IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable

Case No.: 15020/2024

In the matter between:

SENIORS FINANCE (PTY) LTD **First Applicant**

SENIORS FINANCE SECURITY SPV (PTY) LTD **Second Applicant**

(intervening party, joined by order herein)

And

MALCOLM ROSEN N.O. First Respondent

FRANKLIN ROSEN N.O. Second Respondent

(in their capacities as executors of the estate of the late Helen Rosen)

CITY OF CAPE TOWN METROPOLITAN MUNICIPALITY Third Respondent

Coram: Francis J

Heard: 19 June 2026

Delivered: 3 July 2026

ORDER

1. The application by Seniors Finance Security SPV (Pty) Ltd to intervene as Second Applicant is granted. The combined founding affidavit dated 28 November 2025 and the replying affidavit dated 26 February 2026 stand as its papers.

2. Condonation for the late delivery of the executors' answering affidavit in the Rule 46A and intervention applications is granted. The executors, in their representative capacity, are to pay the costs of the condonation application on the attorney-and-client scale.

3. The executors' application to compel compliance with the Rule 35(12) notice is dismissed. The executors, in their representative capacity, are to pay the costs of that application on Scale B.

4. The respondents' objection to the First Applicant's standing to enforce the debt, founded on the cession of the mortgage bond, is dismissed.

5. It is declared that the estate of the late Helen Rosen is indebted to the First Applicant in the Settlement Value as at 25 August 2022 in the sum of R1 322 223,32, as reflected in the certificate of balance annexed to the applicants' draft order.

6. Interest is payable on the sum in paragraph 5 at the rate of prime plus 1,95% per annum, calculated daily and compounded monthly, from 25 August 2022 to the date of final payment, subject to the following.

    (a) The aggregate of interest and the charges contemplated in s 101(1)(b) to (g) of the Act accruing after 25 August 2022 shall not exceed the unpaid balance of the principal debt as at that date, being the amount deferred

under the agreement together with the value of any item contemplated in s 102 of the Act, recorded in the certificate of balance as R300 000, and not the closing balance reflected in that certificate.

(b) The common-law *in duplum* rule applies to the post-death period without interruption by the institution or pendency of these proceedings.

(c) Upon the granting of this judgment, the resulting judgment debt constitutes a new principal sum, on which interest runs afresh at the rate aforesaid from the date of this order, the common-law *in duplum* rule thereafter operating against that new principal.

7. If a dispute arises as to the calculation of interest under paragraph 6, either party may apply on the same papers, supplemented as necessary, for its determination. That may include a referral to oral evidence under Uniform Rule 6(5)(g) or, with the consent of both parties, to a referee under s 38 of the Superior Courts Act 10 of 2013.

8. The counter-application for cancellation of Mortgage Bond No B17[…] is dismissed.

9. The immovable property described as Sections 1 and 3, S[…] B[…] Road No […], Sea Point East, Cape Town, held under Deeds of Transfer ST1[…] and ST1[…], and encumbered by Mortgage Bond No B17[…] in favour of the Second Applicant, is declared specially executable.

10. A reserve price of R3 200 000 is set for any sale in execution of the property.

11. The executors, in their representative capacity, are to pay 70% of the applicants' costs in the main, intervention and Rule 46A applications on Scale B, save where costs have otherwise been ordered. Such costs include the costs of one counsel.

12. The applicants, jointly and severally, are to pay 30% of the executors' costs in the main and Rule 46A applications on Scale A, save where costs have otherwise been ordered.

13. The executors, in their representative capacity, are to pay the costs occasioned by the raising of the cession point, on the attorney and client scale.

JUDGMENT

FRANCIS, J:

Introduction

[1] This matter concerns the home of the late Helen Rosen. In 2007, at the age of 80 and with no monthly income, Ms Rosen took what is known as a lifetime loan, or reverse mortgage, of R300 000, secured by a bond over her home in Sea Point. Such a loan is repayable not in instalments during the borrower's lifetime but as a single sum when a defined Repayment Event occurs, ordinarily the borrower's death. Ms Rosen made no repayment while she lived. She died on 25 August 2022, in her ninety-fifth year, and the debt then fell due. The First Applicant now claims R1 664 464,71 from her estate. The executors argue that the common-law *in duplum* rule, alternatively s 103(5) of the National Credit Act 34 of 2005 (the Act), limits the indebtedness to about R600 000. The difference between the parties is therefore some R900 000, and it is the heart of this matter.

[2] The litigation has been fragmented. In addition to the money claim, I am seized with several related matters. There is a counter-application to cancel the mortgage bond. A related special purpose vehicle applies to intervene. There is an application under Uniform Rule 46A to have the property declared specially executable, and an application for condonation of a late answering affidavit. Both sides claim costs, including costs *de bonis propriis* against directors and legal representatives.

[3] The matter was argued before me on 27 May 2026. With the leave of the Court, further representations were delivered on 9 June 2026. The respondents also delivered further representations, without such leave, on 19 June 2026.

The parties

[4] The First Applicant, Seniors Finance (Pty) Ltd, was at all material times a registered credit provider under the Act. Its business is providing equity-release credit to elderly homeowners.

[5] The Second Applicant, Seniors Finance Security SPV (Pty) Ltd ("the SPV"), is a special purpose vehicle incorporated to hold mortgage bonds as security for the First Applicant's obligations to its funders. It is the cessionary of the bond in issue in the counter-application, and it intervenes by the order made below.

[6] The First and Second Respondents, Malcolm Rosen N.O. and Franklin Rosen N.O., are the executors of the estate of the late Helen Rosen and act in that capacity. I refer to them as the executors.

[7] The Third Respondent, the City of Cape Town, was cited in respect of any interest arising from rates over the property. No relief is sought against it. It has not participated, and no order is made against it.

Background

[8] On 26 July 2007, Ms Rosen and the First Applicant concluded a written loan agreement comprising a Quotation, General Terms, and Loan Details. The principal debt was R300 000, advanced in five annual tranches from the Advance Date. Interest was calculated daily and capitalised monthly at the prime rate of Standard Bank plus 1,95%, with an initial rate of 14,95%. No monthly repayment of capital or interest was payable. The full Settlement Value, being the outstanding advances together with all accrued interest and charges, was payable only on a Repayment Event, the principal such event being the borrower's death.

[9] The papers include a Needs Analysis and Borrower Declaration dated 19 July 2007. It recorded that Ms Rosen owned the property, that her monthly income was nil and her monthly expenses about R4 519, and that she was assisted by an accredited financial adviser, Mr N W Kleynhans, who endorsed the product.

