THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 102/2014
Reportable

In the matter between:

EURO BLITZ 21 (PTY) LTD **First Appellant**

IVO BRANCO **Second Appellant**

and

SECENA AIRCRAFT INVESTMENTS CC **Respondent**

Neutral citation: *Euro Blitz 21 v Secena Aircraft Investments CC* (102/14) [2015] ZASCA 21 (19 March 2015)

Coram: Maya, Majiedt, Pillay and Mbha JJA and Mayat AJA

Heard: 23 February 2015

Delivered: 19 March 2015

Summary: Interest –whether words 'calculated daily' in court order implied compound or simple interest – compound interest claimable only in defined circumstances.

ORDER

On appeal from the South Gauteng High Court, Johannesburg (Kolbé AJ) sitting as court of first instance):

1 The appeal is upheld with costs.
2 The order of the South Gauteng High Court, Johannesburg, is set aside and replaced by the following order:
'(a) Having regard to the judgment of the additional Magistrate E de Klerk dated 19 February 2009 under case number 2795/2006 in the Germiston Magistrate's Court, it is declared that:
(i) Interest which accrues on the capital amount of R353 126.40 may accumulate for the period from 24 March 2006 to 1 June 2012 and that the *in duplum* rule is suspended for such period;
(ii) The *in duplum* rule shall apply to interest which accrues on the capital of R353 126.40 and accrued interest thereon from 2 June 2012 to date of payment;
(b) the respondents are to pay the applicant's costs of the application until date of delivery of its answering affidavit, jointly and severally, the one paying the other to be absolved;
(c) the remainder of the application is dismissed;
(d) the applicant is to pay the respondents' costs of the application incurred after the delivery of its answering affidavit.'

JUDGMENT

Mbha JA (Maya, Majiedt and Pillay JJA and Mayat AJA concurring):

[1] This appeal concerns the proper interpretation and meaning of the order given by the Magistrate's Court, Germiston (the trial court) dated 19 February 2009, in terms of which the appellants were ordered inter alia, to pay

the respondent '[i]nterest at prime plus 5% calculated daily with effect from 24/03/06 to date of payment.' The issue for determination is whether the interest envisaged in the order was simple or compound interest. The South Gauteng High Court, Johannesburg, (Kolbé AJ) held that the words 'calculated daily' in the order permitted no other interpretation but that interest was to be compounded daily. This appeal is against that finding and is with leave of the court a quo.

[2] The background facts to the dispute are largely common cause. The respondent issued summons as plaintiff against the appellants as defendants in the trial court, claiming payment of arrear rental plus interest and costs, based on a written lease agreement entered into between the parties. The prayer sought in the particulars of claim was specifically couched in the following terms:

'1. Payment of the sum of R353 126.40.

2. Interest on the abovementioned amount at the rate of prime plus 5% (five per centum) calculated daily per annum a tempora morae to date of final payment.

. . .'

[3] After hearing argument, the trial court was satisfied that the respondent had proved on a balance of probabilities that the appellants had breached the terms of the lease agreement. It accordingly granted judgment in favour of the respondent in accordance with the prayer sought in its particulars of claim. The question whether the interest payable on the capital amount constituted compound interest was neither raised nor argued. The learned magistrate merely based her order on the provision in clause 21.4 of the lease agreement which states that:

'21.4 The Lessee consents and agrees to pay interest charges on all outstanding amounts due to the Lessor arising from any matter whatsoever, calculated on a daily basis, at a rate of prime plus 5%.'

[4] Subsequently, the respondent launched application proceedings in the court a quo. It sought a declarator that the trial court's order in relation to the interest payable, meant interest calculated at 5 per cent above the prime rate

of interest charged by Nedbank Limited from time to time from 24 March 2006 and that such interest shall be calculated daily and compounded daily from the 24th March 2006 to date of payment.[1] As alluded to earlier, the court a quo granted the order sought holding that the words 'calculated daily' in the trial court's magistrate's order meant that interest was to be compounded daily.

[5] The parties' respective contentions can be summarised as follows. The appellants submitted that the word 'calculated' in the order must be ascribed its ordinary grammatical meaning namely, to determine the interest for a particular period mathematically, which in this case, is on a daily basis. Furthermore, as there was no averment or evidence of an agreement that interest shall be compounded, the order must accordingly be interpreted to provide for simple interest only. The respondent contended on the other hand, that if the intention was to calculate interest on the arrear amount outstanding on a daily basis, then there was no need to include the words 'calculated daily' in the order and that their inclusion can only mean that interest was to be compounded on a daily basis.

