

Prescription – Time Periods, Delay, and Interruption

Prescription applies to all legal claims and debts and means that after the lapsing of a certain period of time, the debt or claim will be extinguished. The amount of time afforded to a specific type of claim or debt before being extinguished is prescribed by the Prescription Act, 68 of 1969 as amended (“the Act”).

As a rule, the consequence of prescription is that the person who is indebted to another person will not be liable to pay the debt and is no longer under any obligation to pay same after the prescription period has lapsed.

Prescription begins to run as soon as the debt is due and when the debt is “due” will depend on when the identity of the debtor becomes known and when the facts from which the debt arises are known to the claimant.

A prescription period can be delayed under certain circumstances in terms of the Act, for example, where the creditor is a minor, declared mentally unfit or under curatorship, the debt is the object of dispute in arbitration, the debtor is outside South Africa or the executor of a deceased estate has not yet been appointed.

The running of the prescription period is interrupted by an acknowledgment of debt, or a summons served by the creditor on the debtor in order to claim payment of the debt due.

In the Supreme Court of Appeal (SCA) in *Investec Bank Limited v Erf 436 Elandspoort Pty Ltd and Others*, the SCA provided further clarification as to what constitutes a tacit acknowledgment of liability which will interrupt the running of prescription of a debt in terms of section 14 of the Act. The SCA pointed out various instances where the debtor had tacitly acknowledged its debt and thus interrupted prescription. These instances include:

1. Providing various proposals about how the individual or company would discharge its debt;
2. Making periodic payments;
3. Allocating sub-rentals which the debtor collected to discharge the debt;
4. Allowing the allocation of sub-rentals which the creditor bank collected to discharge the debt;
and
5. Querying the VAT component of its payments which ultimately constituted an acknowledgment as it did not dispute that the payments were due.

It is still legal for a creditor to demand payment or even sue for a prescribed debt, however the debtor will be able to raise the defence of prescription. It is therefore important that all debtors be aware of prescription, and it is important for creditors to be mindful to pursue claims timeously. If a debt is due by you or owed to you, it is advisable to consult with an attorney to determine the best way forward.