The owner's estimate of value was R1 100 000. A contemporaneous valuation by the First Applicant's valuer was R1 200 000.

[10] On 12 September 2007, a covering mortgage bond was registered in favour of the First Applicant over the property described as Sections 1 and 3, S[…] B[…] Road No […], Sea Point East, held under Deeds of Transfer ST1[..] and ST1[…] ("the property").

[11] By a written cession executed on 3 April 2008, pursuant to a resolution passed on 12 March 2008, the First Applicant ceded its right, title and interest in the mortgage bond to the SPV, for value received and without recourse. The cession was endorsed against the bond in the Deeds Office on 16 May 2008. On 23 February 2009, the SPV undertook, under an Independent Borrower Guarantee, to cede the bond back to the First Applicant on demand in the event of a borrower default. The legal effect of that cession is disputed, and, in particular, whether it stripped the First Applicant of the right to enforce the personal claim against the borrower.

[12] The loan was drawn down in five tranches between September 2007 and September 2011, totalling R300 000, which included an initiation fee of R5 000 added to the capital. Ms Rosen made no repayment in her lifetime. Interest accrued daily and was capitalised monthly as the agreement provided.

[13] Ms Rosen died on 25 August 2022. By 10 October 2023, the First Applicant had advised the executors that the settlement amount was R1 527 057,57. On 20 November 2023, the executors' attorneys indicated that the estate would recognise only R600 000, being capital plus a like amount of interest, relying on the *in duplum* rule. The First Applicant rejected that position, and the dispute remained unresolved.

[14] On 14 June 2024, the executors gave notice under s 32 of the Administration of Estates Act 66 of 1965 calling for a formal affidavit in support of the claim. Rather than comply, the First Applicant launched this application on 2 July 2024.

The course of the proceedings

[15] The founding affidavit asserted that Rule 46A of the Uniform Rules of Court did not apply because the property was no longer the deceased's primary residence, and it did not disclose the cession to the SPV. The bond itself was not attached. The answering affidavit of 15 March 2025 raised prescription, *in duplum*, non-compliance with s 129, reckless credit, failure to use the s 32 procedure, and want of *locus standi* by reason of the cession. A counter-application to cancel the bond was filed at the same time.

[16] The first respondent deposed that he had lived at the property since about 2000 to care for his mother, that it was his primary residence, and that Rule 46A applied.

[17] The executors served a Rule 35(12) notice on 19 August 2024. The First Applicant produced some, but not all, of the documents demanded. An application to compel was launched and later abandoned, and both sides seek costs in respect of it.

[18] After the executors' attack on the absence of the SPV, and once it was appreciated that Rule 46A applied, the applicants, on 28 November 2025, launched a composite application to join the SPV and to have the property declared executable. By order of 8 December 2025, the matter was postponed to 9 March 2026, and a timetable was set, with the executors directed to answer by 19 December 2025. They answered on 3 February 2026, some seven weeks late, and sought condonation. On 9 March 2026, the matter was postponed by agreement to 27 May 2026.

The interlocutory matters

Condonation

[19] The principles governing condonation are settled. As *Melane v Santam Insurance Co Ltd* 1962 (4) SA 531 (A) held, the court has a discretion, to be exercised judicially on a conspectus of all the facts, in essence as a matter of fairness to

both sides, having regard to the degree of lateness, the explanation for it, the prospects of success, and the importance of the matter.

[20] The explanation is that the executors' attorney was abroad from 21 November to 7 December 2025, that the recess intervened, that he returned to chambers on 19 January 2026, and that the answering affidavit, a document of some 74 pages, was delivered on 3 February 2026.

[21] The explanation is incomplete. The week between 8 and 14 December 2025 is unaccounted for. The recess did not suspend the executors' obligations, and the fortnight after the recess is not fully explained. The conduct does not, however, betray a wilful disregard of the rules. The matter had twice been postponed, and the applicants' own conduct contributed materially to the fragmentation, in particular their late appreciation of Rule 46A and their initial non-disclosure of the cession.

[22] Balancing these matters and given that the executors administer an estate rather than a personal interest, the just course is to admit the affidavit but to mark the Court's displeasure by a punitive order as to the costs of the condonation application. Condonation is granted on that basis.

The Rule 35(12) application

[23] Rule 35(12) entitles a party to require production of a document referred to in another party's affidavits. In the event of non-compliance, the document may not be used without the leave of the court. That is the sanction the sub-rule provides. It does not, by itself, authorise an application to compel. The mechanism for that is Rule 35(7).

[24] In any event, the application was overtaken by events. The executors delivered their answering affidavit on 15 March 2025 without the documents they claimed had been withheld. The purpose of a Rule 35(12) notice, which is to enable a party to consider its position before answering, was thereby achieved.

[25] The application was irregular and unnecessary. The executors must bear their costs on the ordinary scale.

The intervention application

[26] The SPV seeks joinder as the second applicant. Where a party shows a direct and substantial interest in the order sought, that is, a legal interest in the subject matter that may be prejudicially affected by the order, the court has no discretion to refuse the intervention. It must be allowed (*South African Riding for the Disabled Association v Regional Land Claims Commissioner and Others* 2017 (5) SA 1 (CC) paras 9 and 11).

[27] The executors themselves accept that the SPV's consent is required to cancel the bond. Their replying affidavit in the counter-application records that, whatever the outcome of the main application, they could not dispose of the property without the SPV's consent to cancellation of the bond. That concession is decisive. The SPV, as registered holder of the ceded bond, has a direct and substantial interest in the relief.

[28] I am unmoved by the submission that the SPV's financial statements reflect total assets of R1,00. The state of its balance sheet bears on any execution against it, not on its interest in the bond.

[29] The intervention is granted. The combined founding affidavit and the replying affidavit of 26 February 2026 will stand as the SPV's papers.

The issues

[30] On the merits, the issues may be summarised as follows: whether the applicants' deponent had the necessary authority and personal knowledge, whether the cession of the mortgage bond to the SPV deprived the First Applicant of the standing to enforce the debt, whether the claim has prescribed, whether the *in duplum* rule, at common law or as given statutory form in s 103(5) of the Act, caps the claim, whether a notice under s 129 of the Act was required, whether the loan constituted reckless credit, whether the dispute-resolution clause barred

the proceedings, whether the applicants ought to have proceeded under the Administration of Estates Act, whether the property should be declared executable and at what reserve, and what order as to costs is appropriate. The *in duplum* question is the centre of gravity of the dispute, and I devote the bulk of this judgment to it.

