

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 61/14

In the matter between:

ANDRÉ FRANCOIS PAULSEN

First Applicant

MARGARETHA ELIZABETH PAULSEN

Second Applicant

and

SLIP KNOT INVESTMENTS 777 (PTY) LIMITED

Respondent

APPLICANTS' STATEMENT OF FACTS

1. Slip Knot Investments 777 (Pty) Limited (hereinafter "Slip Knot") is a credit provider in the field of providing short-term bridging finance to property developers (also referred to as "mezzanine funding"). Slip Knot was not at any relevant time a credit provider registered in terms of section 40 of the National Credit Act No. 34 of 2005.
2. At all relevant times the total principal debt owed to Slip Knot under all outstanding credit agreements, other than incidental credit agreements, exceeded the threshold prescribed in terms of section 42(1) of the said Act.
3. Winkor 139 (Pty) Ltd. (hereinafter "Winkor") is a company involved in the business of property development. Its shares are held by the trustees

of the Paulsen Family Trust. Mr. A.F. Paulsen and his wife, Mrs. M.E. Paulsen (hereinafter collectively referred to as “the Paulsens”) are 2 of the 3 trustees of this Trust.

4. On 10 July 2006 Slip Knot advanced the sum of R12 million to Winskor on terms and conditions set out in a written contract (hereinafter “the contract”), a copy of which is annexed hereto, marked annexure “A”.
5. The contract was subject to a number of suspensive conditions and the R12 million was repayable by Winskor within 12 months after the “commencement date” as defined.
6. From the seventh month after the commencement date interest on the outstanding capital sum ran at 3% per month, calculated daily and capitalised monthly (clause 7.2).
7. It was a further term of the contract that Slip Knot would be entitled to interest at the rate of 2.5% of the nett profit of the development and that Winskor guaranteed a minimum interest payment of R17 million (clause 6).
8. The “commencement date” is 10 July 2006.
9. As security for its loan Slip Knot required and obtained:

- 9.1 a deed of pledge and cession of the Paulsen Family Trust's title and interest in the shares and loan account of Winkor;
 - 9.2 a deed of suretyship signed by the Paulsens, the Paulsen Family Trust and the Keurbos Beleggingstrus, a copy of which is attached hereto as annexure "B"
10. When Winkor defaulted, Slip Knot commenced various legal proceedings. The only proceeding which is relevant is an application on notice of motion in the Western Cape High Court, served on the Paulsens on 10 January 2010, in which Slip Knot claims from the Paulsens, the Paulsen Family Trust and the Keurbos Family Trust jointly and severally:
- 10.1 Payment of R29 million;
 - 10.2 Interest at 3% per month on R12 million from 10 January 2007 as well as interest at the rate of 3% per month on R29 million from 10 July 2007 until date of payment;
 - 10.3 Costs of suit on the attorney and client scale (as provided for in the loan agreement).
11. Winkor was cited as the First Respondent in the Notice of Motion but no relief was claimed against it by Slip Knot.

12. On 24 February 2012 Blignault, J granted the following relief against the Paulsens jointly and severally in their capacities as sureties:

12.1 Payment of R12 million;

12.2 Payment of interest on R12 million at the rate of 3% per month from 21 July 2007 to 10 January 2010, such interest to be limited to a maximum amount of R12 million.

12.3 Payment of interest on R12 million from 11 January 200 at the rate of 3% per month to date of judgment;

12.4 Payment of interest on R12 million at the rate of 3% per month from date of judgment to date of final payment, such interest to be limited to a maximum amount of R12 million;

12.5 Payment of R17 million;

12.6 Payment of interest on R17 million at the rate of 15,5% per annum from date of judgment until date of final payment;

12.7 Costs on an attorney and client scale.

13. On appeal to it the Full Court of the Western Cape High Court, the Full Court granted the following relief against the Paulsens jointly and severally:

13.1 Payment of the sum of R12 million;

13.2 Interest on the sum of R12 million in the amount of R12 million;

13.3 Costs on an attorney and client scale.

14. On a further appeal (and cross-appeal) to the Supreme Court of Appeal the following relief was granted against the Paulsens jointly and severally:

14.1 Payment of R12 million;

14.2 Interest on R12 million until 10 February 2010 in the amount of R12 million;

14.3 Further interest on the capital sum of R12 million at a rate of 3% per month from 10 February 2010 to 24 February 2012;

14.4 Interest on the total of the amounts set out in 11.1, 11.2 and 11.3 above at the rate of 3% per month from 25 February 2012 to date of payment, such interest to be limited to the total of the said amounts.