REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA
(FULL COURT)

Case Number: 105915/2023

1. REPORTABLE: YES / ~~NO~~
2. OF INTEREST TO OTHER JUDGES: YES/~~NO~~
3. REVISED: ~~YES~~/NO

12 MAY 2025
DATE

SIGNATURE

In the matter between:

CHANTELLE SCOTT	Applicant
and	
THE NATIONAL CREDIT REGULATOR	First Respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Second Respondent
THE BANKING ASSOCIATION OF SOUTH AFRICA	Third Respondent
THE DEBT COUNSELLORS' ASSOCIATION OF SOUTH AFRICA	Fourth Respondent
STANDARD BANK OF SA LIMITED	Fifth Respondent

FIRSTRAND BANK LIMITED	Sixth Respondent
NEDBANK LIMITED	Seventh Respondent
ABSA BANK LIMITED	Eighth Respondent
CAPITEC BANK HOLDINGS LIMITED	Ninth Respondent

Summary: The National Credit Act, Act 34 of 2005, to be interpreted by considering the history of the credit industry in South Africa and the purpose of the Act - An application for debt review and or a debt review order does not purge and or cure the default of the original credit agreement for the purposes contemplated in section 103(5) of the National Credit Act. Held-Section 103(5) of the NCA finds application in circumstances where the consumer's obligations under the credit agreement are subject to a debt re-arrangement agreement, debt review or debt review order.

The matter was heard in open court. The judgment is handed down electronically by circulation to the parties' legal representatives by email and uploading to the electronic file of this matter on Caselines. The date of the judgment and order is deemed to be 12 May 2025.

J U D G M E N T

Mazibuko AJ (Van Nieuwenhuizen *et* Mali JJ concurring)

INTRODUCTION

[1] The applicant, Ms Chantelle Scott (Scott), a debt counsellor registered in terms

of section 44 of the National Credit Act ('the NCA'),[1] seeks a declaratory order, firstly, that the term 'default', as it appears in section 103(5) of the NCA, is a reference to a default under the original credit agreement irrespective thereof that the particular original credit agreement is under debt review or has been restructured under a debt review order.

[2] Secondly, that an application for debt review and/or a debt review order does not purge and/or cure the 'default' of the original credit agreement for the purposes contemplated in section 103(5) of the NCA.

[3] Lastly, that the amounts contemplated in section 101(1)(b) to (g) of the NCA that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs, notwithstanding that the credit agreement is subject to a debt review application and/or a debt review order.

[4] The respondents are cited as interested parties, and no relief is sought against them, save for costs in the event of opposition. The first, second, fourth and tenth respondents did not oppose the application.

[5] The third respondent is the Banking Association of South Africa ('BASA'), the national association of domestic and international banks operating in South Africa. The fifth to ninth bank respondents are members of BASA and opposed the application. For the purpose of this judgment, the third, fifth, to ninth respondents will hereinafter be referred to as 'BASA'.

ISSUE IN DISPUTE

[6] It is common cause between the parties that the issue of *in duplum* in terms of section 103(5) of the NCA has been a subject of different interpretations ever since the introduction of the NCA in 2007. This has resulted in the credit

[1] *Act 34 of 2005.*

providers and consumers interpreting section 103(5) as they respectively consider appropriate.

[7] The issue before the court is whether or not section 103(5) also applies in circumstances where the consumer's obligations under the credit agreement are subject to the re-arrangement agreement, debt review or debt review order. Put differently, how should section 103(5) be interpreted in the circumstances where the consumer's obligations under the credit agreement are subject to a re-arrangement agreement, debt review or debt review order.

ASSERTIONS

[8] The applicant submits that section 103(5)[2] continues to apply for as long as the consumer is in default of the original credit agreement, whether or not the re-arranged credit agreement ('the RCA') or re-arranged credit order ('the RCO') is in effect, for the following reasons:

[8.1] The section uses the wording 'default under the credit agreement'. The section refers exclusively to a default under the credit agreement. No mention is made of a default under a re-arrangement order or agreement. There is no provision in the NCA that a consumer's default is purged or cured by a re-arrangement order or agreement.

[8.2] The wording of section 103(5), therefore, justifies the conclusion that the default occurs and subsists for the whole of the period that the consumer remains in default of the specific credit agreement, notwithstanding that the specific agreement is subject to a re-arrangement agreement or order.