Authority and personal knowledge

[31] The executors object that Ms Moira Burger, who deposed to the founding affidavit, became a director of the First Applicant only on 3 March 2023 and cannot speak to events in 2007. They also impugn the authorising resolution, on the basis that it refers to an unidentified service-level agreement and that one director's signature is faint.

[32] The authority of a deponent and the authority of a litigant are different questions. In *Ganes and Another v Telecom Namibia Ltd* 2004 (3) SA 615 (SCA), the Supreme Court of Appeal ("SCA") held that the deponent to an affidavit in motion proceedings need not be authorised by the party to depose. It is the institution of the proceedings that must be authorised.

[33] The institution of proceedings in this matter was authorised. The notice of motion was issued by attorneys on instruction, and the resolution records that Ms Burger is authorised to institute legal proceedings in the company's name. The reference to a service-level agreement that is not attached is not, on a fair reading of the resolution, integral to the authority conferred, and it appears to address an unrelated arrangement. A faint signature, in the absence of any genuine challenge to its authenticity, is no basis to impugn the resolution.

[34] The contention that Ms Burger cannot speak to events in 2007 also fails. A deponent for a corporate party may depose to facts drawn from the company's records, provided the source is identified, and the deponent has acquainted herself with the documents. Ms Burger does so. The point goes to weight, not admissibility.

[35] The objection is, accordingly, overruled.

The cession and the applicants' standing

[36] The executors raise, by a note delivered after argument, a further objection. They say that by the cession of 3 April 2008, the First Applicant divested itself of the right to enforce the debt, and that it lacks the standing to claim payment. They rely on *Picardi Hotels Ltd v Thekwini Properties (Pty) Ltd* 2009 (1) SA 493 (SCA), contending that a cession *in securitatem debiti* deprives the cedent of the power to sue on the ceded debt, which it may recover only by taking re-cession, and that the First Applicant, having elected not to take re-cession before suing, must fail.

[37] I deal first with the manner in which the point arises. The cession was pleaded in the answering affidavit as an attack on the First Applicant's *locus standi*. It was pursued as a discrete objection only later, in a note dated 2 June 2026. That was after argument on 27 May 2026 and after the applicants had presented their case. The applicants replied to it conditionally on 3 June 2026. In their reply of 19 June 2026, the executors maintain that they abandoned no defence in the course of argument. I need not resolve that question. I have determined each defence the executors raised on its merits, so nothing in this judgment turns on whether their oral argument was narrowed. The cost consequence I attach to the cession point does not rest on any narrowing either. It rests on the plain fact, which is not in dispute, that the point was raised by a note delivered after argument had closed and after the applicants had argued, so occasioning wasted costs. A challenge to standing goes to the competence of the proceedings. It turns here on documents already in the record and raises no fresh factual enquiry. It would be unsatisfactory to grant final relief while leaving a real question of standing unresolved. I have, therefore, entertained the point. The manner in which it was raised is a matter for costs, to which I return below.

[38] On the merits, the question is one of interpretation, to be approached as required by *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18. The language of the instrument is read in its context and against its apparent purpose, the document is taken as a whole rather than in isolated

phrases, and a sensible, businesslike construction is preferred to one that is not. These are the principles the SCA applied in *Picardi* itself, drawn there from *Coopers & Lybrand and Others v Bryant* 1995 (3) SA 761 (A) at 767E–768E. The executors' construction does not survive that approach.

[39] *Picardi* does not carry the executors as far as they would take it. The cession there was of all the cedent's rights to the rentals and other revenues of the property, coupled with an express right in the cessionary bank to sue lessees for those rentals. Its object, on the face of the instrument, was the income stream itself. It was that transfer of the right to the rentals that divested the cedent of the standing to sue for them. The instrument before me is of a different character. It is headed "Cession of Mortgage Bond". Its operative words cede the First Applicant's "right, title and interest … in the above bond". Its express object is the bond, that is, the security, and not the personal claim under the home loan.

[40] The executors rely on the closing words that the cession was made "in terms of a Cession of Existing Home Loan Agreements" and on the principle that a mortgage bond is accessory to the debt it secures to argue that the underlying debt passed with the bond. The reference to a further instrument, one not disclosed in these proceedings, cannot bear that weight. Read with the heading and the operative clause, it locates the broader transaction in which the bond was ceded. It does not, of itself, turn a cession of the bond into an outright cession of the debt. I accept that the words "for value received and without recourse" point the other way, and that the accessory character of the bond carries some force. Both must be weighed. They do not, however, prevail against the document read as a whole and against the commercial setting, to which I turn.

[41] That setting is one of security, and it is decisive. On its own constitutive documents, the SPV was incorporated to hold the mortgage bonds in respect of loans granted by the First Applicant and to issue guarantees, not to acquire the loan book. Its audited financial statements, in 2008 and again in 2025, describe its business in those terms and record no borrower receivables among its assets,

only a nominal shareholder loan. Had the underlying debts been ceded out to the SPV, they would have appeared as its assets. They do not.

[42] The Independent Borrower Guarantee of February 2009 confirms the picture. Under it, the SPV undertakes, on the First Applicant's demand after a borrower's default, to cede the relevant mortgage back to the First Applicant. Its liability is never to sound in money, and the First Applicant's remedy against it is confined to specific performance of that re-cession. A vehicle that holds security, re-cedes it on default, and whose liability never sounds in money is not the owner of the debts. The arrangement is a cession of the bond as security, supported by a guarantee, the personal claim against the borrower remaining with the First Applicant.

[43] On that construction, the First Applicant has standing, and *Picardi* is distinguishable. The conclusion does not, however, depend on it. Assume, in the executors' favour, that the home loan was ceded *in securitatem debiti* together with the bond. Even then, the objection fails. The rule that a cedent must take re-cession before suing exists to ensure that the ceded right is enforced by the party in whom it vests, and to protect the debtor against the hazard of a second claim. Both purposes are met where the cedent and cessionary stand before the court as co-applicants, jointly seeking the relief. The SPV has been joined. It makes common cause with the First Applicant, and the estate, bound by this judgment, faces no risk of a further action by the SPV on the same debt. In that situation, the absence of a re-cession formally registered in the Deeds Office is a matter of form and does not defeat the claim.

[44] The endorsement of the cession against the bond on 16 May 2008 does not assist the executors. It records the cession of the bond and nothing else, and it is silent as to the personal claim. To treat it as proof that the debt was ceded is to conflate the security with the obligation it secures, which is the error at the root of the objection.

[45] The objection to the First Applicant's standing accordingly fails, whether the cession is construed as I have construed it or on the executors' own premise.

