



CONSTITUTIONAL COURT OF SOUTH AFRICA

Destri Joseph Malcolm Ferris and Another v FirstRand Bank Limited and Another

CCT 52/13

**Date of hearing: 5 November 2013
Date of judgment: 12 December 2013**

MEDIA SUMMARY

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.

Today the Constitutional Court delivered a judgment refusing leave to appeal against a judgment of the South Gauteng High Court, Johannesburg. The High Court had refused to rescind a default judgment granted against the applicants, Mr and Mrs Ferris.

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. Their debt counsellor then applied to the Randburg Magistrate's Court for an order declaring them over-indebted, which was granted in April 2010. The order also rearranged their credit obligations and specified that the original home loan would be "revived and be fully enforceable" if the order were breached. Soon after this, Mr and Mrs Ferris breached the debt-restructuring 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 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 sought to challenge the High Court's refusal to rescind the default judgment before the Constitutional Court.

In a unanimous judgment written by Moseneke ACJ, the Constitutional Court held that there were no grounds for interfering with the High Court's refusal to rescind. Because Mr and Mrs Ferris had breached the debt-restructuring order FirstRand was, in terms of the National Credit

Act and the order itself, entitled to enforce the loan without further notice. There was therefore no error in the default judgment justifying rescission and Mr and Mrs Ferris did not have a defence to the enforcement action.

The Constitutional Court refused leave to appeal and made no order as to costs.