**NOT REPORTABLE**

**IN THE HIGH COURT OF SOUTH AFRICA**

**EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

CASE NO: EL 521/2025

In the matter between:

**NEDBANK LIMITED** Plaintiff

And

**PHILLIP GERALD CLAASEN** First Defendant

**YVETTE CLAASEN** Second Defendant

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**RULING IN OPPOSED SUMMARY JUDGMENT**

**APPLICATION, AND BRIEF REASONS THEREFOR**

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**HARTLE J,**

[1] The plaintiff seeks summary judgment against the defendants for payment of the sum of R1 874 238.04 plus interest and costs in respect of a home loan agreement arising from the defendants' alleged breach of the agreement's terms.

[2] The defendants deny that they are in arrears. More particularly and despite a formal debt review intervention that interposed itself, they allege that they have faithfully maintained payments in respect thereof (their continuing monthly payments are borne out by bank statements at least) and that the restructuring plan relative to the debt review takes into account the final costs of the contract for the duration of the home loan agreement so that the plaintiff will not be prejudiced over the entire duration of the agreement.

[3] It is abundantly plain that there is a discord between the essential terms of the home loan agreement and the plaintiff's Declaration concerning the aspect of the interest payable by the defendants under the home loan agreement. Indeed one can hardly appreciate how the starting variable rate of interest of 7.25% plus prime factor (0.10%), equating to a minimum monthly instalment of R14 892.92 at the time, escalated to 10.85% by the date of the capital advance (and climbing) since the capital under the home loan agreement was advanced thereunder.

[4] The plaintiff should have pleaded how and when the escalations arose, and the minimum monthly instalments were changed thereby, so that the defendants' supposed default at the time of the issue of the damning Certificate of Balance makes sense. The variations in the interest rate ought to have been in writing. Even though the home loan agreement makes provision for an automatic increase/decrease in the instalments payable the plaintiff has failed to illustrate its entitlement to such increases as and when they arose. There is simply no indication on the statements provided how the defendants purportedly got to be in arrears on the basis of the plaintiff's averment that they failed to pay the minimum monthly instalment.

[5] Further although the home loan agreement anticipated that there might realistically be a debt review down the line, and provides for its impact in the essential terms of the agreement, this has also not been dealt with in the Declaration to appreciate how the debt review order, actually granted, negatively impacted upon the parties' contractual arrangement and debit interest obligations. Indeed the plaintiff did not even plead in its Declaration that there was a debt review and that this was terminated in compliance with section 86 (10) of the National Credit Act, No. 30 of 2005 ("*NCA*").

[6] Thus, the plaintiff's allegation that the debt rearrangement order was *ultra vires* the NCA, is not immediately apparent. Indeed the basis for the plaintiff's rejection of the "*partial payment*" received under the debt review order supposedly justifying the rescission of the Magistrate's Court's order for want of want of "*the contractual payments … expected*" is not clear.

[7] The plaintiff's averment that the defendants failed to pay the "*minimum monthly instalments*" due under the agreement makes no sense, because on the face of it, at the point the plaintiff's system begins to reflect an arrears figure,

the amount indicated as "*received*" exceeds the minimum monthly instalment portended by the loan agreement. (To my mind the defendants' claim that there has been an error in the calculations by the plaintiff is not unrealistic.) Further the terms of the loan agreements at least in its end goal, in relation to the debt-restructuring plan that the defendants went along with for a long while, permits of a conclusion that the plan could reasonably be accommodated with the terms of the home loan agreement.

[8] It is common cause that the plaintiff managed to obtain an order rescinding the debt review order in respect of the defendants' obligations to it under the impugned home loan agreement long after it was granted by the Magistrate's Court.

[9] The defendants aver however that such application was not served on them in compliance with the provisions of section 86 (10)(a)(i) of the NCA. They only came to learn of the rescission order upon being served with the section 129 notice. The plaintiff feebly pleads that they "*did have notice*" but the reason why it so avers is on the basis that the bank served it on the debt counsellor who was also their attorney of record at the time. Whilst the defendants plead a break in their relationship with the debt counsellor, it is evident that the latter in fact filed a notice to oppose that application that culminated in the recission of the debt review order.

[10] In any event the defendants were entitled as consumers to have been personally served with the notice to terminate the review in the prescribed manner.

[11] On the merits of the case, I am satisfied that the defendants raise a triable issue. Indeed they strike me as responsible consumers who have commendably

kept up their payments and even at the commencement of their agreement paid more than the minimum monthly instalment indicated.

[12] As for their request for an order that the debt review resumes, I am satisfied that it is both competent for this court as the "*enforcing court*" to grant such relief, and indeed desirable that the debt rearrangement plan be reinstated forthwith to give effect to the aim and objectives of the NCA which, *inter alia*, seek to recognize mechanisms for resolving over-indebtedness and to encourage and promote responsible consumer obligations under credit agreements.

[13] Given the plaintiff's unreasonable resort to this application, I am satisfied that the defendants are entitled to their costs of opposing the application.

[14] Thus, the order which I make is as follows:

1. The application for summary judgment is refused.
2. The defendants are given leave to defend the action.
3. The defendants' debt restructuring order under Case No. 1435/2023, in the Magistrate's court for the District of East London, held at East London, and dated 1 June 2023, insofar as it relates to the Nedbank Homeloan under reference 8[...], is reinstated with the remaining term of the order being 193 months.
4. The plaintiff is to pay the costs of the summary judgment application on the party and party scale, including costs of counsel, on Scale B.

**B HARTLE**

**JUDGE OF THE HIGH COURT**

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| DATE OF HEARING | : | 2 September 2025 |
| DATE OF RULING | : | 12 September 2025 |

*<u>Appearances:</u>*

*For the plaintiff : Mr. B Tarr instructed by BLC Attorneys, East London (ref. C Charlsey/Elmareth/L27135)*

*For the defendants : Ms. D Mostert instructed by Sharp, Crisp Inc., East London (ref. Ms. K Crisp).*