Prescription

[46] The executors plead that the claim has prescribed, contending that each tranche became due on advance, so that the three-year period under s 11(d) of the Prescription Act 68 of 1969 has long since expired.

[47] That misreads the agreement. This was a lifetime loan. By its terms, the Settlement Value became due only on a Repayment Event. Until then, no debt was claimable, and prescription does not begin to run against a creditor whose claim has not yet accrued. A debt is due, for the purposes of s 12(1), only when it is immediately claimable and the creditor is in a position to enforce it (*Deloitte Haskins & Sells Consultants (Pty) Ltd v Bowthorpe Hellerman Deutsch (Pty) Ltd* 1991 (1) SA 525 (A)).

[48] The Repayment Event, being Ms Rosen's death, occurred on 25 August 2022, and these proceedings were launched some 22 months later. The three-year period had only then begun to run and had not expired. In any event, s 11(a)(i) of the Prescription Act prescribes a thirty-year period for a debt secured by a mortgage bond, and the personal claim and the bond, though now held by different entities, secure one and the same indebtedness.

[49] The defence of prescription fails.

The *in duplum* rule and section 103(5) of the Act

[50] This is the central and most difficult question in the matter, and the one on which the parties are furthest apart. The executors assert that the indebtedness is limited to roughly double the capital, some R600 000, by the *in duplum* rule, whether in its common-law form or in the statutory form given to it by s 103(5) of the Act. The applicants submit that the rule, in either form, has no application to the interest that accrued during Ms Rosen's lifetime, and affects only interest accruing after her death. The answer turns on the proper relationship between

the common-law rule, its statutory counterpart in s 103(5), and the peculiar structure of a lifetime loan. It must be given against the background of the recent decision of the Supreme Court of Appeal in *Sekunjalo*, which has unsettled assumptions long thought secure.

The common-law rule

[51] The *in duplum* rule is of considerable antiquity in our law. In its classic form, it provides that arrear interest ceases to accumulate once the accrued and unpaid interest equals the outstanding capital, so that interest may never, while it remains unpaid, exceed the capital sum. Its purpose is protective. It shields debtors against the unchecked accumulation of interest and gives effect to a public interest in preventing debt from spiralling without limit.

[52] Until recently, three features of the rule were generally accepted. First, it operates on arrear interest, that is, interest that has fallen due and remains unpaid, and not, on the orthodox view, on interest that has merely accrued but is not yet payable. Secondly, the capitalisation of arrear interest does not change its character. Arrear interest debited to the capital account remains interest for the purposes of the rule, and a creditor cannot escape the cap by rolling unpaid interest into capital. Thirdly, the rule was once thought to be suspended by the institution of proceedings, so that interest might run afresh once a creditor sued. That view, taken in *Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (in liquidation)* 1998 (1) SA 811 (SCA), was overruled by the Constitutional Court in *Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd* 2015 (3) SA 479 (CC), which held that the rule continues to operate during litigation and that interest does not begin to run anew merely because summons was issued. Interest runs afresh only once judgment is granted, the judgment debt constituting a new principal debt for the rule's purposes.

Sekunjalo

[53] The executors' principal reliance is on the SCA's decision in *SACTWU Investments Group (Pty) Ltd v Sekunjalo Independent Media (Pty) Ltd and*

Another [2026] ZASCA 39. It requires careful consideration because it bears directly on the first of the settled features described above.

[54] The facts were these. A creditor advanced R150 million to a company on a seven-year term. The agreement provided that, where the debtor had insufficient funds to pay accrued interest on a stipulated interest date, that interest would be capitalised on that date. The debtor paid no interest over the term, and by maturity, the capitalised interest substantially exceeded the principal debt. The creditor argued that, because the agreement permitted the debtor to defer payment when it could not pay, the resulting interest was not arrear interest and the *in duplum* rule did not apply.

[55] The SCA rejected that argument. It held that interest capitalised because the debtor could not pay on the interest date is, in substance, arrear interest, however the agreement may choose to characterise the non-payment, and it reaffirmed *Oneanate* that capitalisation does not alter the legal character of interest. Capitalised arrear interest is still interest, not true capital, for the purposes of the rule. The court warned that to permit creditors to structure around the *in duplum* cap through provisions for deferral and capitalisation would license boundless interest of the kind the rule exists to prevent and would be contrary to public policy. On that approach, the indebtedness in that matter was capped at double the capital, with default interest running afresh only from the date of judgment.

[56] I do not understand *Sekunjalo* to be confined to its facts. Its reasoning is broad, and it rests avowedly on public policy. The decision has been read, with reason, as eroding the once-clear line between accrued and arrear interest, and as signalling that accrued unpaid interest may be treated as arrear for the rule's purposes more readily than the older authorities allowed. To that extent, the executors are correct. A court may no longer dispose of an *in duplum* argument simply by labelling the interest accrued rather than arrear and saying no more. Any analysis of the Rosen loan that rested on so bare a distinction would be inadequate, and I do not adopt it.

[57] *Sekunjalo, however,* does not support the executors' conclusion in this matter for the following reasons.

Section 103(5) of the Act governs this agreement

[58] The first, and more important, reason is that *Sekunjalo* was decided under the common law, in respect of a loan of R150 million between commercial entities to which the Act did not apply. The court was not concerned with, and did not interpret, s 103(5) of the Act or the statutory scheme of which it forms part. The Rosen loan, by contrast, is a credit agreement governed by the Act. It was granted by a registered credit provider to a natural person and falls squarely within the Act's reach. For such an agreement, the statutory regime, and not the unmediated common law, supplies the applicable rule.

[59] The cost of credit under the Act is comprehensively regulated by Part C of Chapter 5, being ss 100 to 106. Section 100 limits the fees and charges a credit provider may levy. Section 101(1) is exhaustive as to what a credit agreement may require the consumer to pay. The permitted items are the principal debt, an initiation fee, a service fee, interest, the cost of any credit insurance, default administration charges, and collection costs. Section 102 identifies what may be included in the principal debt. Section 103 regulates interest, and s 105 regulates the maximum prescribed rates. Into this detailed scheme, the legislature inserted s 103(5), which provides as follows.

> "*Despite any provision of the common law or a credit agreement to the contrary, the amounts contemplated in section 101(1)(b) to (g) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs*."

[60] In *Nedbank Ltd v National Credit Regulator* 2011 (3) SA 581 (SCA), the SCA held that s 103(5) is not a mere codification of the common-law *in duplum* rule, and that it differs from it in several material respects here. First, it caps not interest alone but the aggregate of all the charges listed in s 101(1)(b) to (g), being the

initiation fee, service fees, interest, the cost of credit insurance, default administration charges and collection costs. Secondly, it fixes the ceiling at the unpaid balance of the principal debt as at the time the default occurs. Thirdly, once that ceiling is reached, no further such charge may accrue, and, unlike at common law, a payment by the consumer thereafter does not set interest running afresh up to the cap. Nor is the provision suspended by litigation.

