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Historical municipal debt: a thing of the past for new property owners

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SECTION 118(3) of the Local Government: Municipal Systems Act No. 32 of 2000 (the Act) provides:

“An amount due for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties is a charge on the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.”

The above provision provides that historical debt which remains unpaid, is not considered extinguished by the transfer of a property from one owner to another.

The courts have finally come to the rescue! The North Gauteng High Court handed down a judgement on November 7, 2016 in the case of *Chantelle Jordaan and Others v The City of Tshwane Metropolitan Municipality and Others*. The ruling in this case concerned five independent court applications that were heard together due to considerable overlap in the relief sought. The City of Tshwane and Ekurhuleni municipalities suspended or refused the supply of basic municipal services to the applicants' properties based on outstanding historical municipal debts incurred by previous owners of the properties.

In its ruling, the court declared the provisions of section 118(3) invalid to the extent that the security provision of “a charge upon the property” survives transfer of ownership into the name of a new owner or subsequent owner who is not a debtor of the municipality. The ruling was referred to the Constitutional Court for confirmation and on August 29, 2017, the Constitutional Court confirmed that municipalities cannot hold new property owners liable for a previous owner's historical municipal debt.

The Constitutional Court held that by the municipalities relying on the security provisions of section 118(3) of the Act, they would be able to obtain a court order to sell a property in execution and apply the proceeds thereof to pay the outstanding historical debt. This results in a loss of ownership for new owners and consequently the loss of the ability to use and enjoy the property. The court stated further that this security provision severely limits a new owner's property rights, as it constitutes a deprivation of property in terms of section 25(1) of the Constitution of the Republic of South Africa. The court further held that the provision was capable of being interpreted so that the charge does not survive transfer to the new owner, and therefore did not find it necessary to declare the section invalid.

This victory will result in innocent purchasers no longer being forced to pay historical debt to receive basic municipal services.

For more information on the above, contact Leza Kotze, Partner in the Property & Conveyancing department, on 011 290 2540 or e-mail lkotze@wylie.co.za