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[2] *Section 103 (1) 'Subject to subsection (5), the interest rate applicable to an amount in default or an overdue payment under a credit agreement may not exceed the highest interest rate applicable to any part of the principal debt under that agreement.'*
Section 103(5) 'Despite any provision of the common law or a credit agreement to the contrary, the amounts contemplated in section 101(1)(b) to (g) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs.'

[8.3] It will amount to penalising the consumers who apply for debt review in terms of section 86(2)[3], in exercising their rights under the NCA, contrary to the provisions of section 66(1)[4], to the extent of paying more finance charges than the unpaid balance under the credit agreement.

[8.4] The over-indebted consumer would inevitably end up paying much more than the capital initially owing should it elect to utilise the mechanism as provided for in terms of section 86 of the NCA.

[8.5] The credit providers' interpretation of section 103(5) goes against the purpose of the NCA and is incompatible with the provisions of section 66 thereof.

[9] An argument was advanced on behalf of BASA that:

[9.1] A re-arrangement agreement or order purges the default under the existing credit agreement, with the effect that section 103(5) no longer applies. Any additional interest that is paid is the cost of enjoying the benefits of a longer period of time. To repay the amount that was borrowed. The position is no different from what it would have been if a longer repayment period had been agreed upon when the credit agreement was first concluded.

[9.2] During the currency of the debt review arrangement, the arrears are purged, but in the event that the debt review arrangement is terminated, the arrears under the original credit agreement are reinstated.

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[3] *Section 86(2): 'An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 129 to enforce that agreement.'*

[4] *Section 66(1) 'A credit provider must not, in response to a consumer exercising, asserting or seeking to uphold any right set out in this Act or in a credit agreement- (a) discriminate directly or indirectly against the consumer, compared to the credit provider's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right; (b) penalise the consumer;*
(c) alter, or propose to alter, the terms or conditions of a credit agreement with the consumer, to the detriment of the consumer; or
(d) take any action to accelerate, enforce, suspend or terminate a credit agreement with the consumer.'

[9.3] The effect of an RCA or RCO on the original credit agreement is to amend only the repayment terms of the original credit agreement, subject to the following:

[9.3.1] If the consumer defaults on the rearranged obligations, the original credit agreement repayment terms will be reinstated and enforced as stipulated in the terms of the RCA or RCO, which accords with Section 88(3)(b)(ii) read with section 129(2) of the NCA.

[9.3.2] If the consumer fulfils all their rearranged obligations and the debt review is brought to an end, but there is still an unpaid balance of the principal debt and finance charges under the credit agreement, for example, if the arrangement was for a short period not allowing for full amortisation of the principle debt, the original credit agreement applies in relation to the outstanding balance.

[9.4] According to statistics, consumers increasingly find themselves under immense financial strain, which has resulted in a marked increase in debt review applications. The relief sought will, if granted, only aggravate the situation, with the following effects:

[9.4.1] Rewarding consumers who default thus encouraging default contrary to the stated purpose of the NCA, which is to encourage fulfilment of contractual obligations by consumers and to discourage contractual default.

[9.4.2] Over-emphasising the rights of consumers at the expense of the credit providers' rights, contrary to the stated purpose of balancing the respective rights and responsibilities of credit providers and consumers.

[9.4.3] Benefiting non-paying consumers to default to achieve a statutory cap on what they have to pay, whilst

discriminating against the paying consumers who will not benefit.

[9.4.4] The credit life insurance premium will no longer be collected, resulting in the lapse of the policy.

[10] BASA further submitted that this application calls for the interpretative exercise of the debt review regime contained, particularly in sections 86 to 88, to determine whether the debt review regime contemplates continued existence of default from the original credit agreement to the RCA, or whether it contemplates a clean slate under the RCA. BASA argues that:

[10.1] If the answer is that pre-existing default is carried over to the RCA, then section 103(5) continues to apply under the RCA for as long as default persists, practically resulting in perpetual default. That is an odd result.

[10.2] If the answer is that pre-existing default is purged by the (RCA), then section 103(5) ceases to apply unless and until there is new default under the RCA.

