



CONSTITUTIONAL COURT OF SOUTH AFRICA

Paulsen and Another v Slip Knot Investments 777 (Pty) Ltd

CCT 61/14

Date of hearing: 16 September 2014

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.

On 16 September 2014, at 10h00, the Constitutional Court will hear an appeal against a judgment of the Supreme Court of Appeal concerning whether a credit provider's failure to register under the National Credit Act (NCA) invalidates a loan agreement that is exempted from regulation by the NCA and whether a surety can be held liable for accumulated interest greater than the capital amount of the loan.

In 2006, Mr and Mrs Paulsen (the Paulsens), through Winskor 139 (Pty) Ltd (Winskor) entered into a bridging finance agreement with Slip Knot Investments 777 (Pty) Ltd (Slip Knot) to borrow R12 million. The interest rate of this loan agreement was calculated at 3 per cent per month. As security for this loan, the Paulsens, in their personal capacities, signed a deed of suretyship in favour of Slip Knot. In 2007 Winskor defaulted on its obligation to repay the loan, together with a large amount of accrued interest, to Slip Knot.

In 2010 Slip Knot was successful in the Western Cape Division, Cape Town (High Court) in seeking repayment from the Paulsens. The Paulsens appealed to a full bench of the High Court. The High Court confirmed that the Paulsens owed the capital amount, but held that the interest awarded ought to be limited at R12 million by virtue of the *in duplum* rule, which provides that interest stops accruing on a debt once it has reached the capital amount. On appeal, the Supreme Court of Appeal, agreed that the Paulsens owed the capital sum but found that the *in duplum* rule ceases once litigation commences.

Accordingly, interest continued to accrue between the start of the litigation and the judgment of the High Court, resulting in the award of interest greater than R12 million.

Before the Constitutional Court, the Paulsens argue that Slip Knot was required to register as a credit provider under the NCA, even though this loan agreement was exempted from the regulations and requirements of the NCA. As Slip Knot was not registered, the Paulsens argue that the loan agreement is unlawful and void. Alternatively, the Paulsens argue that the *in duplum* rule – which provides that the interest recovered cannot exceed the principal debt – should apply and limit their debt to R12 million. The Paulsens argue that the amount of interest they must pay is limited by the principle that a surety can never be liable for more than the principal debtor. As the *in duplum* rule would have prevented the interest from accruing beyond R12 million against Winskor, the Paulsens contend that it must also operate to limit their liability to no greater than this amount.

Slip Knot responds that because it exclusively provides bridging finance loans to large-scale property developers, all of which are exempt from the NCA, it is not required to register as a credit provider. Moreover, even if it did have to register, Slip Knot contends that because the loan agreement in question was not subject to the NCA, its failure to register cannot serve to render the agreement invalid. With regard to the *in duplum* rule, Slip Knot argues that the Supreme Court of Appeal's finding that it does not apply once legal proceedings have been commenced was legally correct and based on sound public policy considerations. Slip Knot points out that the Paulsens are experienced business people who enjoyed equal bargaining power, and that with regard to the niche market of bridging finance, the interest rate was not unusual or unfair. Thus, there is no justification for applying the *in duplum* rule to save the Paulsens from paying the full amount of interest accumulated after the commencement of the litigation.