

## PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

### **SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #105**

#### **1. Legal Quotes**

"'Crazy' is a term of art; 'Insane' is a term of law. Remember that, and you will save yourself a lot of trouble." [Hunter S. Thompson]

"We all know here that the law is the most powerful of schools for the imagination. No poet ever interpreted nature as freely as a lawyer interprets the truth." [Jean Giraudoux]

"The law condemns the best of us; but grace saves the worst of us." [Joseph Prince]

#### **2. Olympic shorts**

Here are the top eight comments by sports commentators during the Olympics that they would like to take back:

1. Weightlifting commentator: "This is Gregoriava from Bulgaria. I saw her snatch this morning during her warm up and it was amazing."
2. Dressage commentator: "This is really a lovely horse and I speak from personal experience since I once mounted her mother."
3. Paul Hamm, Gymnast: "I owe a lot to my parents, especially my mother and father."
4. Boxing Analyst: "Sure there have been injuries, and even some deaths in boxing, but none of them really that serious."
5. Softball announcer: "If history repeats itself, I should think we can expect the same thing again."
6. Basketball analyst: "He dribbles a lot and the opposition doesn't like it. In fact you can see it all over their faces."
7. At the rowing medal ceremony: "Ah, isn't that nice, the wife of the IOC president is hugging the cox of the British crew."
8. Soccer commentator: "Julian Dicks is everywhere. It's like they've got eleven Dicks on the field."

#### **3. Inspiring quotes**

"Nothing great in the world has ever been accomplished without passion." [Georg Wilhelm Friedrich Hegel]

"Anything you truly want must be worth fighting for." [unknown]

"Enjoy the little things, for one day you may look back and realize they were the big things." [Robert Brault]

#### **4. Payments made in full and final settlement**

Is a payment marked "in full and final settlement," which payment is banked by the creditor actually the end of the matter?

This question was considered by our courts in *Be Bop A Lula Manufacturing & Printing v Kingtex Marketing* 2008 3 SA 327 (SCA) and *Hubbard v Mostert* 2010 (2) SA 391.

The courts determined that the answer to the question depended on **whether the debtor's payment to the creditor constitutes an "offer of compromise" (*animus contrahendi*) or a "payment towards an admitted liability" (*animus solvendi*).**

**If the payment constitutes an offer of compromise, which offer is accepted by the creditor, then the creditor cannot make any further claim against the debtor.**

Where the payment made is merely a payment towards the debtor's admitted liability, the creditor can retain and deposit the monies received and thereafter sue the debtor for the balance of his claim. The fact that the debtor marked his payment "in full and final settlement" makes no difference in this instance.

If it is **uncertain** that an offer of compromise exists, **the *contra proferentem* rule** will apply. In terms of this rule the interpretation unfavourable to the debtor will prevail, as he had the power to make his intention clear when he made the payment.

**Where the creditor deposits the debtor's cheque marked "full and final", the general interpretation of our judiciary is that the debtor's offer of compromise has been accepted by the creditor, but circumstances may exist justifying a deviation from the general interpretation.**

An offer of compromise must be "clear and unambiguous." Johan Roodt of Roodt Inc in Johannesburg, in a recent article suggested that payment of a cheque in compromise of a debt be accompanied by the following words: "*The attached cheque is tendered, without admission of liability and as an offer of compromise. This cheque is moreover tendered on the basis that, if not accepted on these terms, it must be immediately returned.*"

In this instance, the creditor must either accept the cheque as a compromise of the original debt (in which event, no further amount can be claimed) or return the cheque and pursue the claim for full payment of the original amount.

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