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TRADING IN PROPERTY? - THE SALE MUST BE ADVERTISED

Our law requires that when a trader sells any part of his business other than in the normal course, such trader must publish a notice of his intention to do so in order to protect creditors of the business. Serious consequences can result from the failure to do so. In the case of *Hyde Construction CC v K2013046547* the court confirmed this.

Blue Cloud, the respondent in the matter, purchased Erf 2941 and developed the property into a shopping centre which is situated in Plettenberg Bay. Blue Cloud contracted Hyde Construction, the applicant, to undertake alterations to the shopping centre. A dispute arose between the parties and litigation ensued on the building contract whereafter Blue Cloud then sold the property which formed the basis of the dispute. According to Hyde Construction, Blue Cloud sold the property without any proper notice thereof.

Section 34 of the Insolvency Act deals with the voidable sale of a business. It states that if a trader transfers, in terms of a contract, any business belonging to him, or the goodwill of such a business or any goods or property forming part thereof and such trader has not published a notice of such intended transfer in the Gazette, and in two issues of an Afrikaans and two issues of an English newspaper circulating in the district in which that business is carried on, within a period not less than 30 days and not more than 60 days before the date of such transfer, the said transfer shall be void as against his creditors for a period of six months after such transfer. The purpose of this clause is to protect creditors by preventing traders who are in financial difficulty from disposing of their business assets to third parties who are not liable for the debts of the business, without due advertisement to all the creditors of the business. The Application succeeded and the transfer of the Sectional Title Scheme from Blue Cloud to the K Company was declared void in terms of section 34 of the Insolvency Act.