[61] Two features of the section are decisive. The first is its gateway. By its terms, the section applies only to amounts that accrue while a consumer is in default. Default is the trigger; absent a default, the section is not engaged. The second is the meaning of principal debt. Section 101(1)(a) defines it as the amount deferred in terms of the agreement, plus the value of any item contemplated in s 102. It is not the running balance of the loan account swollen by capitalised interest. Consistent with *Oneanate* and *Sekunjalo*, capitalised interest remains interest and does not enlarge the principal debt. Here, the amount deferred was the capital of R300 000, to which the initiation fee of R5 000 was added under s 102, and none of it was repaid. The unpaid balance of the principal debt was therefore of the order of R305 000. The certificate of balance that the applicants have since produced bears this out. It records the principal debt as R300 000, set apart from the closing balance of R1 322 223,32 swollen by capitalised interest.

No default arose during the borrower's lifetime

[62] Under the agreement, Ms Rosen was obliged to pay nothing, neither capital nor interest, during her lifetime. Interest was calculated daily and capitalised monthly, but it was neither due nor payable until a Repayment Event, and the Settlement Value fell due only on her death. While she lived, there was no obligation she could fail to perform, and she could not be in default. It follows directly that s 103(5) did not apply during her lifetime, for there was no period during which she was in default in which any charge could accrue within the section's reach.

[63] It is here that the distinction between *Sekunjalo* and the present matter is material, and not merely formal. Both the statutory cap and the common-law rule operate on interest that is in arrears, that is, interest on an obligation that is due

and unpaid. Arrear interest presupposes an obligation the debtor has failed to meet, and default in s 103(5) is the statutory expression of that idea. In *Sekunjalo*, the obligation existed. The debtor was bound to pay interest on stipulated dates and did not do so, and the agreement's provision for deferral and capitalisation re-characterised, but did not erase, a failure to pay what was due. The substance the court looked to was a real default dressed as a deferral. The Rosen agreement differs in substance, not only in form. There was no interest date and no obligation to pay during the term, and so no amount that fell due and was left unpaid while Ms Rosen lived. There being no obligation, there was nothing to be in arrears of, and the interest that accrued was not arrears interest in any sense recognised by the rule. The mischief *Sekunjalo* sought to prevent is interest mounting because a debtor who ought to pay does not. That mischief is absent here, at the level of the statutory trigger and of the common-law rule alike. Default cannot be read, as the executors would read it, to reach an arrangement in which nothing is yet payable. That would sever the word from the failure of an existing obligation it everywhere signifies. Purposive interpretation works within the language, not against it. *Sekunjalo* did not interpret "default," and it cannot supply a default where the facts do not warrant one.

Whether the common-law rule applies in parallel

[64] The executors' answer is that the common-law rule applies to the agreement alongside s 103(5), that the Act, as the SCA has observed, is not a code, and that consumer-protection legislation sets a floor and not a ceiling, so that a more generous common-law rule is not excluded but supplements the statutory minimum. On that view, *Sekunjalo*, applied at common law, would cap the pre-death interest even though s 103(5) does not.

[65] There is force in the submission, and I do not dismiss it lightly. The common law is not wholly ousted by the Act, and the opening words of s 103(5), that the cap operates despite any provision of the common law to the contrary, are naturally read as ensuring the primacy of the statutory cap, not as a general abolition of the common-law rule. But the conclusion the executors draw does not follow.

[66] The opening words of s 103(5) are directed at preventing the common law from being used to dilute the statutory protection, for example, by reviving the running of interest on a payment. That is precisely the construction the credit providers urged, and the Supreme Court of Appeal rejected it in *Nedbank*. They are not a warrant for a court to enlarge the cap beyond the field the legislature has marked out. On the subject of the ceiling on the cost of credit, which is the very subject of the *in duplum* rule, the legislature has spoken and has chosen default as the moment from which the cap operates. To graft onto an agreement governed by the Act a common-law rule that caps interest accruing before any default would not supplement the statutory protection. It would rewrite the statutory trigger and displace a considered legislative choice. That a court may not do under the guise of applying the common law. There is a further answer, and it is decisive. In *Nedbank*, the SCA held that s 103(5) is not a mere codification of the common-law rule but a distinct statutory rule, and that, for credit agreements, the Act governs; it is that rule which applies. The Act is not a code, and the common law survives where the Act is silent. But on the ceiling on the cost of credit, the Act is not silent. It has fixed the ceiling and capped it on default. For an agreement within the Act, there is accordingly no parallel common-law cap left to invoke, and the executors' submission, which would have the common-law rule govern a field the statute already occupies, cannot stand.

[67] This conclusion does not leave the vulnerable consumer unprotected. Where the Act perceives a danger in the extension of credit to a consumer who cannot sustain it, it addresses that danger directly, through the prohibition on reckless credit in ss 80 and 81, the affordability and suitability assessment those sections require, and the regulation of the cost of credit in ss 100 to 106. The protection of an elderly equity-release borrower against an improvident loan lies there, and I turn to it below. It is not to be found in straining the *in duplum* cap to reach a period the statute has deliberately placed outside it.

A candid acknowledgment

[68] I accept that the question is not free from difficulty. *Sekunjalo*'s concern with boundless interest speaks with particular force to the position of an income-poor homeowner whose debt multiplies fivefold against the only asset she has, more than it does to a commercial borrower of R150 million. A higher court, attracted to the substance of the matter and to the protective public policy that animates the rule, might hold that the common-law rule, as that court has lately understood it, reaches even an agreement of this kind, or might develop the common law to that end. A litigant might also seek to challenge, on constitutional grounds, a statutory cap that leaves the cost of credit on an agreement of this kind unchecked until death. No such challenge was pleaded before me, no relief was sought against the reach of s 103(5), and the parties whose joinder it would require are not before the court. That, too, is a matter for another forum. The point is an important one, on which the law is presently in motion, and on which authority from an appellate court would be of value. But sitting as a court of first instance, and bound to give effect to the statute the legislature has enacted, I am persuaded that for a credit agreement governed by the Act the applicable cap is that in s 103(5), that the cap is capped on default, that no default arose during Ms Rosen's lifetime, and that the interest which accrued during her life is accordingly not subject to it.

