

“Make crime pay. Become a Lawyer” - Will Rogers

LANDOWNERS’ RIGHTS TO BOUNDARY PROTECTION

All land and property owners are entitled to fully use and enjoy the entire extent of their property. However, in rural and urban settings it’s more often than not difficult to determine where your property ends and your neighbour’s begins.

The boundaries between any two properties mark where a landowner’s rights to that property end and the neighbours’ begin.

In the event of uncertainty whether a boundary wall, fence or hedge is entirely on one of two adjoining properties, it is presumed to be half on one property and half on the other. Each part is then separately owned by the owner of the property on which it stands, but there are “reciprocal servitudes of support”. This means that neither owner may, without the consent of the other remove, raise or lower the boundary wall or fence and tamper with it in any way except where there is an emergency.

As a property owner dealing with an emergency situation, you are entitled to re-erect a boundary wall destroyed by the forces of nature, such as a fire or flood; however the other owner would have to contribute half the cost - if he or she will derive any benefit from it. This duty of support also has the effect that both you and your neighbour are obliged to contribute to the maintenance and repair of the wall. Where your neighbour’s taste is slightly more extravagant than your own however, this is limited to some extent so that you are under no obligation to make unreasonably expensive repairs to a wall that was simple to begin with.

The Fencing Act of 1963 regulates the duties of landowners with regard to boundary fences in agricultural areas. The Act divides the country into proclaimed areas in which contributions to the cost of boundary fences are either obligatory or non-obligatory.

If you are a farmer whose land falls under an obligatory area and you want to build a boundary fence, you have the right to demand a contribution towards the costs from all the landowners whose properties border your farm. Your neighbours may in turn object to the proposal you give them and have one month in which to lodge such objection. Should there be no objections, you may go ahead with building the fence and claim a contribution from all those neighbouring farmers you gave notice to.

Law & Laughter

(Attorney to Doctor in cross examination)

ATTORNEY: Doctor, how many of your autopsies have you performed on dead people?

WITNESS: All of them. The live ones put up too much of a fight.

THE IMPORTANCE OF DUE DILIGENCE RELATING TO INSOLVENCY

A proper due diligence investigation into all relevant issues is of utmost importance when it comes to the sale and purchase of a business.

In this regard, a judgment handed down by the Supreme Court of Appeal on 30 September 2011 for example, has highlighted the crucial effects of non-compliance with the requirements of Section 34 of the Insolvency Act, Act 24 of 1936 (as amended).

In this instance, an agreement of sale was concluded whereby one company sold to another the immovable property on which it conducted a hotel and resort along with the said business enterprise. Without following the proper procedures as set out in the abovementioned section of the Act, the sale went ahead and the purchaser was granted two mortgage bonds by a Bank.

The Seller subsequently went into liquidation and its liquidators challenged the validity of the transfer of the subject matter and the registration of the mortgage bonds against themselves, arguing that it was void as against them on the grounds that:

- (1) the company went into liquidation within 6[six] months from the transaction;
- (2) the transfer was not in the ordinary course of business;
- (3) the transfer of the business was not for the purpose of securing the payment by the company of its debts;
and
- (4) the required notice was not published as set out in Section 34 of the Act.

The court accepted the liquidator's arguments, finding that the Bank should have insisted on publication of a notice in terms of Section 34 and this being expressly excluded in the agreement of sale, must have been done with the Bank's approval or acquiescence.

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