



Susan B Cohen
Attorneys, Notaries and Conveyancers



WITH COMPLIMENTS

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Susan Barbara Cohen *BA LLB LLM (Property Law)*
Karlien van Graan *B COM LLB*

79 - 11th Street
Parkmore, SANDTON
P O Box 781622
2146

Tel: 011 883 4601
Fax: 011 883 2684
Email : susan@susancohen.co.za
Website: <http://susancohen.co.za>

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June 2023

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Property Buyers: The Danger of Not Doing Your Financial Homework

“Look before you leap” (wise old proverb)

Don't let the excitement of buying a property blind you to the necessity of



doing your homework **before** you agree to anything. Look before you leap!



It's not just a matter of buying the right property at the right price – make sure that your finances (and particularly your cash flow situation) won't stop you from fulfilling the financial obligations your signature on the sale agreement binds you to.

Otherwise, you could find yourself in the same unenviable position as the property buyer recently ordered by the High Court to pay substantial damages after she couldn't pay the required deposits.

Three sales, and the seller claims damages

- A trust sold a property to a buyer for R750,000.
- The buyer failed to pay the two required deposits totalling R280,000, the trust cancelled the sale and put the property up for resale.
- It resold the property for R500,000 and sued the buyer for its R250,000 loss on the sale, plus the estate agent's commission of R22,500 it paid for the new sale.
- The buyer fought the claim on a variety of grounds, none of which found favour with the Court. It ordered the buyer to pay, in addition to legal costs on an attorney and client scale, a total in damages of R235,875. That's a figure seemingly arrived at by the Court by taking into account an amount of R40,000 already paid in by the buyer, which presumably leaves the buyer down a total of just under R280k plus two sets of legal costs.

Important lessons for buyers and sellers

1. Buyers: Before you sign...

Of course, the big lesson here for buyers is to make sure they can comply with the terms of the sale agreement they sign, with particular emphasis on their ability to make payments as and when due.

2. And sellers: Before you sign...

Sellers on the other hand will want to avoid all the risk, delay and cost that the trust in this case was put to by investigating upfront the financial position of all potential buyers before accepting any offer. Make sure also that the terms of your sale agreement protect you adequately in the event of any default by the buyer.

3. Seller: Mitigate your damages

Our law requires that if you want to sue for losses you incur as a result of someone else's breach of contract (or wrongdoing), you must first take reasonable steps to minimise your losses.

As the Court put it: "... the mitigating rule is a rule where a breach of contract has occurred. **The innocent party cannot merely sit back and allow their losses to accumulate; the party must take reasonable positive steps to prevent the occurrence or accumulation of losses.** The rule does not require the innocent party to do anything more than a reasonable person could do under the same circumstances. Reasonable expenses incurred in carrying out the mitigation steps may be claimed as additional damage suffered. The onus of proving what steps could reasonably have been taken, or that the expenses incurred were unreasonable, rests on the party in breach." (Emphasis added)

As the seller, therefore, be sure to actively seek alternative buyers, use professionals to assist only as reasonably necessary, and accept only a reasonable resale price. In this case the evidence had established that the trust had acted reasonably both in reselling the property at the price it did, and in using the services of an estate agent to do so.

As always, agree to nothing without professional advice!

Understanding Your Legal Obligations as an Employer of Domestic Workers

South Africans employ an estimated 900,000 domestic workers. They assist us with a range of tasks that keep our homes running smoothly - from cleaning and gardening to cooking and childcare, their contributions are invaluable. However, as an employer, it is vital that you recognise and fulfill your legal obligations in order to establish a fair and lawful working relationship.



Compliance with these legal requirements has become increasingly important as law enforcement authorities become more and more vigilant in ensuring adherence, so without further ado let's delve into the details of what the law expects from you.

Firstly, what do we mean by "domestic worker"?

In the context of this article, domestic workers refer to individuals who work in your home, including gardeners, cleaners, cooks, nannies, caregivers (to children, the aged, the sick, the frail or the disabled), au pairs, chauffeurs and the like. Excluded are farm workers and those working less than 24 hours a month for you.