The position after death

[69] The position changes on Ms Rosen's death. From 25 August 2022, the Settlement Value was due and payable. The executors did not pay it, and the estate fell into default. From that date, the interest that accrues is interest on a debt that is due and unpaid, that is, arrear interest, and two consequences follow.

[70] First, s 103(5) applies, because the estate is in default. The cap it imposes is the unpaid balance of the principal debt as at the time of the default, which I have held to be of the order of R305 000. The aggregate of post-death interest and of any charge within s 101(1)(b) to (g) accruing after 25 August 2022 may not exceed that figure. The words "as of the time the default occurs" fix the date on

which the principal debt is measured. They do not convert the accumulated pre-death interest into a principal debt.

[71] Second, the common-law rule applies of its own force to the post-death period, the estate being in default on a debt that is due. Following *Paulsen*, the rule is not suspended by the institution of these proceedings, so that the post-death interest, whether accruing before or during this litigation, may not, in the aggregate, exceed the capital then outstanding. Of the two caps, the statutory cap, measured against the principal debt of about R305 000, is the stricter and prevails.

Quantum

[72] After the conclusion of argument, I directed the executors to furnish, by 17 June 2026, their own calculation of the unpaid balance as at the date of death, should it differ from the balance certified by the applicants. The object was narrow. The executors had disputed the quantum throughout, and the direction gave them the opportunity to displace the certificate with a competing computation of their own. They produced none. Their response, dated 17 June 2026, was twofold. The document annexed to the applicants' draft order is said not to be a valid certificate of balance under clause 20 of the agreement, and the early running of the loan account is said to disclose inconsistencies. The response was supported by a letter from a chartered accountant, who recorded that he could not perform the calculation without further information, and by a spreadsheet confined to the period September 2007 to April 2008. The applicants replied on 18 June 2026 that the information the accountant sought was already in the record, which they identified item by item, and that the certificate stood unimpugned. I take each aspect of the executors' response in turn.

[73] The first issue does not avail the executors. Clause 20 of the agreement provides for a certificate of balance, and a certificate issued under that clause is prima facie proof of the amount certified. That much is settled by *Senekal v Trust Bank of Africa Ltd* 1978 (3) SA 375 (A). Where the debtor puts up nothing to disturb it, that proof stands. The executors say that the certificate does not comply with

clause 20, but they do not identify the respect in which it fails to do so, nor have they impugned the certified figure on its merits. The certificate was issued as at 25 August 2022. It certifies the unpaid balance as of that date at R1 322 223,32 and records the principal debt of R300 000 separately. A bald assertion that the certificate is invalid, unaccompanied by any competing calculation, does not displace the proof it carries.

[74] Nor does the second issue. The spreadsheet does not address the date of death at all. It runs only to 30 April 2008 and goes no further than to suggest that the balance at that date and the interest for that month were marginally smaller than the loan statement reflects. The suggestion in any event rested on prime rates that did not match the executors' own schedule. MR17 records prime rising to 14% on 12 October 2007 and to 14,5% on 7 December 2007. The spreadsheet held prime at 13,5% until 12 December 2007, then applied 14%, and never applied 14,5%. Correcting the rates in the executors' own schedule yields a higher balance, not a lower one. The error, therefore, ran against them, not for them. The executors have since accepted as much. In a reply delivered on 19 June 2026, after the applicants' letter of 18 June 2026 had drawn the errors to their attention, the executors conceded that they had wrongly held the prime rate at 13,5% and had failed to adjust it, and they put up a corrected spreadsheet. The corrected spreadsheet adopts the rates in MR17 and produces a balance as at 31 March 2008 of R65 577,91, higher than the R65 550,16 on which they first relied. Neither document was called for. I have received both, because the applicants suffer no prejudice from a concession in their favour, and because the record should reflect the executors' own corrected figure. The concession does not assist them. It confirms what I have already found, that the discrepancy on which they relied was the product of their error, and the corrected figure, being higher, runs against them as the uncorrected one did. The corrected spreadsheet still stops at April 2008 and says nothing about the position as of the date of death. The executors have put up nothing that displaces the certified balance.

[75] The Settlement Value as at the date of death is now established. The certificate of balance the applicants have produced, issued as at 25 August 2022, certifies the unpaid balance at that date as R1 322 223,32, comprising the capital advanced and the interest that accrued during Ms Rosen's life, none of which is capped on the analysis above. The same certificate records the principal debt separately, as R300 000.

[76] This resolves the discrepancy I could not settle on the papers earlier. The loan-statement figure of R1 504 306,27 as at 31 August 2022, on which reliance was first placed, cannot be reconciled with a certified balance six days earlier that is lower still. The applicants now rest their claim on the certificate, and I accept the certified figure, because it was issued on the date of death. The pleaded R1 664 464,71 as at 27 May 2024 is explicable as that death-date balance carried forward with post-death interest to the date of pleading. It is not, however, the sum for which judgment is determined, because the post-death interest must be calculated separately and is subject to the caps already described. I therefore decline to grant judgment in the single lump sum proposed in the applicants' draft order.

[77] I must also decline the cap sought in the applicants' draft order. The draft order would confine the post-death cost of credit to R1 322 223,32, the closing balance. But s 103(5), as I have held, measures the cap against the principal debt, which the applicants' own certificate fixes at R300 000. To cap the post-death charges at the swollen closing balance would be to treat capitalised interest as part of the principal debt, which *Oneanate*, *Sekunjalo* and the architecture of the Act alike forbid. The cap is accordingly of the order of R300 000, and I framed the order to reflect that.

Section 129 of the Act

[78] Section 129(1), read with s 130, provides that a credit provider may not commence proceedings to enforce a credit agreement before first giving notice to a consumer who is in default. Its trigger, again, is the default, and its purpose is

to afford the consumer an opportunity to remedy the default and bring the agreement up to date, thereby reinstating it.

[79] The executors submit that they step into the shoes of the deceased consumer. Whether an executor or a person appointed to administer a deceased estate is a consumer within the meaning of s 1 of the Act has not been authoritatively settled. In *ABSA Bank Ltd v Magiet NO* (15967/2007) [2013] ZAWCHC 7, the executrix of a deceased borrower was treated as a consumer to whom a notice under s 129 was due, and a like approach was taken in *SA Taxi Development Finance (Pty) Ltd v Thethani NO* (10417/2023) [2024] ZAWCHC 33. In *MFC (A Division of Nedbank Ltd) v Mkhwanazi and Others* (15047/2020) [2022] ZAGPJHC 203 para 55, the holder of letters of authority over a small estate under s 18(3) of the Administration of Estates Act was held not to fall within the definition, though the court there observed that no distinction should be drawn for this purpose between such a person and an executor. The point has not been decided by an appellate court as far as I am aware, and need not be resolved here, as the matter may be disposed of on a different basis.

