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How Amendments in the Valuation of Property Affects Refuse Removal Charges

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A Brief Overview of the FIFE INVESTMENTS (PTY) LTD v CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY (2024) Judgment

INTRODUCTION

This article focuses on how the amendments in the Valuation of Property affects Refuse Removal Charges for residential properties in the jurisdiction of the City of Johannesburg.

On or about the **24th of April 2024**, the High Court in Johannesburg handed down a Judgment against the City of Johannesburg Metropolitan Municipality (the "City") in favour of Fife Avenue Investments (Pty) Ltd ("Fife"). The relevant dispute concerned the refuse removal charges billed by City to Fife, after the valuation of 268 ("Two Hundred and Sixty Eight") units owned by Fife were incorrectly inflated on the 2013 General Valuation Roll. The above-mentioned units are collectively referred to herein as "the Property".

A BRIEF BACKGROUND

Fife owned 268 units. During the 2013 general valuation period, which endured from **1 July 2013** until **30 June 2018**, Fife became aware that it was being charged for rates and refuse according to elevated and incorrect property valuations in respect of the abovementioned units and proceeded to dispute same with the City.

To explain the importance of the valuations of the Property with regard to the refuse charges, in the City's tariffs, refuse charges are determined by the value of your property. As such, if the incorrect value has been ascribed to your property, it is possible that the incorrect refuse tariff is also being applied to your property (depending in what valuations category your property falls within in terms of the tariffs).

Accordingly, HBGSchindlers Attorneys acting on behalf of Fife, lodged objections to the fifth supplementary Valuation Roll to the 2013 General Valuation Roll ("GVR"), relating to the incorrect valuation of unit numbers 15 to 268 of the Property with the City's Valuation Department.

Pursuant to the objections that were lodged, the City revalued the Property reducing the value thereof. The City informed Fife thereof by issuing objection outcomes with regard to same, indicating thereon that the municipal values of the Property had been accordingly reduced.

The representatives of Fife were satisfied with the reduction in the value of the Property. It should be noted that in terms of section 52 of the Local Government Municipal Property Rates Act 6 of 2004 ("the MPRA"), the value of a property will be automatically reviewed, if the value of the property increases or decreases by more than 10% (Ten Percent) from the original value ascribed on the valuation roll. The only way to circumvent the automatic review, is to lodge an appeal with the Valuations Appeal Board ("VAB") and have the value confirmed on appeal. This is due to the fact that the VAB is both the body that deals with any appeals lodged and with the section 52 reviews. As such, due to the fact that Fife did not lodge any appeals to the objection outcomes, the Property was marked for automatic review. The reviews confirmed that the Property had been overvalued on the 2013 GVR.

Upon receipt of the review outcomes in amending the valuation of the Property, the City's rates department attended to the majority of the adjustments on the Accounts relating to the amendment of the valuations for the period of **1 July 2013** until **30 June 2018**. However, the City, failed to affect the required adjustments to the refuse removal charges in respect of the Property. The City and Pikitup maintained that the refuse removal billing was correct at the time that they were billed, and that they were not empowered to rebill those amounts based on the reduced valuations of the Property.

Fife argued that there should be a retrospective reduction in terms of the rates that were paid and/or payable to the City in light of the reduction of the valuation of the Property. Fife argued same in terms of:

Section 55 of the Local Government Municipal Properties Rates Act, 6 of 2004[1] which states that "any adjustments or additions made to a valuation roll in terms of section 51(c), 52(3) and 69 take effect on the effective date of the valuation role", and that "if any adjustments in the valuation of a property affects the amount due for rates payable on that property, the municipal manager must calculate: 1) The amount actually paid on the property since the effective date; and 2) the amount payable in terms of the adjustment on the property since the effective date".

Furthermore, in terms of Section 9.5 of the Credit Control and Debt Collection Policy[2] , and Section 10 of the Credit Control and Debt Collection By-Laws[3], the City must ensure accurate monthly billing with the application and appropriate correct tariffs and service charges.

COURT'S FINDINGS

A retrospective change in the valuation roll cannot, according to the City, be applied retrospectively to refuse removal charges. The Property Rates Act is not applicable to refuse removal charges and there is no statue that authorises or compels the City to repay/rebill refuse removal charges after a retrospective change to the City's valuation roll.

Absent legislation authorising the City to make repayment in respect of refuse removal charges, the City contented that it is not authorised to repay/rebill those amounts .

The definition for "rate" in section 1 of the Local Government: Property Rates Act of Act 6 of 2004[4] would be applicable in that, inter alia:

"rate" means a municipal rate on property envisaged in section 229(1)(a) of the Constitution;

Further to the above, the court quoted s229(1)(a) of the Constitution of the Republic of South Africa, 1996[5], which states:

1. Subject to subsections (2), (3) and (4), a municipality may impose-
2. Rates on property and surcharges on fees for services provided by or on behalf of the municipality."

Both parties accepted that, at the time the refuse charges were levied by the City, the charges were correct. However, the valuation roll retrospectively reduced the value of several of the units in the Property. Therefore, through the retrospective reduction of the value of the units, the refuse removal charges, when calculated in relation to the reduced valuation of the Property, would be inflated and incorrect and as such stood to be amended.

The refuse removal charges became incorrect with effect from the effective date of the retrospectivity of the change in valuation (being 1 July 2013), thus, the City would become obliged to repay/rebill the inflated refuse removal amounts charged by the City to Fife.

JUDGMENT

The court held that the City was obliged to rebill the accounts in so far as it had billed Fife for the inflated charges incurred for refuse removal, due to the re-evaluation of the Property which, retrospectively, reduced the Property's value.

CONCLUSION

Refuse removal, along with Property rates, are charges that are calculated according to the value of a property. If the valuation of a property is reduced retrospectively, the City is obliged to reduce the charges intrinsic to the value of the Property (such as refuse removal and property rates). Therefore, such charges that were retrospectively over-billed for, should be recalculated by the City.

[1] *Local Government Municipal Properties Rates Act, 6 of 2004.*
[2] *Credit Control and Debt Collection Policy.*
[3] *Credit Control and Debt Collection By-Laws.*
[4] *Local Government: Property Rates Act of Act 6 of 2004.*
[5] *Constitution of the Republic of South Africa, 1996*

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