THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 766/2010

In the matter between:

SALLY ANN COLLETT **Appellant**

and

FIRSTRAND BANK LTD **Respondent**

NATIONAL CREDIT REGULATOR **Amicus Curiae**

Neutral citation: ***Collett v Firstrand Bank*** **(766/2010) [2011] ZASCA 78**

(27 May 2011)

Coram: Mpati P, Brand, Maya, Malan and Tshiqi JJA

Heard: **4 May 2011**

Delivered: **27 May 2011**

Summary: Debt review in terms of s 86 of National Credit Act 34 of 2005 – right of credit provider to terminate review under s 86(10) – reading in 'or High Court' in s 86(11)

ORDER

On appeal from: Eastern Cape High Court, Grahamstown (Eksteen J sitting as court of first instance):

The appeal is dismissed.

JUDGMENT

MALAN JA (Mpati P, Brand, Maya and Tshiqi JJA concurring)

[1] This appeal concerns the construction of s 86(10) and (11) and s 87 of the National Credit Act 34 of 2005. Eksteen J sitting in the Eastern Cape High Court, Grahamstown, granted summary judgment against the appellant in an amount of R677 254,92 with interest and costs and made an order declaring certain immovable property executable. The action was based on a mortgage bond hypothecating the property declared executable. A 'mortgage agreement' is a 'credit transaction' and the NCA applies to it.[1]

[1]Section 8(4)(d) and s 1 *sv* 'mortgage' and 'mortgage agreement'.

[2] The appellant was in default with her repayments under the bond and by reason of her failure to pay any or all of the agreed instalments the whole of the outstanding amount became due. On 4 January 2010 she applied for debt review in terms of s 86(1). The application was made to Gerhard Stoltz Debt Counsellors and the respondent was notified of it the same day. On 15 February 2010 Stoltz advised the respondent that the application was successful and that the debt obligations of the appellant were in the process of being restructured. A debt restructuring proposal was circulated to all the appellant's credit providers, including the respondent. None of the credit providers accepted the proposal. On 29 March 2010 Stoltz referred the matter to the East London Magistrate's Court in terms of s 86(8) for an order that the appellant be declared over-indebted; that her debt commitments be re-arranged; that the credit agreements of those credit providers who terminated their reviews under s 86(10) be resumed and be included in the debt review; and for costs.

[3] After the matter had been referred to the Magistrate's Court and on 7 April 2010, that is more than 60 days after the appellant's application, the respondent terminated the debt review in so far as it related to the mortgage bond. It did so pursuant to the provisions of s 86(10). The hearing before the Magistrate's Court in terms of s 87, set down for 10 June 2010, was postponed to 12 August 2010. Summons was issued on 21 June 2010 and served on the appellant on 1 July 2010.

[4] Section 86 sets out the procedure to be followed by the debt counsellor on receipt of a consumer's application for debt review. Section 87 concerns the re-arrangement of a consumer's obligations and the powers of the Magistrate's Court to which the matter has been referred. Sections 86 and 87 are contained in Part D of Chapter 4 of the NCA, which is entitled 'Over-indebtedness and reckless credit'. The procedure when applying for debt review is contained in s 86 and has been described elsewhere.[2] The sections referred to read as follows:

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[2] *Nedbank Ltd & others v National Credit Regulator & another (*662/09 & 500/10) [2011] ZASCA 35 (28 March 2011) paras 10 ff.

’86. (10) If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may give notice to terminate the review in the prescribed manner to—

(a) the consumer;

(b) the debt counsellor; and

(c) the National Credit Regulator,

at any time at least 60 business days after the date on which the consumer applied for the debt review.

(11) If a credit provider who has given notice to terminate a review as contemplated in subsection (10) proceeds to enforce that agreement in terms of Part C of Chapter 6, the Magistrate’s Court hearing the matter may order that the debt review resume on any conditions the court considers to be just in the circumstances.

87. **Magistrate’s Court may re-arrange consumer’s obligations.**—(1) If a debt counsellor makes a proposal to the Magistrate’s Court in terms of section 86(8)(b), or a consumer applies to the Magistrate’s Court in terms of section 86(9), the Magistrate’s Court must conduct a hearing and, having regard to the proposal and information before it and the consumer’s financial means, prospects and obligations, may—

(a) reject the recommendation or application as the case may be; or

(b) make—

(i) an order declaring any credit agreement to be reckless, and an order contemplated in section 83(2) or (3), if the Magistrate’s Court concludes that the agreement is reckless;

(ii) an order re-arranging the consumer’s obligations in any manner contemplated in section 86(7)(c)(ii); or

(iii) both orders contemplated in subparagraph (i) and (ii).