[80] The purpose of s 129, being the cure of default and the reinstatement of the agreement, as explained in *Nkata v FirstRand Bank Ltd* 2016 (4) SA 257 (CC), cannot be realised on these facts. The agreement contemplated a single Repayment Event. That event occurred, and the Settlement Value became due. There is nothing to reinstate, and no arrears for an executor to cure by resuming a payment pattern that the agreement never required. To insist on a s 129 notice in these circumstances would be to insist on an empty formality, and the Act does not require it. A different conclusion might follow where a deceased had been in arrears at death under an instalment agreement that contemplated continuing performance, as for example, where death is itself stipulated to be a default event under a financed sale. That is not the position in this matter. Accordingly, the defence under s 129 fails.

Reckless credit

[81] The case under ss 80 and 81 of the Act is the most morally arresting, and, given my conclusion on the *in duplum* question, it is here that the protection of a borrower in Ms Rosen's position must be found if it is to be found at all. The executors say that the First Applicant ought never to have advanced credit to an 80-year-old woman with no income and monthly expenses of about R4 500, whose only conceivable source of repayment was the realisation of her home after her death.

[82] The elderly homeowner, asset-rich and income-poor, is a paradigm of vulnerability under consumer-protection law, and this Division has been astute to protect such persons, particularly in matters affecting the home. A reckless-credit defence of this kind is not to be brushed aside.

[83] But the test under the Act is a particular one. Section 81(2) prohibits the entry into a credit agreement without first taking reasonable steps to assess the consumer's general understanding and appreciation of the risks, costs and obligations of the proposed agreement, the consumer's debt repayment history, and the consumer's existing financial means, prospects and obligations. An agreement is reckless under s 80 if that assessment was not made, or if, having been made, it showed that the consumer did not understand the agreement or would be rendered over-indebted, and the credit was nonetheless granted. The enquiry is into the adequacy of the assessment, proportionate to the agreement, and not into whether, with hindsight, the credit was advisable.

[84] The proportionality of the assessment to the agreement matters here. This was not an instalment agreement and required no monthly payment, so the consumer's capacity to service instalments from income, the usual concern of an affordability assessment, was not the relevant measure. The relevant measure was whether the security would, on a prudent forecast, discharge the Settlement Value at the Repayment Event, and whether the consumer understood how the Settlement Value would accumulate against her home.

[85] On the evidence, the First Applicant made an assessment proportionate to the product. It obtained a contemporaneous valuation. It engaged an independent and accredited financial adviser, who recommended the loan. It applied a loan-to-value ratio of about 25%, leaving a substantial equity margin against the accumulation of interest over the borrower's expected lifetime. And it completed a Needs Analysis and Borrower Declaration recording Ms Rosen's circumstances, signed by her and counter-signed by the adviser. That is not a perfunctory process, and it engages each of the matters s 81(2) requires to be assessed. The executors say that the adviser endorsed the product rather than warning against it, and that his involvement is, for that reason, of little value. The submission mistakes what s 81(2) requires. The section directs the enquiry to the consumer's understanding and appreciation of the risks and costs, to her repayment history, and to her means and obligations. It does not require that independent advice take the form of a recommendation to decline. The adviser's function was to ensure that Ms Rosen understood the product and how the Settlement Value would grow against her home, and, on the record, he discharged it.

[86] The product was structured to meet Ms Rosen's position rather than to ignore it. It provided funds against her sole substantial asset without requiring the monthly servicing she plainly could not have managed. She made the choice with independent advice and disclosure of how the Settlement Value would grow. The autonomy of an elderly consumer is not absolute, but neither is it nothing; where the credit provider has discharged the obligations imposed by s 81, the Act respects the consumer's choice. The assessment that s 81 requires is preventive, and is directed to the risk the product in fact presents. For a loan of this kind, the risk was whether the security would, on a prudent forecast, meet the Settlement Value when it fell due. On this record, the forecast held. The property exceeds the death-date balance by a substantial margin on the applicants' own valuation, and by a larger one on the municipal valuation, so that the security has met the debt and left meaningful equity in the estate. The contention that the credit was reckless because the debt would devour the home

is not borne out where the home has absorbed it, and more remains. The defence of reckless credit, on this record, is not made out. I add that nothing in this conclusion should be taken as an endorsement of equity-release lending to the elderly as a class. Each agreement must be measured against ss 80 and 81 on its own facts.

The dispute-resolution clause

[87] Clause 30 of the agreement provides that, after a dispute is referred to the First Applicant, an unresolved dispute may be referred to conciliation, mediation, or arbitration. The clause is permissive. It does not erect a precondition to litigation.

[88] Even if it were otherwise, the executors have not sought a stay. They filed an answering affidavit, launched a counter-application, took interlocutory steps and engaged the merits. Any right to insist on alternative dispute resolution was waived by their election to litigate.

[89] The defence fails.

The Administration of Estates Act

[90] The executors' final substantive defence is that the First Applicant ought to have followed the claims procedure under the Administration of Estates Act before suing. That is answered by *Nedbank Ltd v Steyn and Others* 2016 (2) SA 416 (SCA), in which the SCA held that there is no provision in that Act that can be construed as depriving a creditor of its common-law right to enforce a claim by action against the executor of a deceased estate. The statutory claims procedure does not oust that right.

[91] The defence fails.

Rule 46A and the reserve price

[92] Rule 46A governs the execution of immovable property that is the primary residence of a judgment debtor. It gives procedural effect to the constitutional concern, recognised in *Jaftha v Schoeman; Van Rooyen v Stoltz* 2005 (2) SA 140 (CC) and *Gundwana v Steko Development CC* 2011 (3) SA 608 (CC), that

judicial oversight should attend the loss of a home, an interest grounded in s 26 of the Constitution. Where the residence is occupied not by the deceased borrower but by an heir who has lived there for many years, the s 26 interest is engaged in that occupier, and the court must take it into account.

[93] The first respondent's evidence, not seriously contested by the time the matter reached me, is that he has lived at the property since about 2000 to care for his mother and that it is his primary residence. Rule 46A thus applies.

[94] The applicants did not bring a Rule 46A application together with the main application. That was a material shortcoming. *Absa Bank Ltd v Mokebe and Related Cases* 2018 (6) SA 492 (GJ) holds that, where a money judgment and an order declaring a primary residence executable are sought, the applications should ordinarily be brought and heard together, so that the court may weigh the whole picture. The omission is undesirable, but it is not fatal where the composite application has since been brought and heard with the main application, as has happened here, and where the executors have shown no prejudice that an order as to costs cannot answer.