5 key requirements

- 1. Employment Contract:** It is essential to sign a written employment contract with your domestic worker. This contract should specify important details, including full name and ID number, remuneration, working hours, overtime, leave (annual, sick, maternity, compassionate, family responsibility), and job description (list roles and responsibilities). Having a clearly defined contract protects both of you and ensures a fair working relationship to your mutual benefit.
- 2. Minimum Wage:** The current National Minimum Wage (NMW) for each "ordinary hour worked" is R25-42. Assuming a work month of 21 days x 8 hours per day, R25-42 per hour equates to R4,270-56 per month. The [Living Wage](#) calculator will help you check whether or not you are actually paying your domestic worker enough to cover a household's "minimal need" (adjust the "Assumptions" in the calculator to ensure that the figures used are up to date).
- 3. Pay Slips:** Every month, you must provide your domestic worker with a written pay slip. The pay slip should include your and your employee's details, the ordinary and overtime hours worked during the payment period, the applicable rate of remuneration, and any deductions made by you. This document ensures transparency and accountability in the payment process.
- 4. UIF Registration:** You must register your domestic worker for UIF (Unemployment Insurance Fund) and make monthly contributions. This will provide short-term relief to your employee during periods of unemployment, maternity leave, or illness. Both of you must contribute 1% of wages each month (i.e., 2% in total). Failure to comply is not only unfair to your employee, but it also exposes you to penalties and other legal consequences.
- 5. COIDA Registration:** Under COIDA (the Compensation for Occupational Injuries and Diseases Act), you must register your domestic worker with the Compensation Commissioner to ensure that your worker (or dependants) is eligible for compensation in case of injuries, disabilities, or illnesses sustained

while on duty.

It is crucial to understand that non-compliance with these obligations can lead to severe consequences for you, with the risk of legal disputes, referrals to the CCMA (Commission for Conciliation, Mediation and Arbitration), Labour Court fights, and so on.

Familiarise yourself with your obligations, seek professional guidance if needed (dismissals and retrenchments are particular minefields here!) and prioritise the well-being of your domestic workers to maintain a positive and lawful working relationship.

Maintenance Claims and Life Partners

More and more couples are opting to live together as permanent life partners rather than enter into a formal marriage. The risk for such couples is that whilst our law is steadily (if slowly and cautiously) extending many of the protections of formal marriage to unmarried life partners, that process is not by any means complete yet.



A recent High Court decision, refusing a life partner's claim for interim maintenance after her relationship broke down, illustrates.

A “permanent romantic relationship” and a failed maintenance claim

- An opposite-sex couple had lived together in a “romantic” relationship for 8 or 9 years, having three young children and splitting when one partner left the common home.
- That partner then sued her ex-partner for (amongst other things) personal maintenance for herself for ten years or until her “death or remarriage”. She based that claim on her request for a declaration that she and her partner had lived as “partners in a permanent opposite-sex life-partnership in which the partners had undertaken reciprocal duties of support”. That main action is being defended by the ex-partner and is yet to come to trial.
- In the meantime, having successfully obtained interim maintenance orders for her children, she then asked the High Court to likewise order interim maintenance for herself as well. She asked for R56,000 per month plus payment of medical, motor and other expenses, together with a R1m initial contribution to costs.
- The Court dismissed this interim application, and whilst its analysis of our current law on the subject, with all the constitutional law ramifications, will be of great use and interest to lawyers, the practical result is what life partners should take note of.

What you must prove to get a maintenance order

Holding that “a ‘*permanent romantic relationship*’ is not synonymous with a permanent life partnership wherein the parties undertook reciprocal duties of support to one another within the context of a familial setting”, the Court found that the applicant “**must first prove facts establishing that the duty of support existed, and that it existed in a familial setting.**” (Emphasis added)

She could prove all that, said the Court, in the pending court case. For the moment she must live on her own means, without interim maintenance, until her main action comes to trial.

Practically, if you find yourself in a similar situation you have four choices if you want to claim personal maintenance for yourself (note that maintenance for children is an entirely separate issue, not subject to these limitations) –

1. As regards interim maintenance, you can hope that a court will assist you despite the outcome in this case, the Court here stating that “In reaching these conclusions we make it clear that they pertain only to the particular case presented to us by the applicant. Our conclusions are most certainly not intended to be of some broader implication or consequence. It thus of course remains open to anyone to approach court for declaratory relief of the nature which the applicant has sought in this matter and it is hoped that, should that occur, this judgment may provide assistance as to the manner in which such an approach should be made.”; or
2. You can try to prove at the full trial that your relationship was more than a “permanent romantic relationship” and was in fact a permanent life partnership with an undertaking of mutual support; or
3. You can hope for a change in the law creating an automatic duty of support between you. New legislation on the matter has been pending for many years but appears to be currently stalled. In addition, if this particular case proceeds to trial it may be that something further will emerge from that; or
4. **Clearly the safest solution** – you can put the matter beyond all doubt by signing a full “cohabitation agreement” as soon as your relationship becomes a permanent one.

What should be in your cohabitation agreement?

Although everyone’s own situation and needs will be unique, make sure that your cohabitation agreement (also sometimes called a “domestic partnership agreement”) sets out clearly your respective legal rights and financial arrangements both during your relationship and in the event of separation.

