

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

World Cup soccer shorts

Overheard after a great 1 - 0 victory for Germany over Argentina in the final:

"We're going to celebrate for at least five weeks now. At some point we'll stop celebrating

but we'll always keep waking up with a smile." [German goalkeeper, Manuel Neuer]

"The pain will last forever." [Javier Mascherano, Argentinian midfielder]

The other highlight of the tournament was the 7 - 1 victory by Germany over the hosts, Brazil, in the semi-finals (see picture above).



SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #7

1. Legal Quotes

"After the chaos and carnage of September 11th, it is not enough to serve our enemies with legal papers." [George W. Bush]

"It is not unprofessional to give free legal advice, but advertising the fact that the first visit will be free is a bit like a fox telling chickens that it will not bite them until they cross the threshold of the hen house." [Warren E. Burger]

2. Quote of the Day

"The danger to South Africa is not Jacob Zuma, but a citizenry capable of entrusting a man like him with the Presidency. It will be far easier to limit and undo the follies of a Zuma presidency than to restore the necessary common sense and good judgment to a depraved electorate, willing to have such a man for their president. The problem is much deeper and far more serious than Mr. Zuma, who is a mere symptom of what ails South Africa. Blaming the Prince of the Fools should not blind anyone to the vast confederacy of fools that made him their prince. The Republic can survive a Jacob Zuma who is, after all, merely a fool. It is less likely to survive a multitude of fools such as those who made him their President." [Ken Peters: Professor of Economics in the Czech Republic]

3. Overheard in court

1. Attorney: "And how did you happen to go to Dr Oosthuizen?"
Witness: "Well, a girl down the road had several of her children by Dr Oosthuizen and she said he was really good."
2. Attorney: "Officer, when you stopped the Defendant, were your red and blue lights flashing?"
Witness: "Yes, sir."
Attorney: "And did the Defendant say anything when she got out of the car?"
Witness: "Yes, sir."

Attorney: "What did she say?"

Witness: "What disco am I at?"

4. Sobering thought

Pope Francis stated that an estimated 2% of priests in the Catholic Church are paedophiles. The pope went on to label this figure as a "leprosy" which must be eradicated.

5. Pets in a sectional title scheme

The rule against pets in the sectional title complex is a general one as contained in the annexures to the Sectional Titles Act 95/1986 ("the Act"). Whilst it is a blanket prohibition, it ordinarily provides the trustees with a discretion to allow pets ("with express written permission of the trustees").

The South African case law on the subject is governed by the case of *Body Corporate of Laguna Ridge Scheme v Dorse 1999 (2) SA 512 (D)*.

In this case, Dorse's sought permission from the trustees of the body corporate to keep her dog in her flat. The body corporate denied her request. When she refused to remove the dog, the body corporate applied to court for an order forcing her to do so.

In dismissing the body corporate's application with costs, the court found that:

- The trustees were vested with a discretion to either grant or refuse permission for an owner to keep a pet;
- Each request to keep an animal had to be considered on its own merits based on the relevant facts and circumstances;
- The restriction against pets was imposed to prevent causing nuisance to other residents in the scheme.

In this case the trustees failed to consider the facts (that the dog did not bark, and as it was never allowed onto the common property by Dorse, did not cause a nuisance to other residents), and as such they did not properly apply their minds and their decision to refuse Dorse permission was unreasonable.

6. Deregistration of a Close Corporation: Personal Liability of Members?

The Companies Act of 2008 ("the Act"), which came into effect on 1 April 2008, replaced both the Corporate Laws Amendment Act of 2006 and the Companies Act of 1973. In terms of the Act, no new Close Corporations ("CC's") may be registered, but CC's already registered with CIPRO (now CIPC- the Companies and Intellectual Property Commission) will continue to exist until they are deregistered, liquidated or converted into private companies in terms of the Act.

According to PM Meskin, B Galgut, and JA Junst Henochsberg on the on the Close Corporations Act (Durban: LexisNexis 1997) vol 3 issue 20 Com 550: '[I]t is submitted that the effect of deregistration of a corporation is that its existence as a legal person ceases ... and, '[i]f a [CC] is deregistered while having outstanding liabilities, the persons who are members of such corporation at the time of deregistration shall be jointly and severally liable for such liabilities' (s 26(5) of the Close Corporations Act 69 of 1984).

Deregistration of a CC can easily occur as a result of poor administration, most commonly where a CC fails to lodge its annual return timeously. In this event, the Registrar can serve notice on the CC by way of registered post to its postal address calling on it to show cause why it should not be deregistered. In the absence of a response, deregistration will follow. This can happen without the CC or its members being aware of same, should the CC in the interim have changed its address.

A deregistered CC may be re-registered on application to the Registrar, but such re-registration does not extinguish the personal liability of its members at the time of deregistration.

Deregistration is completely different from liquidation. Liquidation is where a creditor of the CC applies for it to be wound up by the Court as it is unable to pay its debts. The assets of the CC will then be utilised by the liquidator to pay these debts.

Further to this, if it can be shown that the member/s permitted the CC to trade whilst it was already insolvent, or the CC made payments to its members whilst already insolvent, the members shall be held personally liable for the CC's debts or the amounts paid out to them by the CC.

How has this person liability of the members changed as a result of the promulgation of the new Companies Act?

Where the members of a CC deregister a CC having outstanding debts, **they are no longer automatically personally liable for the debts**. Our company law, however, contains extremely onerous provisions relating to the behaviour and liability of directors of companies and members of CC's. In terms of the Act, members/directors remain personally liable, jointly and severally with the CC or company, for any irregularities that may have occurred when they were still acting. This is very similar to section 424 of the old Companies Act of 1973 with regards to "reckless" trading, which is still applied by the courts today.

If a court finds that the members of a CC or directors of a company are guilty of "reckless" trading, the court can "pierce the corporate veil" and hold the members/directors personally liable for the debts of the CC or company.

In summary, all members of CC's and directors of companies must act in a professional and responsible manner to avoid being held personally liable for their actions.

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