

Original

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

25/3/2019
DATE

R. Kightley P.P.
SIGNATURE

Case No. **31749/2011**

In the matter between:

DR HOWARD BRUCE MORTIMER FORSYTH

Respondent/Plaintiff

and

GERHARD CHRISTOPHER HEYDENRYCH

Applicant/Defendant

JUDGMENT ON LEAVE TO APPEAL

INGRID OPPERMAN J

[1] This is an application for leave to appeal against a judgment handed down by this court on 18 October 2018. Leave to appeal is sought against the whole of the judgment.

[2] The application for leave to appeal was filed on 2 November 2018 but was only brought to my attention on 18 January 2019 when enquiries were made

about the hearing thereof. This office received the court file and the application on 19 February 2019 whereafter the date for the hearing of the application was set for 19 March 2019, by agreement between all concerned. It is regrettable that no enquiries were directed prior to 18 January 2019.

[3] In *Du Bruyn NO & others v Karsten* [2018] ZASCA 143, Nicholls AJJ highlighted the fact that the National Credit Act 34 of 2005 (the NCA), has been bemoaned by many a court as not being a model of clarity. The *Du Bruyn* judgment was delivered on 28 September 2018 and this court's judgment on 18 October 2018. I did not have sight of it nor was it drawn to my attention by any of the parties prior to my judgment being handed down. In my view, it does not change the principles applicable to this case. Mr Riley however, argued that para [28] of *Du Bruyn*, compelled Mr Forsyth to have registered as a credit provider. In my view, such an interpretation is wrong. The court in *Du Bruyn* found that the credit agreement under consideration was an arms-length transaction, that the NCA had application and that, because the transaction was one which exceeded the threshold, the Du Bruyns were required to register as credit providers.

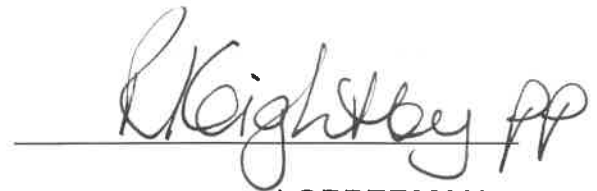
[4] In casu, I have found that the transaction under consideration is not an arms-length transaction. Most of the facts underpinning such conclusion are common cause. I found that the NCA did not have application. That, in my view, is the end of the enquiry. Of course, once the NCA has application and the threshold is exceeded, then para [28] has application. But that is not the case here.

[5] Perhaps though, and because of the confusion to which the NCA has given rise in so many other instances, it is fair to say that the test formulated in section 17 of the Superior Court Act, 10 of 2017 has been met.

[6] I accordingly grant the following order:

6.1. Leave to appeal the judgment dated 18 October 2018 is granted to the full court of the Gauteng Local Division.

6.2. The costs of the application for leave to appeal are to be costs in the appeal.

A handwritten signature in black ink, appearing to read 'I Opperman', is written over a horizontal line.

I OPPERMAN
Judge of the High Court
Gauteng Local Division, Johannesburg

Heard: 19 March 2019
Judgment: 25 March 2019
Appearances:
For Plaintiff: Adv AL Williamson
Instructed by: Werthschröder Inc
For Respondent: Adv N. Riley
Instructed by: FJ Cohen Attorneys