



Member of the phatshoane henney group of associated firms.

the phatshoane henney group is an association of independent firms not practising in partnership and with separate liability.

phatshoanehenney
GROUP OF ASSOCIATED FIRMS

GEORGE:

TEL: 044 874 1140
FAX: 044 873 4848

CAPE TOWN:

TEL: 021 421 6999
FAX: 021 418 2747

WEBSITE: www.millers.co.za

EDITOR

It is interesting how the town of George runs empty during the winter holidays. I hope everyone is back in full swing and for those of you who had some holidays, I hope you are refreshed and ready for new challenges. At Millers George the first activity after the winter holidays is normally the Vodacom Outeniqua Cheese Festival. For those of you who did not visit us in the Millers Kuier tent, don't worry, there is always next year!

The Editor, Salomé van Wyk, Conveyancing

LANDMARK RUGBY RULING

For the first time in the history of rugby in South Africa a court found that a rugby player who was injured in a game may in certain circumstances be entitled to claim his damages from the rugby player who caused the injury.

In a landmark Western Cape High Court judgment a rugby player, Ryand Hatting, won his case against an opposing rugby player who injured him so severely during a scrum that left him with a broken neck. It was alleged that the defendant, Alex Roux, executed a maneuver called the "jack knife" which meant that the defendant intentionally shifted his head into the wrong channel of the scrum and caused the injury sustained.

In order for Hatting to succeed he had to prove that the defendant's conduct was wrongful and that he acted intentionally or negligently. Any player participating in a rugby game agrees to the risks associated with the sport. However, a player should not, by virtue of the game be regarded as having consented to the risk of being injured **as a result of serious aggressions, which are not normally associated with rugby.** Wrongfulness is often excluded through consent of harm but in some cases consent to injury or consent to the risk of such injury is regarded as being contra bonos mores (against the good morals of society). In considering the approach the courts in determining liability, both unlawfulness and fault in respect of a sports injury essentially involves the question whether the defendant acted reasonably or unreasonably. (Remember Gary Pagel stomping on the Frenchmen's head or Mike Tyson biting Evander Holyfield's ear?)

The court ruled that the action of the defendant was "unlawful and extremely dangerous" and that the placing of the head in the wrong channel of the scrum was a planned move deliberately executed. The Court found that the Defendant's conduct was wrongful and that Hatting was entitled to damages as well as costs. Written by Uys Fourie, Commercial Dept. George

TERSYDESTELLING VAN VONNIS

In die kredietwêreld is 'n verstekvonniss sodat so 'n persoon moeilik verdere krediet kan kry as daar 'n ou vonnis teen sy naam is. Die vonnis is waarskynlik geneem omdat die persoon se finansiële posisie so versleg het dat hy nie die eisbedrag kon betaal nie. Sedertdien het die vonnisskuldenaar se finansiële posisie sodanig verbeter dat hy die volle eisbedrag en kostes kon aflos, maar weens die vonnis teen sy naam wil geen kredietverskaffer weer krediet aan hom verskaf nie. Kan hy nou daardie vonnis tersyde stel?

Die Landdroshofreëls maak voorsiening vir 'n eenvoudige prosedure ingevolge waarvan sodanige vonnis tersyde gestel kan word. In 'n onlangse saak is aansoek gebring by die Hoë hof om 'n Hoë Hof verstekvonniss tersyde te stel. Die vonnis is verleen nadat 'n bank weens wanbetaling van verbandpaaiemente dagvaarding uitgereik het. Omdat die volle eisbedrag en kostes intussen vereffen is, het die Bank toestemming verleen tot die tersydestelling van die vonnis.

Die reëls van die Hoë Hof bepaal dat 'n vonnis net tersydegestel kan word indien die vonnisskuldenaar goeie redes aanvoer. Die redes moet insluit dat hy 'n bona fide verweer teen die eis gehad het en hoekom hy nie die dagvaarding verdedig het nie. By die scenario hierbo geskets het die Vonnisskuldenaar geen verweer nie en is dit eintlik die rede hoekom hy nie die saak verdedig het nie. So 'n Vonnisskuldenaar kan dus nie aan die reëls voldoen nie en sal nie tersydestelling van vonnis kry nie.

Die Hof het in terme van die gemene reg ook die bevoegdheid om sy eie bevele tersyde te stel, maar die onus rus op die Applikant om die Hof te oortuig dat daar 'n redelike verduideliking is waarom toegelaat is dat die vonnis by verstek verkry is. Ook op hierdie gronde kan ons verleë Vonnisskuldenaar van hierbo nie die toets slaag nie. Tensy die Hoë Hof reëls verander word of ons gemenereg deur die Konstitusionele Hof uitgebrei word, is daar dus niks wat 'n Vonnisskuldenaar kan doen om 'n Hoë Hof vonnis teen sy naam te verwyder nie.

Geskryf deur Arno Crous, Litigasie George

UNMARRIED FATHERS! YOU HAVE RIGHTS AND RESPONSIBILITIES

In the past, save for the duty to pay maintenance the natural father of a child born out of wedlock had no legal relationship with his child and was in essence regarded as an outsider when it came to making decisions that affected the child's well-being and upbringing. This has changed significantly after 1 July 2007 when part of the Children's Act (the act) came into effect.

In terms of the act, the natural father of an extra-marital child will acquire full parental rights and responsibilities in respect of his child if – 1. He is living with the mother of the child in a permanent life partnership at time of the child's birth; OR 2. He consents to be identified or by order of court be identified as the child's father; OR 3. He pays damages in terms of customary law; OR 4. He contributes or has attempted in good faith to contribute to the child's upbringing and expenses in connection with the maintenance of the child for a reasonable period of time; OR 5. He marries the mother.

Parental rights and responsibilities means that both parents must, at all times give "due consideration" to the views of the other co-holder(s). Due consideration must be given before a decision is made which will significantly change or effect the other co-holder's exercise of his/her right and responsibilities towards the child. These decisions include, but are not limited to decisions regarding the care of the child, education, medical care and departure or removal from the Republic.

Parents, always keep in mind that the best interest of your child should be the paramount factor when making decisions which are likely to affect your child's well-being. Written by Lizelle Acker, Litigation Cape Town