THE LAW

[11] Every court, tribunal, or forum must promote the spirit, purport and objects of the Bill of Rights when interpreting any legislation and developing any common law or customary law.[5]

[12] The Constitutional Court in Airports Company South Africa v Big Five Duty Free (Pty) Ltd,[6] approved as correct the approach, with regard to principles of interpretation adopted by the Supreme Court of Appeal in Natal Joint v Endumeni Municipality,[7] which states :

'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory

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[5] *Section 39(2) of the Constitutionof the Republic of South Africa, Act 108 of 1996.*
[6] *2019(5) SA 1 CC at 29.*
[7] *2012 (4) SA 593 (SCA) at [18].*

instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence.

Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.

Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'

[13] In Chisuse and Others v Director-General, Department of Home Affairs and Another,[8] *the Constitutional Court held:*

'[47] In interpreting statutory provisions, recourse is first had to the plain, ordinary, grammatical meaning of the words in

[8] *[2020] (ZACC) at 47*

question.[9] *Poetry and philosophical discourses may point to the malleability of words and the nebulousness of meaning,*[10] *but, in legal interpretation, the ordinary understanding of the words should serve as a vital constraint on the interpretative exercise, unless this interpretation would result in an absurdity.*[11] *As this Court has previously noted in Cool Ideas, this principle has three broad riders, namely: "(a) that statutory provisions should always be interpreted purposively; (b) the relevant statutory provision must be properly contextualised; and (c) all statutes must be construed consistently with the Constitution, that is, where reasonably possible, legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to in (a).'*[12]

[48] Judges must hesitate "to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation.'[13]

[14] The Constitutional Court held as follows in Minister of Police and Others v Fidelity Security Services (Pty) Ltd:[14]

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[9] *Diener N.O. v Minister of Justice and Correctional Services [2018] ZACC 48; 2019 (4) SA 374 (CC); 2019 (2) BCLR 214 (CC) at para 37; Mankayi v AngloGold Ashanti Ltd [2011] ZACC 3; 2011 (3). SA 237 (CC); 2011 (5) BCLR 453 (CC) at para 70; and Commissioner, South African Revenue Service v Executor, Frith's Estate [2000] ZASCA 94; 2001 (2) SA 261 (SCA) at para 2 of Plewman JA's judgment.*

[10] *As TS Elliot has eloquently stated, "[w]ords strain, crack and sometimes break, . . . slip, slide, perish, [d]ecay with imprecision . . .". Elliot Burnt Notion (No. 1 of Four Quarters) at Part V.*

[11] *See Cool Ideas 1186 CC v Hubbard [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) (Cool Ideas) at para 28; SATAWU v Garvas [2012] ZACC 13; 2013 (1) SA 83 (CC); 2012 (8) BCLR 840 (CC) (Garvas) at para 37; and Dadoo Ltd v Krugersdorp Municipal Council 1920 AD 530 at 543. See further Bishop and Brickhill, "'In The Beginning Was The Word': The Role of Text in the Interpretation of Statutes" (2012) 129 SALJ 681 at 697-8.*

[12] *Cool Ideas id at para 28.*

[13] *Natal Joint Municipal Pension Fund v Endumeni Municipality [2012] ZASCA 13; 2012 (4) SA 593 (SCA) (Endumeni) at para 18.*

[14] *Minister of Police and Others v Fidelity Security Services (Pty) Ltd and Others 2022 (2) SACR 519 (CC) para 34.*

'(a) Words in a statute must be given their ordinary grammatical meaning unless to do so would result in an absurdity.

(b) This general principle is subject to three interrelated riders: a statute must be interpreted purposively; the relevant provision must be properly contextualised; and the statute must be construed consistently with the Constitution, meaning in such a way as to preserve its constitutional validity.

(c) Various propositions flow from this general principle and its riders. Among others, in the case of ambiguity, a meaning that frustrates the apparent purpose of the statute or leads to results which are not businesslike or sensible results should not be preferred where an interpretation which avoids these unfortunate consequences is reasonably possible. The qualification reasonably possible is a reminder that Judges must guard against the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used.

(d) If reasonably possible, a statute should be interpreted so as to avoid a lacuna (gap) in the legislative scheme.'