[95] Rule 46A(9)(b) requires the court, in setting a reserve, to take account of the market value of the property, the amounts owing in rates and under registered bonds, any equity that may be realised, the interests of the judgment debtor and other occupiers, and the risk that, without a reserve, the property may be sold for substantially less than its worth.

[96] The applicants propose R2 800 000, as per their valuer's report. The executors propose R3 760 000 on the municipal valuation. The municipal figure is indicative, drawn from the rates roll, while the valuer's report is a market estimate prepared for litigation. Each has its limits. The 2007 valuation of R1 200 000 is of little present help, though the substantial appreciation of Sea Point values since then is not in dispute.

[97] The judgment debt is in the order of R1,32 million in capital and pre-death interest, with post-death interest subject to the cap I have described. According to

the applicants' valuation, the equity margin over the debt is about R1,5 million, while according to the municipal valuation, it is closer to R2,4 million. There is no evidence of significant rates in arrears. The first respondent has occupied the property for more than two decades, has no alternative accommodation on record, and has no apparent means of redeeming the bond. These features tell against a reserve at the lower end, which would expose the occupier to disproportionate prejudice for little corresponding benefit to the estate or the creditor. One must also consider that forced sale values are generally discounted against the asset's true value.

[98] Weighing these matters, including the fact that there is a forced sale, I set the reserve at R3 200 000. That figure preserves a meaningful equity margin for the estate over the judgment debt while protecting the first respondent against a sale at an undervalue. If the reserve is not achieved, Rule 46A(9)(c) to (e) regulates what follows. The Sheriff must report to the court, and a further order may be sought. The oversight contemplated by the rule is not spent by this order. The property is declared specially executable, with a reserve price of R3 200 000.

Costs

[99] Costs are at the court's discretion, ordinarily following the result. Where litigation is fragmented, where the parties enjoy mixed success, or where a party's conduct has caused wasted costs, that principle may be adjusted.

[100] Here, the applicants have succeeded on the main relief, the intervention, and most of the defences raised against them, including the central dispute over the *in duplum* rule. The executors have succeeded in part. The post-death interest is capped under s 103(5); they have obtained a higher reserve than the applicants proposed, and condonation has been granted on terms. The applicants' initial non-disclosure of the cession and their failure to bring a Rule 46A application at the outset contributed materially to the fragmentation and the postponements. The executors' ill-conceived application to compel, and their breach of the timetable, generated unnecessary expense. So too did the cession point. It was pressed by a note delivered after argument had closed and after the applicants

had presented their case, and it then failed. The wasted costs it occasioned must fall on the executors, and the manner of its raising warrants the attorney-client scale.

[101] Under Uniform Rule 67A, the court must fix the scale of costs. The matter has been substantial, and the issues warranted senior representation. The appropriate scale for the main application is Scale B.

[102] The applications for costs *de bonis propriis*, advanced on both sides, fail. The threshold is high, requiring a substantial departure from the standard expected of a practitioner. The applicants' errors of non-disclosure and procedure were errors of judgment, which they corrected. The executors' attempt to proceed without proper service on the SPV was, on the Sheriff's return, an unsuccessful step rather than an abuse. Neither meets the threshold.

[103] The orders that follow seek to reflect these considerations without descending into an impractical apportionment.

Order

[104] In the result, I make the following order.

1. The application by Seniors Finance Security SPV (Pty) Ltd to intervene as Second Applicant is granted. The combined founding affidavit dated 28 November 2025 and the replying affidavit dated 26 February 2026 stand as its papers.

2. Condonation for the late delivery of the executors' answering affidavit in the Rule 46A and intervention applications is granted. The executors, in their representative capacity, are to pay the costs of the condonation application on the attorney-and-client scale.

3. The executors' application to compel compliance with the Rule 35(12) notice is dismissed. The executors, in their representative capacity, are to pay the costs of that application on Scale B.

4. The respondents' objection to the First Applicant's standing to enforce the debt, founded on the cession of the mortgage bond, is dismissed.

5. It is declared that the estate of the late Helen Rosen is indebted to the First Applicant in the Settlement Value as at 25 August 2022 in the sum of R1 322 223,32, as reflected in the certificate of balance annexed to the applicants' draft order.

6. Interest is payable on the sum in paragraph 5 at the rate of prime plus 1,95% per annum, calculated daily and compounded monthly, from 25 August 2022 to the date of final payment, subject to the following.

   (a) The aggregate of interest and the charges contemplated in s 101(1)(b) to (g) of the Act accruing after 25 August 2022 shall not exceed the unpaid balance of the principal debt as at that date, being the amount deferred under the agreement together with the value of any item contemplated in s 102 of the Act, recorded in the certificate of balance as R300 000, and not the closing balance reflected in that certificate.

   (b) The common-law *in duplum* rule applies to the post-death period without interruption by the institution or pendency of these proceedings.

   (c) Upon the granting of this judgment, the resulting judgment debt constitutes a new principal sum, on which interest runs afresh at the rate aforesaid from the date of this order, the common-law *in duplum* rule thereafter operating against that new principal.

7. If a dispute arises as to the calculation of interest under paragraph 6, either party may apply on the same papers, supplemented as necessary, for its determination. That may include a referral to oral evidence under Uniform Rule 6(5)(g) or, with the consent of both parties, to a referee under s 38 of the Superior Courts Act 10 of 2013.

8. The counter-application for cancellation of Mortgage Bond No B17[…] is dismissed.

9. The immovable property described as Sections 1 and 3, S[…] B[…] Road No […], Sea Point East, Cape Town, held under Deeds of Transfer ST1[…] and ST1[…], and encumbered by Mortgage Bond No B17[…] in favour of the Second Applicant, is declared specially executable.

10. A reserve price of R3 200 000 is set for any sale in execution of the property.

11. The executors, in their representative capacity, are to pay 70% of the applicants' costs in the main, intervention and Rule 46A applications on Scale B, save where costs have otherwise been ordered. Such costs include the costs of one counsel.

12. The applicants, jointly and severally, are to pay 30% of the executors' costs in the main and Rule 46A applications on Scale A, save where costs have otherwise been ordered.

13. The executors, in their representative capacity, are to pay the costs occasioned by the raising of the cession point, on the attorney and client scale.

M FRANCIS

Judge of the High Court

Appearances:

For Applicant:	Adv Nadeem Ali
Instructed by:	Hunts (Inc Borkums) Attorneys
For Respondent:	Adv Brendan Atkins
Instructed by:	Jones Attorneys