[6] It is trite law that the rules applicable to the interpretation of documents are applicable to the interpretation of a judgment or order of court. The test in this regard is well established. If there is no uncertainty in the meaning of the words the court's intention must be established primarily from the language of the judgment or order as construed according to the usual, well-known rules of interpretation of documents. If, however, uncertainty arises from the judgment or order, regard may be had to extrinsic and the surrounding circumstances relevant to the granting of such judgment or order such as the evidence, both oral and documentary, that was adduced before the trial and submissions made. Trollip JA described the test as follows in *Firestone South Africa (Pty) Ltd v Gentiruco A G*:[2]

'First, some general observations about the relevant rules of interpreting a court's judgment or order. The basic principles applicable to construing documents also

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[1] Prayer 1.4 of the Notice of Motion reads:
'1.4 Interest which accrues shall be interest at the rate referred to in 1.3 above calculated daily and compounded daily from the 24th March 2006 to date of payment.'

[2] *Firestone South Africa (Pty) Ltd v Gentiruco A G* 1977 (4) SA 298 (A) at 304D-H.

apply to the construction of a court's judgment or order: the court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual, well-known rules. See *Garlick v Smartt and Another*, 1928 A.D. 82 at p. 87; *West Rand Estates Ltd. v New Zealand Insurance Co. Ltd.*, 1926 A.D. 173 at p. 188. Thus, as in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention. If, on such a reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it. Indeed, it was common cause that in such a case not even the court that gave the judgment or order can be asked to state what its subjective intention was in giving it (*cf*. *Postmasburg Motors (Edms.) Bpk. v Peens en Andere*, 1970 (2) S.A. 35 (N.C.) at p. 39F-H). Of course, different considerations apply when, not the construction, but the correction of a judgment or order is sought by way of an appeal against it or otherwise – see *infra*. But if any uncertainty in meaning does emerge, the extrinsic circumstances surrounding or leading up to the court's granting the judgment or order may be investigated and regarded in order to clarify it; for example, if the meaning of a judgment or order granted on an appeal is uncertain, the judgment or order of the court *a quo* and its reasons therefor, can be used to elucidate it. If, despite that, the uncertainty still persists, other relevant extrinsic facts or evidence are admissible to resolve it. See *Garlick's* case, *supra*, 1928 A.D. at p. 87, read with *Delmas Milling Co. Ltd. v Du Plessis*, 1955 (3) S.A. 447 (A.D.) at pp. 454F-455A; *Thomson v Belco (Pvt.) Ltd. and Another*, 1960 (3) S.A. 809 (D).'[3]

[7] In my view and having regard to the above rule of interpretation, the word 'calculated' in the trial court's order pertaining to interest, must be given its grammatical and ordinary meaning, unless that would result in some absurdity, repugnancy or inconsistency with the rest of the order. To 'calculate' means to '[e]stimate or determine by arithmetical or mathematical reckoning; estimate or determine by practical judgement or on the basis of experience'.[4]

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[3] Van Rensburg & another NNO v Naidoo & others NNO; Naidoo & others NNO v Van Rensburg NO & others 2011 (4) SA 149 (SCA) para 42.
[4] Shorter Oxford English Dictionary 6 ed vol 1 (2007).

[8] To 'capitalise' on the other hand means to 'convert into a capital sum'.[5] Needless to say, the term capitalisation of interest is interchangeable with the expression compounding of interest.[6] Thus 'compound interest' is defined as 'reckoned on the principal together with the accumulated unpaid interest'.[7] This must be contrasted with simple interest, which is reckoned or determined on the principal or capital sum.

[9] As can clearly be seen, 'capitalised' and 'compound' on the one hand bear a different meaning to the word 'calculated'. In terms of its definition, capitalisation of interest, is no more than an accounting exercise which is designed to simplify the calculation of compound interest, in respect of which the interest's identity remains intact. In other words the concept is merely concerned with what is to be done with the interest after it has been calculated. Thus, it is quite possible that in certain circumstances capitalisation might amount to a novation thereby converting the interest element into capital.[8] However 'calculated' only refers to the period or method of calculating interest on the capital amount.[9] The calculation will be in respect of either simple or compound interest which may be done on an annual, monthly or as in this case, on a daily basis. There is accordingly a clear distinction between a method of calculation of interest on the one hand, and the method of accounting for interest after its calculation on the other.