(2) The National Credit Regulator may not intervene before the Magistrate’s Court in a matter referred to it in terms of this section.’

Section 88 deals with the effect of debt review or a re-arrangement order or agreement.[3]

[3]Section 88(3) is of importance: ‘Subject to section 86 (9) and (10), a credit provider who receives notice of court proceedings contemplated in section 83 or 85, or notice in terms of section 86 (4) (b) (i), may not exercise or enforce by litigation or other judicial process any right or security under that credit agreement until—

[5] In her affidavit opposing the application for summary judgment the appellant did not deal with the merits of the respondent's case but only questioned the respondent's right to have instituted action. She stated:

'As I applied for Debt Review prior to the Applicant issuing Summons against me, and furthermore, as my Debt Counsellor has referred my application to the Magistrate's Court prior to the Plaintiff's Summons and within the prescribed 60 business day period, it should be clear the Plaintiff did not have the right to issue Summons against me.'

[6] The question to be decided is therefore whether a credit provider is entitled to terminate a debt review in terms of s 86(10) after the debt counsellor has referred the matter to the Magistrate's Court for an order envisaged by s 86(7)(c) (and s 87(1)(b)) and while the hearing in terms of s 87 is still pending. In the court below Eksteen J held in the affirmative. The conclusion of the court below is supported by several provincial division judgments.[4] However, as has become typical of the jurisprudence developing around the NCA, there is a host of decisions that have taken a different view.[5] It is not

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(a) the consumer is in default under the credit agreement; and

(b) one of the following has occurred

(i) An event contemplated in subsection (1) (a) through (c); or

(ii) the consumer defaults on any obligation in terms of a re-arrangement agreed between the consumer and credit providers, or ordered by a court or the Tribunal.

[4] *SA Taxi Securitisation (Pty) Ltd v Nako & others* [2010] ZAECBHC 4; *Firstrand Bank Ltd v Fillis* 2010 (6) SA 565 (ECD); *Firstrand Bank Ltd v Evans* (2010) ZAECPEHC 55; *Firstrand Bank Ltd t/a First National Bank v Seyffert* 2010 (6) SA 429 (GSJ). Some of the problems encountered with the implementation of the NCA are discussed in National Credit Regulator *Debt Review Task Team May* 2010.

[5] *Standard Bank of South Africa Ltd v Kruger; Standard Bank of South Africa Ltd v Pretorius* 2010 (4) SA 635 (GSJ); *SA Securitisation (Pty) Ltd v Matlala* [2010] ZAGPJHC 70; *Wesbank a division of Firstrand Ltd v Papier (with the NCR as Amicus Curiae)* 2011 (2) SA 395 (WCC). In some matters the question was left open (eg *BMW Financial Services SA (Pty) Ltd v Mudaly* 2010 (5) SA 618 (KZD) para 23). Others are not particularly clear on the issue (eg *Changing Tides 17 (Pty) Ltd NO v Erasmus & another; Changing Tides*

possible to do justice to all the considerations advanced in these conflicting decisions.[6] They deal with the approach to take when construing the NCA; the question when the entitlement to terminate the debt review arises and ends; and the meaning of s 86(11), in particular, which court may order a resumption of the debt review which was terminated.

[7] The view that the credit provider may not terminate the debt review after referral to the Magistrate's Court is perhaps best articulated by Griesel J speaking for the full court in *Wesbank a division of Firstrand Bank Ltd v Papier (with the NCR as Amicus Curiae).*[7] He, quite correctly, pursued a contextual approach to the legislation.[8] He referred to Part D of Chapter 4 of the NCA as introducing the concepts of 'over-indebtedness and reckless credit' and stated that, '[t]he object of this part of the Act is to provide protection and assistance to an over-indebted consumer in an environment that encourages participation in good faith by both parties. The mechanisms provided by the Act are contained in ss 85-88 and consist of debt review, on the one hand, and debt re-arrangement, on the other.'[9] Proceeding on this basis he held that s 86(10) dealt with one aspect of the elaborate process as described in the heading to s 86; 'Application for debt review'. This process commences with an application by the consumer in terms of s 86(1), followed by the notification of the application by the debt counsellor to all credit providers and credit bureaux.[10] The consumer and each credit provider must then, as is

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17 (Pty) Ltd NO v Cleophas & another; Changing Tides 17 (Pty) Ltd NO v Fredericks & another [2009] ZAWCHC 175).