[15] Finance charges refer to the cost of credit contemplated in terms of section 101(1)(b) to (g) of the NCA, which provides:

'(1) A credit agreement must not require payment by the consumer of any money or other consideration, except-

> *(b) an initiation fee, which- (i) may not exceed the prescribed amount relative to the principal debt, and (ii) must not be applied unless the application results in the establishment of a credit agreement with that consumer;*
>
> *(c) a service fee, which- (i) in the case of a credit facility, may be payable monthly, annually, on a per transaction basis or on a combination of periodic and transaction basis; or (ii) in any other case, may be payable monthly or annually; and (iii) must not exceed the prescribed amount relative to the principal debt;*
>
> *(d) interest, which-*

(i) must be expressed in percentage terms as an annual rate calculated in the prescribed manner; and

(ii) must not exceed the applicable maximum prescribed rate determined in terms of section 105;

(e) cost of any credit insurance provided in accordance with section 106;

(f) default administration charges, which-

(i) may not exceed the prescribed maximum for the category of credit agreement concerned; and

(ii) may be imposed only if the consumer has defaulted on a payment obligation under the credit agreement and only to the extent permitted by Part C of Chapter 6; and

(g) collection costs, which may not exceed the prescribed maximum for the category of credit agreement concerned and may be imposed only to the extent permitted by Part C of Chapter 6.'

[16] Section 71 of the NCA reads:

'(1) A consumer whose debts have been re-arranged in terms of Part D of this Chapter may apply to a debt counsellor at any time for a clearance certificate relating to the debt re-arrangement.

(2) A debt counsellor who receives an application in terms of subsection (1), must- (a) investigate the circumstances of the debt re-arrangement and (b) either-

(i) issue a clearance certificate in the prescribed form if the consumer has fully satisfied all the obligations under every credit agreement that was subject to the debt re-arrangement order or agreement, in accordance with that order or agreement; or

(ii) refuse to issue a clearance certificate, in any other case.'

[17] Section 88 of the NCA provides:

'(1) A consumer who has filed an application in terms of section 86(l), or who has alleged in court that the consumer is over-indebted, must not incur any further charges under a credit facility or enter into any further credit agreement, other than a consolidation agreement, with any credit provider until one of the following events has occurred:

(a) the debt counsellor rejects the application, and the prescribed time period for 35 direct filing in terms of section 86(9) has expired without the consumer having so applied;

(b) the court has determined that the consumer is not over-indebted, or has rejected a debt counsellor's proposal or the consumer's application, or

(c) a court having made an order or the consumer and credit providers having made an agreement re-arranging the consumer's obligations, all the consumer's obligations under the credit agreements as re-arranged are fulfilled, unless the consumer fulfilled the obligations by way of a consolidation agreement.

(2) If a consumer fulfils obligations by way of a consolidation agreement as contemplated in subsection 1(c), or this subsection, the effect of subsection (1) continues 45 until the consumer fulfils all the obligations under the consolidation agreement, unless the consumer again fulfilled the obligations by way of a consolidation agreement.

(3) 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)[15], may not exercise or enforce by litigation or other judicial process any right or security under that credit agreement until-

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

(b) one of the following has occurred:

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[15] Section 86(4)(b)(i)'On receipt of an application in terms of subsection (I), a debt counsellor must- (b) notify, in the prescribed manner and form- (i) all credit providers that are listed in the application.

(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.'

[18] *Section 95 of the NCA provides: 'The provision of credit as a result of a change to an existing credit agreement, or a deferral or waiver of an amount under an existing credit agreement, is not to be treated as creating a new credit agreement for the purposes of this Act if the change, deferral or waiver is made in accordance with this Act or the agreement.'*

DISCUSSION

[19] Credit plays a fundamental role in the daily lives of the community. It is not a far-fetched thought that one will need to make use of credit at some point in one's life, as not many people can afford to buy items with cash. The industries available for the provision of credit include micro-lenders, banks, financial institutions, retailers and vehicle financiers.

[20] The prevailing circumstances that necessitated the NCA to be incorporated in South Africa were that the industry or the market was characterised by discrimination, a lack of transparency, limited competition, high costs of credit and limited consumer protection. The levels of consumer over-indebtedness had spiralled out of control.

