

IN THE SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 21862/10

DATE: 2010-10-11

In the matter between

JAN GEORGE STEPHANUS & HELENA SEYFFERT Plaintiff

And

10 **FIRSTRAND BANK LIMITED T/A FIRST NATIONAL BANK** Defendant

J U D G M E N T

(Application for Leave to Appeal)

WILLIS, J:

[1] This is an application for leave to appeal against the judgment which I gave in this matter on 11 October 2010. Interestingly, I gave judgment
20 in three other cases at that same time, but the other respondents in those cases have decided to abide with the decision of the Court and had not subjected me to an application for leave to appeal.

[2] I am flattered and indeed encouraged that the Supreme Court of appeal ('SCA') has seen fit to refer approvingly to this judgment

elsewhere. It seems to have endorsed the overall thrust of my judgment in this matter.

[3] On the other hand, the application for leave to appeal covers some issues which were not pertinently dealt with by the SCA in its judgments, such as *Nedbank Limited v The National Credit Regulator*, 2011 (3) SA 581 (SCA) and *FirstRand Bank v Collett*, 2011 (4) SA 508 (SCA). If one makes mention of almost any section of the National Credit Act, No. 34 of 2005, a cry goes out among lawyers,
10 *quot homines, tot sententiae* (there are as many different opinions as there are men and women capable of holding them)!

[4] I am also mindful of that fact that the SCA, in a famous case, which shall not be mentioned here today, said that when it comes to novel points of law, judicial humility is especially appropriate when considering applications for leave to appeal. Mindful of the appropriate humility that is appropriate for this court and mindful, too, of the variety of different opinions when it comes to interpretations of the National Credit Act it seems to me that there is indeed a reasonable aspect that another court
20 would come to a different conclusion from my own in this matter.

[5] There was no serious disagreement that, if leave to appeal were to be granted, the appropriate forum to hear the appeal would be the SCA. This seems to me to be obvious, in view of the complexity of the matter,

and the issues of policy that will need to be considered, that the appeal should be heard by the SCA.

[6] The following order is made:

- 1) Leave to appeal is granted against my judgment in case number 21862/2010, that is that matter of *Seyffert v FirstRand Bank Limited*.
- 2) The appeal is directed to the Supreme Court of Appeal.
- 3) The costs and the application for leave to appeal, are costs of the appeal.

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