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THE JOHANNESBURG
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INACCURATE REPORTING ON COURT CASE

RE: ***Nelson Mandela Bay Municipality v Amber Mountain Investments***

1. The above refers.

2. Our offices have received several queries from attorneys, conveyancers and members of the public, in relation to the article below:

   https://businesstech.co.za/news/business/174931/new-water-and-lights-rules-sa-homeowners-need-to-know-before-selling/.

3. This article has already been shared over 6,000 times on Facebook.

4. The article gives the reader the impression that the law has changed to provide that it is no longer necessary to pay amounts that are calculated by the municipality for the period that the rates clearance certificate will remain valid for (ie "forward projections") when obtaining a rates clearance certificate.

5. It does so in its opening paragraphs, using these words:

   "The Supreme Court of Appeal has ruled that municipalities cannot demand that property sellers pay months in advance for rates, fees and charges before issuing a rates clearance certificate, according to a report by **The Star**."

6. The Businesstech report was clearly based on a report in the Star (to be accessed at http://www.iolproperty.co.za/roller/news/entry/rates_victory_for_property_sellers) which also gives the reader an inaccurate impression from its opening paragraph, which reads as follows:

   In a major court victory for property owners, the Supreme Court of Appeal has ruled that municipalities cannot demand that property sellers pay in advance for many months of rates, fees and charges before issuing a rates clearance certificate.

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7. Both of these articles convey an inaccurate recordal of what the court debated, and concluded, for the reasons set out below:

6.1 The case in question (*Nelson Mandela Bay Municipality v Amber Mountain Investments 3 (Pty) LTd*, which can be accessed here: http://www.saflii.org/za/cases/ZASCA/2017/36.html) did not deal with forward projections.

6.2 To explain forward projections as briefly as possible:

6.2.1 Municipalities issue rates clearance certificates in terms of the Local Government: Municipal Systems Act. The certificates are issued in a special (prescribed form) and must remain valid for a minimum number of days.

6.2.2 They need to remain valid for this period, to ensure that once obtained by the conveyancer, they are still valid when transfer passes to the new owner (bearing in mind that it takes 3 months on average to transfer).

6.2.3 In order to issue a certificate that remains valid for at least 60 days, the municipality calls for payment of all amounts owing on the account, plus forward projections. These are estimates of your future rates/taxes/service charges for 90 - 120 days. The idea is that you pay these in advance into your account, which puts your account into credit for 90 - 120 days. This is the best that the municipality can do to ensure that when transfer passes, the account will be in credit. However, this does not always result in the account being in credit when transfer passes (but this is beyond the scope of this note).

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6.2.4 This case did not say anything about forward projections. It is thus still lawful for a municipality to include forward projections in the rates clearance figures and require that these be paid before issuing a rates clearance certificate.

6.2.5 This case said that a municipality may not charge a whole year's rates to a consumer on the first day of the financial year, and then (if the consumer wants to transfer during that year) require payment of the balance of the year's rates, before issuing a rates clearance certificate.

6.2.6 The court said that most consumers elect to be billed rates on a monthly basis, and that a municipality can only require a consumer to pay rates up until the date of transfer. This does not mean that the municipality cannot call for forward projections for rates charges. A municipality must simply, after transfer, refund any amounts already paid by the consumer for rates (that were paid by that consumer as part of the forward projections but which relate to a period after transfer, because the consumer is not liable for these amounts).

8. We trust that this will help to clarify the situation, and we would hope that some sort of rectification would be printed, in order to guide the public and attorneys in general as to the true legal effect of this important judgment.

The Chairperson of the JAA's Property Committee

Louis Kruger