[6] A useful comparison of some of the judgments was undertaken by D Pillay J in *Firstrand Bank Ltd v Mvelase* 2011 (1) SA 470 (KZP) paras 51 ff.

[7] 2011 (2) SA 395 (WCC).

[8] Para 21 and see *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490 (CC) para 90.

[9] Para 15. This argument was first developed in *Standard Bank of South Africa Ltd v Kruger; Standard Bank of South Africa Ltd v Pretorius* 2010 (4) SA 635 (GSJ) paras 13 ff.

[10] Section 86(4)(b).

required by s 86(5), comply with the requests of the debt counsellor and participate in the debt review in good faith.

[8] The debt counsellor must within 30 days determine whether the consumer 'appears to be over-indebted'.[11] If he determines that the consumer is not over-indebted he must reject the application[12] and advise the consumer of his right to approach the court directly in terms of s 86(9) within 20 business days.[13] Where the debt counsellor determines that the consumer appears to be over-indebted he must[14] 'issue a proposal' recommending that the Magistrate's Court make any of the orders provided for by s 86(7)(c) (and s 87(1)(b)). Griesel J concluded that a referral in terms of s 86(7)(c) sets in motion a 'debt re-arrangement by the court' as opposed to a 'voluntary re-arrangement' in terms of s 86(8)(a). Because neither the NCA nor the regulations contain any time period within which the referral to court must be made he opined that, having regard to the context, the answer became clear:

'The process of "debt review" requires of the debt counsellor to determine, within 30 days, whether or not a consumer is over-indebted. If not, the debt counsellor must advise the consumer of his or her right "to approach the court" within a further 20 business days for the necessary order. This leads me to the conclusion that the period of 60 days referred to in s 86(10) was introduced with the abovementioned time frame in mind so as to allow the consumer and/or debt counsellor sufficient time to "approach the court" for the necessary relief in terms of s 87.[15]

…

Given the fact that a consumer has a period of 50 business days, calculated from the date of his application to the debt counsellor, within which to "approach" the magistrate's court for an order in terms

[11] Section 86(6)(a) read with reg 24(6).

[12] Section 86(7)(a).

[13] Regulation 25(5). Section 86(9) provides: 'If a debt counsellor rejects an application as contemplated in subsection (7)(a), the consumer, with leave of the Magistrate's Court, may apply directly to the Magistrate's Court, in the prescribed manner and form, for an order contemplated in subsection (7)(c).'

[14] *Nedbank & others v National Credit Regulator & another* (662/09 & 500/10) [2011] ZASCA 35 (28 March 2011) para 29.

[15] Para 25.

of s 87, it could never have been contemplated that the rest of the process – including a hearing before the magistrate and a re-arrangement order in terms of s 87 – should all be finalised within the remaining ten business days.[16]

…

On the interpretation advanced on behalf of the plaintiff herein, the position is quite simple: the credit provider would be entitled, in each case where a period of 60 days has elapsed without a re-arrangement order in terms of s 87 having been made, unilaterally "to derail the entire debt review process".'[17]

[9] To my mind this is too limited an approach. Section 86(10) must be construed in view of the other provisions of the NCA, particularly s 86(11). An application by a consumer to apply for debt review, be declared over-indebted and have his debts arising from credit agreements re-scheduled are novel concepts introduced by the NCA.[18] Their purpose is to assist not only consumers who are over-indebted,[19] but also those who find themselves in 'strained' circumstances.[20] A consumer who finds himself in either of these circumstances may apply for debt review in terms of s 86(1). He may do so whether or not he is in arrears under any particular credit agreement. Where the consumer is not in default of any of his obligations, the credit provider is unable to terminate the process because s 86(10) gives the right to terminate the debt review only where the consumer is in default. In such a case the credit provider must await the hearing in terms of s 87. Nor can the credit provider proceed to enforce the credit agreement because the consumer is not in default. Where the consumer, however, is in default the credit provider is entitled to enforce that credit agreement provided the consumer has not made application for debt review pursuant to s 86(1) and the credit provider has complied with the requirements of s 129 and 130. In terms of s 86(2) an application for debt review concerning a particular credit agreement may not be made if

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[16] Para 26.

[17] Para 28.