[21] The NCA relates to natural persons as consumers. It aided the industry by encouraging responsible borrowing, avoiding over-indebtedness, and discouraging reckless credit granting and contractual default by consumers. It is applicable to all credit products where the payment is deferred and where interest or any other fees, including finance charges, are payable.

[22] Of importance and centre of this application is the balance of respective rights, responsibilities and interests of consumers and credit providers, including BASA. Section 2(1) provides guidance as to how the NCA must be

interpreted. The interpretation must be in a manner that gives effect to the purposes set out in section 3.[16]

[23] On reading the NCA, debt counselling and debt restructuring are integrated mechanisms to prevent consumers' over-indebtedness and relieve them from over-indebtedness. Another useful indirect debt relief mechanism is the *in duplum* rule, a special rule similar to the common law. 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.

[24] Generally, in terms of the NCA, the debt contained in the original credit agreement is gradually written off over a period. The credit transaction will stipulate a principal debt, interest rate, fees and repayment term, with the monthly payments resulting in a zero balance at the end of the repayment term. In the event that the consumer falls into arrears with their monthly payment,

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[16] *Section 3 reads: 'The purposes of this Act are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers, by-*
(a) promoting the development of a credit market that is accessible to all South Africans, and in particular to those who have historically been unable to access credit under sustainable market conditions; (b) ensuring consistent treatment of different credit products and different credit providers;
(c) promoting responsibility in the credit market by- (i) encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers; and (ii) discouraging reckless credit granting by credit providers and contractual default by consumers;
(d) promoting equity in the credit market by balancing the respective rights and responsibilities of credit providers and consumers;
(e) addressing and correcting imbalances in negotiating power between consumers and credit providers by- (i) providing consumers with education about credit and consumer rights; (ii) providing consumers with adequate disclosure of standardised information in order to make informed choices; and (iii) providing consumers with protection from deception, and from unfair or fraudulent conduct by credit providers and credit bureaux;
(f) improving consumer credit information and reporting and regulation of credit bureaux;
(g) addressing and preventing over-indebtedness of consumers, and providing mechanisms for resolving over-*indebtedness based on the principle of satisfaction by the consumer of all responsible financial obligations;*
(h) providing for a consistent and accessible system of consensual resolution of disputes arising from credit agreements; and
(i) providing for a consistent and harmonised system of debt restructuring, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements.'

they will be in default of their obligations in terms of the original credit agreement. They may then apply for the re-arrangement of their obligations under the original credit agreement. The RCA will take into account the amount owed, including the arrear amount and rearrange the payment of that amount.

[25] In my respectful view, the RCA does not replace the original credit agreement, nor is it an addendum to the original credit agreement. It is an arrangement or a plan to bring the payments under the original credit agreement up to date. The consumer is in default, hence the RCA or RCO.

[26] The RCA or RCO does not constitute a separate agreement to the original credit agreement. The original credit agreement remains the same credit agreement with rearranged payment terms for defaulted or arrear amounts. There is one original credit agreement with one default. The provision of credit as a result of a change to an existing credit agreement or a deferral or waiver of an amount under an existing credit agreement is not to be treated as creating a new credit agreement for the purposes of this Act if the change, deferral or waiver is made in accordance with this Act or the agreement.[17] To this end, I do not agree with the views expressed on behalf of BASA that the RCA or RCO creates a clean slate for the consumer.

[27] The consumer engages in the whole process of exploring options like the RCA or RCO because they are in default under the original credit agreement. The reorganisation of the debt approach is an attempt to resolve the consumer's default before resorting to full legal proceedings to which the credit providers are entitled, but for the RCA or RCO. It is an opportunity for the consumer to rectify the default status of the original credit agreement to avoid legal action being ensued by the credit provider. They are protected from legal action as long as they comply with their obligations under the RCA or RCO. See section 88(3) of the NCA.

[28] To this end, the consumer is in default under the original credit agreement up until they pay to the credit provider all overdue amounts, together with the credit provider's permitted default charges and reasonable costs of enforcing the

[17] *Section 95 of the NCA, supra.*

agreement up to the time of reinstatement, the consumer resumes their original monthly obligations in terms of the original credit agreement. The rest of the terms and conditions of the original credit agreement remain applicable, binding and enforceable.

