held by the Supreme Court of Appeal to have exceeded his mandate, and the provisional curatorship order was accordingly discharged.

WAITERS' WAGES – THE REAL RATES

Waiters and other employees in the "Hospitality Sector" (the wide definition includes for example hotels, game lodges, guest houses, B&Bs, restaurants, pubs, caterers, related activities etc, etc....) will, from 1 July 2007 this year, have regulated minimum wages, working hours and basic conditions of employment.

Press reports as to what minimum wages apply have largely been inaccurate; in fact the only two categories are: -

1. Workers in establishments that employ less than 10 employees - R1.480-00 per month, R341-60 per week or R7.59 an hour, and
2. For those in establishments employing more than 10 employees -R1.650-00 per month, R380-80 per week or R8.46 an hour.

Note that the minimum wages exclude tips.

Commission workers are included in the protection and must earn at least the minimum wage.

SHORT LEASES: STAMP DUTY ABOLISHED

SARS has announced that no stamp duty will be payable on short leases (residential and commercial) entered into on or after 1 June 2007, provided that the lease is for a period of 5 years or less (inclusive of renewal periods). At date of writing, the necessary amendment to the Stamp Duties Act has not yet been promulgated, so the date or details may change – take advice on the final outcome.

FALSE ACCUSATION OF RACISM IS GROUNDS FOR DISMISSAL

Not only is it a serious form of misconduct to display racist attitudes towards a colleague, but, the Labour Court has now held, on the other side of the coin it is also a serious form of misconduct to accuse a colleague of racism "without reasonable cause".

The Court accordingly upheld the dismissal of an employee for falsely accusing a colleague of being a racist. The accusation was a contravention of a workplace code of conduct prohibiting "insulting, abusive, obscene or racial language, communication or behaviour"; so check your employment contracts and codes of conduct for conformity.

NO SQUATTING ALLOWED (NOT, AT LEAST, ON THE TRADE MARK REGISTER)

The best way to protect your interest in a trade mark (that is, a brand name, slogan, logo or shape that identifies the services or goods of one person and distinguishes them from the goods and services of another) is to have it registered in the Register of Trade Marks.

A recent decision of the Supreme Court of Appeal, in which registration of shoe tread designs was extinguished, highlights two restrictions on what you can register, and when: -

1. You cannot register a trademark purely to stifle competition – in other words you can't "squat on the trade mark register", and
2. A shape or design must be more than just functional or aesthetic, it must actually distinguish your product from others; it must "indicate source of origin".

WHEN A R1 THEFT JUSTIFIES DISMISSAL

The Labour Court has confirmed that "it is an established labour law principle that the value of unauthorised stock appropriation is irrelevant, and dismissal is the correct sanction". The Court accordingly upheld the dismissal of a supermarket employee, despite the fact that in the case in question, only R1 worth of meat bones was involved.

Bearing that in mind, you should still have your Code/s of Conduct and disciplinary procedures checked to ensure that any dishonesty can be dealt with quickly and effectively.

WEBSITE OF THE MONTH: VIDEO CLIPS FOR BUSINESSES

Video clips can turn an average PowerPoint presentation into an exceptional one. They will enliven a staff training session, and could even lead you to that breakthrough you've been looking for in your own strategising.

And whilst video sharing sites like YouTube (www.youtube.com) are probably best known for their recreational content, they can also be a goldmine of (mostly short) video clips on a whole host of business-related topics.

Try using search terms like "business advice", "marketing", "cash flow", "interview skills", "business planning", "small business", "HR Training" etc to get an idea of what's available.

Beware of potential copyright issues before downloading and using clips in presentations, marketing messages etc. Note also that to download from these sites, you will need special downloading software (Google for a suitable source).

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