[18] *Nedbank & others v National Credit Regulator & another* (662/09 & 500/10) [2011] ZASCA 35 (28 March 2011) paras 20 ff.

[19] Section 79 of the NCA.

[20] Section 87(7)(b) of the NCA (see H C J Flemming *Flemming's National Credit Act* 2ed 139 ff).

the credit provider has 'proceeded to take the steps contemplated in section 129 to enforce that agreement'.[21]

[10] The purpose of the debt review is not to relieve the consumer of his obligations but to achieve either a voluntary debt re-arrangement[22] or a debt re-arrangement by the Magistrate's Court.[23] The purposes of the NCA include the promotion of responsibility in the credit market by encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers'.[24] Its approach to over-indebtedness is 'based on the principle of satisfaction of all responsible consumer obligations'.[25] By providing for a consistent and harmonised system of debt restructuring the NCA 'places priority on the eventual satisfaction of all responsible consumer obligations'.[26] It follows that the NCA serves not only the interest of consumers: its construction calls for a careful balancing of all relevant interests.[27]

[11] The debt counsellor is charged to determine whether the consumer 'appears' to be over-indebted,[28] and must issue a proposal recommending any or all of the orders set out in s 86(7)(c). The debt counsellor's involvement in the debt review is no end in itself but part of an on-going process culminating in the order of the Magistrate's Court under s 87 (or a voluntary re-arrangement under ss 86(7)(b) and 86(8)(a)). Only then

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[21] *Nedbank & others v National Credit Regulator & another* (662/09 & 500/10) [2011] ZASCA 35 (28 March 2011) paras 4 ff.

[22] Section 86(7)(b).

[23] Sections 86(7) and 87.

[24] Section 3(c)(i).

[25] Section 3(g).

[26] Section 3(i).

[27] See *Nedbank Ltd & others v National Credit Regulator & another* para 2; *Firstrand Bank Ltd v Mvelase* 2011 (1) SA 470 (KZP) paras 20-21; *Rossouw & others v First National Bank t/a FNB Home Loans* (640/2009) [2010] ZASCA 130 (30 September 2010); 2010 (6) SA 439 (SCA) para 17; *BMW Financial Services (South Africa) (Pty) Ltd v Mudaly* 2010 (5) SA 618 (KZD) para 16.

[28] Section s 86(6)(a).

can the debt review be said to be complete. The role of the debt counsellor does not end with his referral of the matter to the Magistrate's Court. His 'proposal' takes the form of an application governed by the Rules of the Magistrates' Court and he is required to be present in court, participate in the hearing and assist the court by way of furnishing evidence, making submissions or answering questions.[29] It is no answer to contend that contextually s 86(10) forms part of s 86 and thus part of the 'debt review' as opposed to the 'hearing' before the Magistrate's Court in terms of s 87. The words in s 86(10) 'that is being reviewed in terms of this section' rather emphasise that it is not a debt review pursuant to ss 83(3)(b) or 85(a) and (b). Entirely different considerations apply to the review under these sections: they are not necessarily initiated by the consumer and the court has a discretion whether to proceed under those provisions. The credit provider is not entitled to terminate either of them. Under ss 86 and 87 there is only one unified process the purpose of which is the restructuring of the consumer's debts by amending the terms of the credit transaction between the parties. If the parties agree, they may amend the agreement in terms of s 116 or file a consent order as envisaged by s 86(8)(a). If they do not, the hearing envisaged by s 87 takes place. It follows that I am in agreement with the conclusion reached in the court below:[30]

'I am unable to find anything in the structure of section 86 or of the Act in its entirety which is indicative of an intention on the part of the legislature to limit the right of a credit provider under section 86(10) to the process prior to the reference to the Magistrate's Court. On the contrary I consider that the credit provider's rights to give notice in terms of section 86(10) continues until the Magistrate's Court has made an order as envisaged in section 87.'

[12] In the *Papier* decision[31] the court held that the right of a credit provider to terminate the debt review is forfeited once the debt counsellor brings an application to the Magistrate's Court in terms of ss 86(7) and 87. The argument was that because the debt counsellor has a period of 30 days within which to determine whether the consumer appears to be over-indebted, and the consumer a further 20 days, in the event of a finding that he is not over-indebted, to apply directly to the Magistrate's Court

[29] *National Credit Regulator v Nedbank Ltd & others* 2009 (6) SA 295 (GNP) at 313C-D.

[30] Para 18.