[29] 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. If the consumer defaults on the RCA, the RCA terminates, and the consumer becomes liable under the terms and conditions of the original credit agreement. Though the consumer may now take longer period to pay off the debt than they would normally do but for the RCA or RCO, that cannot be construed as a reward and advantage for being in default or encouraging consumers to be in default whilst affecting the collection costs of the credit providers, as argued by BASA. In my view, the statutory *in duplum* rule seeks to counter the excessive credit costs.

[30] To reiterate the observable, had the consumer not been in default, there would be no need for RCA or RCO, resulting in the payment of the revised amount. The consumer is temporarily exonerated from being sued as long as they pay a portion of the arrear amounts, and that is under the original credit agreement. Therefore, it can not be correct that the RCA or RCO creates a clean slate for the consumer. If one follows this approach, the consumer will be exposed to a situation where they are treated differently from other consumers, thereby contravening section 66 of the NCA. Owing to the RCA or RCO, the consumer will, in the end, pay more finance charges than they ordinarily would have, but for the RCA or RCO, thereby contravening section 103(5).

[31] In conclusion, the purpose of the RCA or RCO is to provide for debt-reorganisation in cases of over-indebtedness. Section 103(5) is to be read together with the overall purpose of the NCA, which, among others, is to discourage over-indebtedness and to treat all consumers the same, as provided in section 66.[18] Consumer exercises their right to debt review or re-arrangement

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[18] *Section 66(1) A credit provider must not, in response to a consumer exercising, asserting or seeking to uphold any right set out in this Act or in a credit agreement- (a) discriminate directly or indirectly*

when they are over-indebted, or a situation has arisen causing them to be in default, or they foresee such depending on whether they are already in breach.

[32] Though the re-arrangement results in the prolonged duration of the original credit agreement, for the purposes of section 103(5), default continues to be present. The credit provider may not charge finance charges in terms of section 103(5). The consumer who exercised their right should not be disadvantaged and treated differently from those who have not exercised this right. The purpose of the NCA is to protect consumers from having to pay in excess of what they would have paid had they not entered debt review or re-arrangement.

CONCLUSION

[33] Given the preceding, in my respectful view, considering the history of the credit industry and on the reading of the purpose of the National Credit Act, the legislature could not have intended that section 103(5) finds no application in circumstances where the consumer's obligations under the credit agreement are subject to a debt re-arrangement agreement, debt review or debt review order. As a result, an application for debt review and or a debt review order does not purge and or cure the default of the original credit agreement for the purposes contemplated in section 103(5) of the National Credit Act. For these reasons, the application ought to succeed.

[34] With regard to costs, Scott sought relief on costs in the event of opposition. The application is imperative for all the parties, including BASA and the bank respondents. I find no reason why costs should not follow the event of the unsuccessful opposition, including that of counsel.

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against the consumer, compared to the credit provider's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right; (b) penalise the consumer; (c) alter, or propose to alter, the terms or conditions of a credit agreement with the consumer, to the detriment of the consumer; or (d) take any action to accelerate, enforce, suspend or terminate a credit agreement with the consumer.

ORDER:

[35] As a result, I propose the following declaratory order.

[35.1] An application for debt review and or a debt review order does not purge and or cure the default of the original credit agreement for the purposes contemplated in section 103(5) of the National Credit Act 34 of 2005.

[35.2] The respondents are to pay costs, including that of counsel at scale C, one paying and the other being absolved.

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N G M MAZIBUKO

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree, and it is so ordered

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N JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree

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N MALI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of hearing:	11 February 2025
Judgment delivered:	12 May 2025

Appearances:

For the applicant:	Adv N G Louw
Attorneys for the applicant:	Jennings Inc
For first, second, fourth and tenth respondents:	No appearance
For third, fifth to ninth respondents:	Adv I Green SC with Adv M Gwala
Attorneys for third, fifth to ninth respon*dents:*	*Cliffe Dekker Hofmeyr Inc*

ORDER:

[35] As a result, I propose the following declaratory order.

[35.1] An application for debt review and or a debt review order does not purge and or cure the default of the original credit agreement for the purposes contemplated in section 103(5) of the National Credit Act 34 of 2005.

[35.2] The respondents are to pay costs, including that of counsel at scale C, one paying and the other being absolved.

N G M MAZIBUKO

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree.

N MALI

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

I agree, and it is so ordered.

N JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA