



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**Ferris and Another v FirstRand Bank Limited and Another**

**CCT 52/13**

**Date of hearing: 5 November 2013**

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On 5 November 2013 at 10h00 the Constitutional Court will hear an application for leave to appeal against a refusal by the South Gauteng High Court, Johannesburg to rescind a default judgment based on an alleged failure to comply with the National Credit Act.

In 2007 Mr and Mrs Ferris took out a home loan from FirstRand Bank, which was secured by a mortgage bond. Soon after this they fell into arrears. In 2009 they applied for debt review. The debt counsellor made a settlement offer to FirstRand, which Mr and Mrs Ferris claim FirstRand ignored. The debt counsellor then applied to the Randburg Magistrate's Court to have the Ferrises declared over-indebted. Before judgment was delivered, FirstRand sent a notice in terms of section 86(10) of the Act purporting to terminate the debt review. It is not disputed that this notice was not properly delivered. In April 2010 the Magistrate granted a debt rearrangement order declaring Mr and Mrs Ferris over-indebted, rearranging their obligations and specifying that the original home loan would be "revived and fully enforceable" if the order were breached. Soon after this, the Ferrises breached the rearrangement order. FirstRand issued summons to enforce the loan, and in November 2011 the High Court granted default judgment against Mr and Mrs Ferris.

Mr and Mrs Ferris applied to the High Court for rescission of the default judgment. Their application was denied on the grounds that there had been no procedural irregularity justifying rescission, and in any event they would not have had a defence against FirstRand's enforcement action. Both the High Court and the Supreme Court of Appeal denied their subsequent applications for leave to appeal. Mr and Mrs Ferris then applied

to the Constitutional Court for leave to appeal against the High Court's refusal to rescind the default judgment.

Mr and Mrs Ferris argue that the High Court should have rescinded the default judgment because they had two defences to the enforcement action. First, because the notice was not properly delivered, the rearrangement order was not terminated and this precluded the enforcement of the loan. Second, because FirstRand refused the debt counsellor's initial settlement offer without making a counter-offer, it did not participate in the debt review proceedings in good faith.

FirstRand argues that this Court should not interfere with the High Court's refusal to rescind the default judgment. Mr and Mrs Ferris have not shown good cause, because they did not adequately explain their default and because they took too long to apply for rescission. Furthermore, their breach of the rearrangement order entitled FirstRand to enforce the loan agreement against them.