[10] Based on the aforegoing, it follows that the respondent's contention that the words 'calculated daily' in the order envisaged that interest is to be compounded daily, is legally untenable and cannot be sustained. In my view, the fact that the respondent sought an order declaring that the interest must be '*calculated daily and compounded daily*' (emphasis added) is an implicit concession on the respondent's part that these are two distinctly different concepts which cannot have the same meaning.

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[5] Shorter Oxford English Dictionary (supra).
[6] *Commercial Bank of Zimbabwe Ltd v M M Builders & Suppliers (Pvt) Ltd* and three similar cases 1997 (2) SA 285 (ZH) at 308C.
[7] Shorter Oxford English Dictionary (supra).
[8] *Pfeiffer v First National Bank of SA Ltd* 1998 (3) SA 1018 (SCA) at 1032B.
[9] *Commercial Bank of Zimbabwe* (supra) at 308F-310B.

[11] The legal principles governing the applicability of compound interest also militate against the interpretation which the respondent seeks to have attached to the clause in question, especially when it is compared against simple interest. As a starting point, it is accepted generally that where in a written agreement, compound interest is not expressly provided for, only simple interest was due. In *Mayfair South Townships (Pty) Ltd v Jhina*,[10] clause 3 of the agreement read:

'The balance from time to time owing by the purchaser to the seller in respect of the purchase price shall bear interest at the rate of 9.75 per cent per annum, provided that the seller in its discretion may at any time increase such rate to a rate not exceeding the maximum rate which from time to time is charged by any building society in respect of a loan secured by a first mortgage bond over land. Such interest shall be calculated monthly in advance and the payment of interest shall be included in the aforesaid monthly payments, which payments shall in the first instance be allocated to the payment of interest and thereafter in deduction of the purchase price'

In deciding whether or not compound interest was intended, Flemming J held that the clause as phrased, could not have provided for anything more than simple interest.

[12] It is also trite law that compound interest is claimable only in certain defined circumstances, namely, where parties agree to pay compound interest;[11] if the obligation to pay interest is alleged,[12] and if it is established by evidence that a universal custom of lessors charging compound interest on arrear rentals is uniformly and universally observed throughout leasing practices in South Africa.[13] The respondent has failed to establish any of these grounds. Further, at the trial the respondent never attempted to raise or argue any of these points. Significantly, the appellants' version in this respect was not disputed in the respondent's replying affidavit.

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[10] *Mayfair South Townships (Pty) Ltd v Jhina*,1980 (1) SA 869 (T).

[11] *Davehill (Pty) Ltd v Community Development Board* 1988 (1) SA 290 (A) at 298H-J where Smalberger JA said: '[c]ompound interest (interest on interest) may be expressly stipulated for by agreement, is commonplace today in commercial and financial dealings and has been sanctioned by our courts for many years'.

[12] L T C Harms, *Amler's Precedents of Pleadings*, 7 ed at 240.

[13] *Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd (in liquidation)* 1998 (1) SA 811 (SCA) at 829F.

[13] As stated earlier, the order of the trial court was granted in accordance with the respondent's prayer as set out in the particulars of claim and also in accordance with clause 2.14 of the lease agreement. The words 'compounded daily' do not appear in this clause nor in the trial court's order. In light of the aforegoing, the court a quo erred in finding that the words 'calculated daily' intended that interest was to be compounded daily. The separate issue pertaining to the applicability of the *in duplum* rule was conceded in the court a quo and for that reason was not considered in this court.

[14] In the circumstances I make the following order:

1 The appeal is upheld with costs.

2 The order of the South Gauteng High Court, Johannesburg, is set aside and replaced by the following order:

'(a) Having regard to the judgment of the additional Magistrate E de Klerk dated 19 February 2009 under case number 2795/2006 in the Germiston Magistrate's Court, it is declared that:

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(b) the respondents are to pay the applicant's costs of the application until date of delivery of its answering affidavit, jointly and severally, the one paying the other to be absolved;

(c) the remainder of the application is dismissed;

(d) the applicant is to pay the respondents' costs of the application incurred after the delivery of its answering affidavit.'

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B H MBHA

JUDGE OF APPEAL

APPEARANCES:

For appellant:	H P van Nieuwenhuizen (1st & 2nd) Instructed by: David Kotzen Attorneys, Edenvale Lovius-Block Attorneys, Bloemfontein
For respondent:	G Kairinos SC Instructed by: Marais Stephens Attorneys, Sandton Symington & De Kok, Bloemfontein