[31] Para 7.

in terms of s 86(9) for an order contemplated in s 86(7)(c), the 60 day period was introduced to allow either the debt counsellor or the consumer sufficient time to approach the Magistrate's Court as aforesaid. I do not think that s 86 requires the consumer or his debt counsellor to 'approach the court' within the period of 60 days. Indeed no time period is specified within which the debt counsellor must make application to the Magistrate's Court. Nor does the NCA require the process of debt re-structuring to be complete within the period of 60 days after the application was made. To do so would obviously be unrealistic. If it is correct, the credit provider will have little, if any, opportunity to terminate the debt review, that is only the period after the 60 day period and before the Magistrate's Court is approached. A sounder approach is to recognise the express words of s 86(10) which gives the credit provider a right to terminate the debt review in respect of the particular credit transaction under which the consumer is in default, and only when he is default, at least 60 business days after the application for debt review was made. It must be emphasised that it is only when the consumer is in default that the credit provider has this right. If he is not, the debt review continues without the credit provider being entitled to terminate it. It is not that the credit provider is 'derailing' the process when he terminates the debt review: it the consumer that is in breach of contract, not the credit provider. If the consumer applies for debt review before he is in default the credit provider may not terminate the process. But if the consumer is in default the consumer is entitled to a 60 business days' moratorium during which time the parties may attempt to resolve their dispute.

[13] This conclusion is supported by s 86(5). Where, as in this case, the consumer has applied for debt review before the credit provider has proceeded to enforce the credit agreement,[32] the consumer and credit provider are obliged, as s 86(5) requires, not only to comply with any reasonable request by the debt counsellor to facilitate an evaluation of the consumer's indebtedness and the prospects for responsible debt restructuring but also to participate in good faith in the review and negotiations.[33] This duty to negotiate does not terminate when the debt counsellor refers his proposal to the

[32]Section 86(2).

[33] Section 86(5) provides: 'A consumer who applies to a debt counsellor, and each credit provider contemplated in subsection (4)(b), must –

Magistrate's Court but continues pending the hearing. This much was conceded by counsel appearing for the National Credit Regulator, the *amicus curiae*. Moreover, the purpose of these negotiations is specifically to 'result in responsible debt re-arrangement'[34] which is precisely what the debt review is all about.

[14] The conclusion that the right of the credit provider to terminate the debt review under s 86(10) can be exercised even after a referral to the Magistrate's Court, does not lead to the anomalous result contended for on behalf of the *amicus curiae*.[35] While it is correct to say that s 87(1) requires that the Magistrate's Court 'must conduct a hearing', it is not correct to argue that termination of a debt review terminates the hearing. Section 86(10) entitles a credit provider to terminate the debt review relating to a specific credit agreement ('[i]f a consumer is in default under a credit agreement that is being reviewed'), not the 'hearing'. The hearing continues and, if several credit agreements are being reviewed, continues in respect of the others. Although notice of termination of the debt review is not required to be given to the Magistrate's Court but only to the consumer, debt counsellor and National Credit Regulator,[36] the proceedings are governed by the Rules of the Magistrates' Courts which makes adequate provision for the service of process and notices.[37]

[15] However, the right of the credit provider to terminate the review is balanced by s 86(11) which provides that if the credit provider has given notice to terminate and proceeds to enforce the agreement 'the Magistrate's Court may order that the debt

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(a) comply with any reasonable requests by the debt counsellor to facilitate the evaluation of the consumer's state of indebtedness and the prospects for responsible debt re-arrangement; and

(b) participate in good faith in the debt review and in any negotiations designed to result in responsible debt-rearrangement.'

[34]Section 86(5)(b).

[35] See also *Papier's* case above para 32.

[36] Section 86(10)(a) (b) and (c).

[37] Rule 9. See *GG* 33487 of 23 August 2010 and *Nedbank Ltd & others v National Credit Regulator & another* above, para 28.

review resume on any conditions that the court considers to be just in the circumstances'. It is at this moment that the participation of the credit provider in the debt review becomes relevant. He is obliged to comply with the reasonable requests of the debt counsellor (s 86(5)(a)) and to participate in good faith in the review and any negotiations designed to result in responsible debt re-arrangement (s 86(5)(b)). Should the credit provider fail or refuse to participate in the review, a resumption of the process may well be ordered. But where the credit provider on good grounds conclude that the proposed restructuring will not lead to the 'satisfaction by the consumer of all responsible financial obligations' (s 3(g) and (i)) or a re-arrangement as contemplated by s 86(7)(c) the court considering the resumption of the debt review may well refuse to sanction its resumption. As was stated by D Pillay J in *FirstRand Bank Ltd v Mvelase*,[38] the NCA strikes a balance between the interests of consumers and those of credit providers –

'through a push-pull tension which ensures that whenever sections of the NCA tip the scales in favour of the consumer, countervailing rights of the credit provider in other sections sway the balance in favour of the latter, and vice versa.'

