

Knowledge speaks, but wisdom listens.

## **ENTERING INTO A CONTRACT WITHOUT THE NECESSARY AUTHORITY**

It is common practise, mostly in the business world, for a contract to be entered into by an agent, acting on behalf of someone else, be it a juristic entity or a private person. This well-known principle is called the Law of Agency.

Agency occurs whenever a company concludes a contract. This is because a company is a juristic person, which has no corporeal existence, and can only act through individual mediators, called the agent.

An agent is not a party to the contract. When an agent enters into a contract, on behalf of another person or entity, known as the principal, the agent merely acts in a representative capacity.

Furthermore, an agent who enters into a contract on behalf of another person or entity does not give any promise that his principal is capable and/or willing to execute his obligations under the contract. However, the agent is regarded as having implicitly promised the other party that he had the necessary authority to enter into the contract and that the principal will be legally bound to the contract.

If it turns out that the agent did not have the necessary authority to represent the principal, then the agent can be liable to pay damages. In this regard the law does not necessitate that the other party to the contract be put in a better financial position than he would have been in if the agent did have authority. He can only demand to be put into the same financial position as he would have been in if the agent had the required authority.

### *Law & Laughter*

Q: Why won't sharks attack lawyers?

A: Professional courtesy.

# FAILURE TO PAY PROPERTY RATES AND TAXES TO MUNICIPALITIES

There are various Rates Payers Associations throughout South Africa where property owners elect to pay their monthly rates and taxes to these associations, as opposed to the relevant municipalities. The refusal by tax payers to pay their municipalities relates mainly to a failure by municipalities to deliver the required services.

The decision of the Supreme Court of Appeal in *Rademan v Moqhaka Municipality* on 1 December 2011 should be considered. Rademan paid all her services accounts (water, electricity, sewerage and refuse removal), but failed to pay her property rates and taxes to the Municipality. She was a member of a local Rates Payers Association and made monthly payment of the rates and taxes to the said association.

The Municipality discontinued her electrical services due to her failure to pay the relevant rates and taxes. No court order was obtained by the Municipality.

The decision of the court was in favour of the municipality due to the fact that, in terms of relevant legislation, the Municipality is authorised to:

- consolidate accounts;
- discontinue any municipal service (despite the fact that the particular account is paid up) due to any one of the accounts being in arrears; and
- discontinue any service(s) without the necessity to obtain a court order.

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