IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 5773/18

In the matter between:

CHANGING TIDES 17 (PROPRIATARY) LIMITED Applicant/Plaintiff

and

JUSTIN FABIAN TURNER Respondent/Defendant

Case No: 9707/18

In the matter between:

CHANGING TIDES 17 (PROPRIATARY) LIMITED N.O. Applicant/Plaintiff

and

CANDICE WILMA JONES First Respondent/Defendant

CANDICE WILMA JONES N.O. Second Respondent/Defendant

RUDOLF DAVID MACKAY Third Respondent/Defendant

Date heard: 14 September 2018

REASONS FOR THE ORDER: 26 SEPTEMBER 2018

SALDANHA J:

[1] The above two matters served before this court in the unopposed third division on the 14 September 2018, as applications for default judgment.

[2] In respect of each of the matters I made the following orders:

"Case No: 5773/18

IT IS ORDERED THAT:

1. *This default judgment application is postponed sine die to allow the Plaintiff to issue an application to have the bonded property declared specially executable ("the execution application") and set down for hearing simultaneously with this application;*
2. *The Plaintiff is directed, either by way of a schedule to the particulars of claim or by way of further explanation contained in the execution application, to provide a further and better explanation of the interest rates applicable and the acronyms contained in paragraph 3.1.6 of the particulars of claim as well as the connection between the various agreements pleaded in the particulars of claim.*
3. *The costs occasioned by today's postponement stand over for later determination."*

"Case No: 9707/18

IT IS ORDERED THAT:

1. *This default judgment application is postponed sine die to allow the Plaintiff to issue an application to have the bonded property declared specially executable ("the execution application) and set down for hearing simultaneously with this application;*
2. *The Plaintiff is directed, either by way of a schedule to the particulars of claim or by way of further explanation contained in the execution application, to provide a further and better explanation of the interest rates applicable and the acronyms contained in paragraph 1.4.6 of the particulars of claim as well as the connection between the various agreements pleaded in the particulars of claim.*
3. *The costs occasion by today's postponement stand over for later determination."*

These are the reasons for the orders;

[3] The claims in both of the matters arose out of the defendants' breach of loan agreements which loans are secured by indemnity bonds. In respect of the Turner matter (Case No.: 5773/18 the loan agreement had been entered into on the 8th August 2014 at Bellville between Main Street 65 Proprietary Limited (a credit provider duly registered as such in terms of the NCA, under No. NCRCP1725), as Lender (the lender) and the defendant as borrower (the borrower).

[4] In respect of the Jones and Mackay matter (Case No.: 9707/18) on the 3rd October 2014 a loan agreement was entered into between Alpha Housing Warehouse (RF) (Proprietary) Limited (Registration Number 2012/215104/07), (which is registered as a credit provider in terms of Sections 40 and 45 of the National Credit Act No.34 of 2005 under No. NCRCP), as lender and the first defendant Candice Wilma Jones (Identity Number 831203 0150 081) who was married to Clifton Jones (the deceased) in community of property at No.: 5 Petunia Court, Belhar, 7493. The Second Defendant is Candice Wilma Jones in her capacity as executrix of the Estate Late Clifton Jones. The third Defendant is Rudolf David Mackay (Identity Number 851121 5143080 an adult male at 49 Abraham Street, Ravensmead, Parow, 7493.

[5] In respect of the Turner matter, the Trustees for the time being of the South African Home Loans Guarantee Trust (Master's Reference number IT/10713/00) (the Guarantor) at Main Street 65 Proprietary Limited it successors-in-title and assigns (Creditor) entered into a Common Terms Agreement (the Agreement) dates 5 October 2001 on various terms and conditions as reflected in the Guarantee.

[6] In the Jones - Mackay matter, the Trustees for the time being of the South African Home Loans Guarantee Trust (Master's Reference number IT10713/00) Guarantor and Alpha Housing Warehouse (RF) Proprietary Limited its successors-in-title and assigns (Creditor) entered into a Common Terms Agreement (the Agreement) dated 7 October 2013 on various terms and conditions.

[7] The suite of transactions between the various entities are referred to and described in the Particulars of Claims in both matters. Needless to say they are complex in nature, intricate and not easily understandable.

[8] In the course of the hearing of the application, the court enquired from counsel who appeared on behalf of the applicants to explain the meaning of a paragraph found in both matters namely;

"[3.1.6] The full amount outstanding from time to time would bear interest at the mid-market rate for deposits in South African Rand for a period of three months, which appears on the Reuters Screen, SAFEY page under the caption "yield" as of approximately 11:00AM Johannesburg time on the date of registration of the indemnity bond referred to below and would be reset thereafter on the same basis on the 21 February, 21 May, 21 August and 21 November (or, if that day is not a business day, the immediately succeeding business day) (the JIBAR rate) converted to and expressed as a nominal annual rate, compounded monthly, rounded up to the nearest first decimal point (the BASE rate) , plus 3.20% as reflected in part "B" of the loan agreement, which together constitutes the interest rate;.."

[9] Counsel for the applicant candidly informed the court that it was not apparent from the Particulars of Claim as to exactly what was meant by the various references in

respect of the calculation of the interest rate on the outstanding amounts owed from time to time; save for the fact that it was contained in the particulars of claim.

[10] The Particulars of Claim is a lengthy document with several annexures. In my view it is not easily understandable by a lay defendant who is required to understand the nature of the suite of agreements and also his/her indebtedness to a plaintiff and the intricate calculations. In my view it appears that the Particulars of Claim are not in accordance with the provisions of section 22 of the Consumer Protection Act 68 of 2008 read together with section 1 which places an obligation on a producer of documents to do so in plain language and cognizant of the context, comprehensiveness, vocabulary usage that an ordinary consumer would readily understand. Inasmuch as the applicants may contend that the Consumer Protection Act, 68 of 2008 is not applicable to the Particulars of Claim, I am nonetheless satisfied that on a reading of the Particulars of Claim it should be set out in plain language comprehensible to a lay person.

[11] For these reasons the court requested that the defendants in each of the matters be provided with a document either by way of a Schedule to the Particulars of Claim or by way of an explanatory note in the execution application that provides a further and better explanation of the interest rates applicable and the acronyms contained in the paragraphs relating to the interest rate as well as an explanation with regard to the various agreements pleaded in the Particulars of Claim.

[12] Counsel for the applicant very co-operatively obliged and on that basis prepared draft orders which I made orders of court.

SALDANHA J

Appearance:

For the Applicant : Mr Ross Randall