[16] Section 86(11) refers to the 'Magistrate's Court' that may give the order that the debt review be resumed. In his judgment in the court below Eksteen J considered that where s 86(11) refers to the Magistrate's Court 'hearing the matter' it is a reference to the Magistrate's Court to which the debt review has been referred. He reasoned that the jurisdiction conferred by s 86(11) is specifically restricted to the Magistrate's Court in contrast to the powers enjoyed under ss 83, 85, 129(2) and 130 where reference is made to 'the court' or 'a court'. The debt review process provided for by s 86 in its entirety falls under the judicial oversight of the Magistrate's Court and, for that reason, he held that only the Magistrate's Court had jurisdiction to order a resumption of the debt review.[39]

[17] Proceedings to enforce a credit agreement may be commenced in either the High or the Magistrate's Court. Section 86(11) mentions only the Magistrate's Court. It

[38] 2011 (1) SA 470 (KZP) para 20.

[39] See paras 23 ff.

seems to me that the words 'hearing the matter' in this subsection relate to the proceedings to enforce the agreement and must, consequently, refer to the enforcing court which may be either the High or the Magistrate's Court. The problem, however, is that s 86(11) does not refer to the High Court at all. This, it was submitted, is an omission in the legislation that can and should be cured by reading the words 'or High Court' into the subsection.[40] I agree with this approach: it will avoid the issues that may arise from two different courts considering related matters.

[18] Often debt enforcement proceedings take place by way of a simple summons followed by an application for summary judgment. As was said in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*,[41] 'summary judgment procedure was not intended to "shut (a defendant) out from defending", unless it was very clear indeed that he had no case in the action. It was intended to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights.' Over-indebtedness is not a defence on the merits.[42] However, because of its extraordinary and stringent nature a court has an over-riding discretion to refuse an application for summary judgment.[43] It would be proper for a defendant to raise termination of the debt review by reason of the credit provider's failure to participate or its bad faith in participating when application for summary judgment is made. These issues may be raised, not as a defence to the claim, but as a request to the court not to grant summary judgment in the exercise of its over-riding discretion. Of course, sufficient information on which the request for a resumption of the debt review is based must be placed before the court.

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[40]See, in particular, *Mercedes Benz Financial Services South Africa (Pty) Ltd v Dunga* 2011 (1) SA 374 (WCC) paras 16-23 and 33-44.

[41] [2009] ZASCA 23; 2009 (5) SA 1 (SCA) para 31.

[42] C van Heerden in J W Scholtz, J M Otto, E van Zyl, CM van Heerden and N Campbell *Guide to the National Credit Act* (2008) para 12.16.

[43]*Joob Joob Investments* paras 10-11.

[19] No such request was made by the appellant in the court below. Moreover, the proposal by the debt counsellor in respect of the mortgage bond the debt review of which was terminated envisaged a debt re-structuring in terms of which the monthly instalments payable on the mortgage bond be reduced from R6 644,93 to R3 500,00, but payable over the same period of time, that is 240 months. This would deprive the respondent of nearly one half of what it was entitled to under the credit agreement. Such a proposal is not in accordance with the NCA, particularly s 86(7)(c)(ii), which places limits on the proposal for the re-arrangement as well as on the order to be made in terms of s 87(1).[44] In these circumstances the termination of the debt review by the respondent is understandable. It follows that the appeal should be dismissed. No order for costs was sought.

[20] The appeal is dismissed.

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F R MALAN

JUDGE OF APPEAL

[44]Cf *SA Taxi Securitization (Pty) Ltd v Mongezi Moni & others* [2011] 2 AEC GHC 11 paras 34 ff.

APPEARANCES:

For Appellant: SA Collett

Instructed by:

Gerhard Stoltz Inc

East London

Webbers

Bloemfontein

For Respondent: P F Louw SC, S Eiselen and N Konstantinides

Instructed by:

Glover Inc

Parktown

Rossouws

Bloemfontein

For Amicus Curiae: A E Franklin SC and A Govender

Instructed by:

Honey Attorneys

Bloemfontein