

SEPTEMBER 2007

Beware The Revocable Bank Guarantee

Your Advert - Can You Ever Attack A Competitor's Product?

Amendments To Deeds Of Sale – Get Them Signed!

When Employees Go Bad – Proof

When Employees Go Bad – Recovery

Reverse Mortgage Eviction Woes

Your RA – No Guarantees

Website(s) Of The Month: Jobs On The Net

And A Bonus Website: Rugby World Cup Spreadsheet



Est. 1962

**HONEY
ATTORNEYS**

Tel +21 (021) 941 7777 | Fax +21 (021) 941 7800 | www.honeyattorneys.co.za | office@honeyattorneys.co.za

The information in this document is of a general nature and does not constitute legal advice

BEWARE THE REVOCABLE BANK GUARANTEE

Often a sale agreement will provide for the buyer to lodge a bank guarantee “acceptable to the seller” for the purchase price. That doesn’t mean that the seller can reject whatever guarantee is lodged on a whim - the objection to it must be “fair and reasonable”.

But that opens up an area of uncertainty - in a recent High Court case, a bank’s guarantee contained a clause allowing it to revoke the guarantee under certain circumstances – and that, held the Court, entitled the seller (on the particular facts of the case) to reject the guarantee.

As banks are seldom prepared to issue truly irrevocable guarantees, it would be wise to specify in more detail exactly *what* form of guarantee will be acceptable to the seller – if you don’t, you could well end up in a (very expensive) legal dispute.

YOUR ADVERT - CAN YOU EVER ATTACK A COMPETITOR’S PRODUCT?

You are the best widget maker ever – and that tempts you mightily to have a go at the lower quality of the opposition’s product in your next advert. But bear in mind that (in terms of the Advertising Standards Authority’s Code of Advertising Practice), you may not use advertising to “attack, discredit or disparage other products directly or indirectly”.

That doesn’t mean that you are barred from ever making any reference at all to another product. As confirmed in a recent ASA Directorate ruling, that isn’t necessarily disparagement – provided that your advert states that the other product “is good” or “makes no statement regarding the quality or nature of that product”.

You may also be allowed to impart information “highlighting a weakness in an industry or product”, provided that it “is factual and in the public interest” – be aware that the ASA will look amongst other things at what your *intention* is in making such a disclosure.

There are grey areas here – in case of any doubt, get legal advice before spending a fortune on an ad campaign that you may be forced to pull.

AMENDMENTS TO DEEDS OF SALE – GET THEM SIGNED!

Any deed of sale of land/buildings must be written, and signed by both parties, to be valid.

It often happens that a purchaser puts in an offer, which the seller amends and then waits to see whether the purchaser will accept the changes. In terms of a recent High Court decision, if the offer is “significantly modified to constitute a counter-offer” by the seller, the sale is invalid “in the absence of a counter signature” by the purchaser.

So never rely on a *verbal* agreement by a buyer to any new terms you have inserted or changed. Make sure that the alterations are signed by both of you.

The usual practice of course is just to *initial* any amendments, but it was questioned in this case whether only *signature* would suffice - and whilst the Court was not required to make a decision on that point (and there is at least one old case suggesting that "signatures by initials" are sufficient), it might be safest to avoid doubt by insisting on full signatures.

WHEN EMPLOYEES GO BAD - PROOF

In terms of a recent CCMA decision, "an arbitration is a hearing de novo and the employer cannot merely rely on [the] criminal conviction to find an employee guilty of a disciplinary offence".

The warning is there for employers holding disciplinary procedures – any alleged misconduct by an employee must be proved all over again, even after a criminal conviction.

WHEN EMPLOYEES GO BAD - RECOVERY

If you are the victim of an employee's theft, dishonesty, fraud or "misconduct", you may well be able to recover your losses from the employee's pension fund.

But you need to push the process - the fund is empowered to withhold payment of an employee's pension benefit for a *reasonable* period only. And the fund can only actually repay you from the pension benefit if the employee either

- Unequivocally admits liability in writing, or
- Has a judgment against him/her for the loss.

In a recent decision, the Pension Funds Adjudicator held that: -

1. The "misconduct" must be more than just merely *negligent* – there must be an element of *dishonesty*, and
2. An unsigned e-mail is insufficient proof of admission of liability – so get any admission signed, and make sure that it is a "clear and firm" admission.

REVERSE MORTGAGE EVICTION WOES

Anyone intending to lend money under a "reverse mortgage" agreement (where a loan is made to a property owner against sale of the property to the lender, the idea being to re-transfer the property to the borrower against repayment of the loan), must be aware that eviction of the borrower in the event of default is not going to be easy.

Not only do all the complex and onerous procedures of the "PIE" (Prevention of Illegal Eviction from Unlawful Occupation of Land) Act apply, but, per a recent High Court decision, the Courts will also be looking for compliance with both the National Credit Act (including its usury provisions), and the Constitution.

YOUR RA – NO GUARANTEES

Don't be dazzled by the "illustrative maturity values" given to you when you are considering a new Retirement Annuity – the Pension Funds Adjudicator has confirmed that they "are not guarantees, but are estimates that are used to give an indication to the investor what the value of his retirement benefit might be if certain assumptions are met".

A complaint by an investor that he had lost "approximately 23% of the estimated value at maturity" was dismissed.

RAs can be excellent tools in a retirement funding plan, but take professional advice on whether they are for you - and if so, which ones.

WEBSITE(S) OF THE MONTH: JOBS ON THE NET

Whether you are an employer looking for staff, or an individual in need of a job, try some of the well-known employment sites – such as Career Junction at www.careerjunction.co.za, JobMail at www.jobmail.co.za, and Pnet at www.pnet.co.za. Also worth a try is Gumtree at www.gumtree.co.za (choose a city, then “Jobs”).

For a list of other sites (including many which service specific industries) go to Ananzi at <http://ananzi.co.za/catalog/Employment/JobSites/index.html>.

AND A BONUS WEBSITE: RUGBY WORLD CUP SPREADSHEET

Download the spreadsheet from http://aaronheath.com/sportsheets/Rugby_World_Cup_2007.xls It lists all the fixtures, and you can enter the scores and bonus points after each match to keep track of the logs.

[Tel +21 \(021\) 941 7777](tel:+21(021)9417777) | [Fax +21 \(021\) 941 7800](tel:+21(021)9417800) | www.honeyattorneys.co.za | office@honeyattorneys.co.za

Should you require any further information or assistance please contact:

Litigation:

George de Beer george@honeyattorneys.co.za
Nic Barnaschone nic@honeyattorneys.co.za
Christo Potgieter christo@honeyattorneys.co.za

Commercial Law:

Johan Vermeulen johan@honeyattorneys.co.za

Property Law & Conveyancing:

Jacques du Toit jacques@honeyattorneys.co.za
Danie de Villiers danie@honeyattorneys.co.za
Charles Koegelenberg charlesK@honeyattorneys.co.za
Bronwyn Brink bronwyn@honeyattorneys.co.za

Honey Bloemfontein: t: 051 403 6600

Honey Johannesburg t: 011 656 1452