Cover questions such as -

- How will your various assets be divided?
- Do you undertake a reciprocal duty of support and on separation will each or both of you be entitled to personal maintenance and other financial support?
- What provisions are made for your children’s support and maintenance?
- Will there be any financial adjustment between you? What happens for example if only one of you works? Or if you paid for an extension to your life partner’s house or have been paying the bond? Or if one of you brought more into the relationship than the other?
- Who will take over ongoing liabilities and contracts such as leases, bonds, medical and life policies, monthly accounts and so on?
- What else that will need to be regulated in your particular circumstances?

Also make wills!

Supplement your cohabitation agreement with a valid will (“Last Will and Testament”) or perhaps a joint will. That’s the document that will count when you die and it’s the only safe way of ensuring that your last wishes are carried out, and that the loved ones you leave behind are properly looked after once you’re gone. Your cohabitation agreement

and your wills are separate and essential documents, so have your lawyer draw them all for you at the same time.

Ponzi Schemes: Another MTI Judgment, Risks and Red Flags

“MTI’s business clearly amounted to an unlawful ponzi-scheme, i.e. a fraudulent investing scam promising high rates of return to investors and generating returns for earlier investors with investments taken from later investors.” (Extract from judgment below)



In times of economic turmoil, the promise of "easy money" can be incredibly enticing. Unfortunately, this allure often leads people into the clutches of fraudsters who operate ponzi and pyramid schemes.

But why are these scams so successful at fooling even the most astute investors? The answer lies in several factors. First, the promise of quick and substantial profits taps into our desire for financial security and independence. Second, scammers often prey on our emotions and exploit our fear of missing out on lucrative opportunities. Third, they employ persuasive tactics, such as using testimonials and social proof, to gain our trust.

The latest High Court judgment in the MTI (Mirror Trading International) liquidation saga highlights yet again the dangers for investors who get sucked into these schemes.

“An illegal and unlawful scheme”

- MTI was founded in 2019, promising high returns to investors (members of “My MTI Club”), pooling bitcoin for trading “on the global cryptocurrency market”. In 2020, referral bonuses for introducing new members were implemented.
- This latest judgment is part of an extensive saga of litigation involving liquidators, investors/members, creditors and directors (who still steadfastly deny any wrongdoing). In this matter the liquidators applied to the High Court for a series of declarations aimed at facilitating their claims against investors and others.
- The liquidators succeeded in obtaining declarations that –
 - MTI’s business model is “an illegal and unlawful scheme”, and
 - “All agreements concluded between MTI and its investors in respect of the trading/management/investment of bitcoin for the purported benefit of the investors, are declared unlawful and *void ab initio* [void from the beginning]”.
- They failed in their attempts to have MTI declared “factually insolvent” (i.e., its liabilities exceeded its assets) from 2019, nor did they obtain declarations that payments made by MTI to investors/members, commission earners and others amounted to “dispositions” recoverable by the liquidators. Both would have made it easier for them to recover from anyone who ever received any form of payout from MTI, but that is unlikely to deter the liquidators from pursuing these

claims.

In any event both sides will presumably appeal this latest judgment, and for now at least it seems that investors/members, whether “winners” (those who got payouts exceeding their investments) or “losers” (presumably the vast majority of investors/members as is invariably the case with ponzi schemes), must remain concerned that not only will their claims turn out to be valueless, they may also have to pay back into the liquidation everything they were ever paid out if the declarations of illegality and voidness are confirmed on appeal

Even if their claims are eventually allowed and proved, they must wonder what if anything they'll be awarded in light of a R931m preferent claim proved by SARS.

The red flags to share with friends, family, colleagues and employees

The bottom line is that, when a ponzi or pyramid scheme inevitably collapses, investors risk losing everything.

To protect ourselves and others, it's essential to be aware of the warning signs. Keep in mind at all times that “if it looks too good to be true, it probably is” and be alert to key “red flags” such as guarantees of high returns with little or no risk, complex investing and compensation structures, and an emphasis on recruitment rather than product sales.

Sharing this information with friends, family, and colleagues is crucial in preventing more people from falling victim to these schemes. Employers, in particular, should educate their staff about the dangers and provide resources to help them avoid becoming victims.

Stay informed, be vigilant, and protect yourself, your employees and others from the siren call of "easy money."

Legal Speak Made Easy

“Amicus Curiae”

Literally meaning “Friend of the Court”, this is an impartial person or organisation allowed by a court to help it by providing information, expertise or insight (legal or factual) into issues before the court in a particular case.



These issues would normally be of a public interest nature, such as human rights or constitutional questions in which the court is likely to be assisted in determining the matter by being offered a broader view and more comprehensive information or insight than would usually be provided by the actual parties to the case.

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