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The High Court upholds applicability of *in duplum* rule to protect overwhelmed debtors

National Credit Act – defaulting debtor – credit costs accruable – in duplum rule

On 12 May 2025, a full bench of the High Court handed down judgment in *Scott v The National Credit Regulator*.[1] It concerned whether, once a credit agreement was subject to a debt review process, the debtor remained in default under the original credit agreement or if the debt review process created a new agreement between the parties, thereby purging the default. This bears consequences for the applicability of the *in duplum* rule.

Section 103(5) of the National Credit Act (NCA) codifies the *in duplum* rule. It provides that while the debtor is in default, interest and other credit charges (collectively "interest") on the credit agreement is capped at the value of the outstanding portion of the principal debt. Essentially, at any given time, the debtor can never owe double the principal amount. Accordingly, if the debt review process purges the default, the *in duplum* cap does not apply, and interest can accrue afresh on the amortised debt.

The applicant, a debt counsellor, contended that the debt review process does not "*purge or cure default of the original agreement"*. Instead, the consumer remains in default under the original agreement, despite the conclusion of a debt review process. The respondents, however, argued that the debt review process extinguishes the debtor's protection under the *in duplum* rule. By this, interest may run afresh on the re-arranged debt. To hold otherwise, the respondents argued, would encourage debtors to default on the credit obligations.

The Court found that the interpretation advanced by the respondents – that a debtor's default is purged by the debt review process and interest may accrue afresh – would undermine the purpose of the NCA. The effect of this interpretation would exacerbate a debtor's exposure and sink a *bona fide* debtor deeper into credit by encumbering them with additional credit costs of the new agreement. Given that a debtor only enters into a debt review process because they are in default under the primary agreement, to allow interest to further accrue on an amount which the debtor already defaulted on would be counterintuitive.

The Court thus found that the debt review process does not replace the original credit agreement or create a new one. Instead, it merely rearranges repayment of the existing debt and accrued interest. In this regard, the Court found as follows:

> "Notwithstanding the fact that the arrear amount by which the consumer is in default under the original credit agreement is included in the calculation of the outstanding balance on which the RCA or RCO is based, the consumer remains in default. Therefore, section 103(5) is applicable."

Accordingly, because the debtor remains in default under the original credit agreement, and no new agreement with an amortised debt arises following a debt review process, the debtor remains protected by the *in duplum* rule. Even following a debt review process, interest remains capped at

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[1] *Scott v National Credit Regulator and Others* 2025 (5) SA 568 (GP) (12 May 2025).

the value of the outstanding portion of the principal debt. As such, the Court confirmed that the statutory *in duplum* rule operates –

> "… for as long as a consumer is in default and serves against the accrual of further unpaid interest, including other costs of credit, when the unpaid interest and other costs equal the outstanding principal debt in terms of a credit agreement."

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