'A' **CASE NO: 20896/2010**

In the matter between:

NEDBANK LIMITED Plaintiff

and

WEDGEWOOD VILLAGE GOLF AND COUNTRY ESTATE (PTY) LTD 1st Defendant

PINNACLE POINT HOLDINGS (PTY) LTD 2nd Defendant

PROPERTY PROMOTIONS AND MANAGEMENT (PTY) LTD 3rd Defendant

THE TRUSTEE OF THE CLIFTON TRUST 4th Defendant

THE TRUSTEES OF THE IC STRATFORD FAMILY TRUST 5th Defendant

NEW PORT FINANCE COMPANY (PTY) LTD 6th Defendant

DAVID CARL MOSTERT 7th Defendant

AND

'B' **CASE NO: 22331/2010**

In the matter between:

NEDBANK LIMITED Plaintiff

and

DAVID CARL MOSTERT 1st Defendant

NEW PORT FINANCE COMPANY (PTY) LTD 2nd Defendant

AND

'C' **CASE NO: 24607/2010**

In the matter between:

NEDBANK LIMITED Plaintiff

and

THE TRUSTEES OF THE IC STRATFORD FAMILY TRUST 1st Defendant

THE TRUSTEE OF THE CLIFTON TRUST 2nd Defendant

JUDGMENT: 27 SEPTEMBER 2011

E STEYN J

1] In this matter I deal with three summary judgment applications, as set out above, that were set down together. These three applications were set down with two other related matters, being case no 3895/2009, ('**3895**') being an application where Nedbank Limited applied for an order to declare certain property executable and case no 24892A/2010, ('**24892A**') being an application by Danger Point Ecological Development Company (Pty) Ltd, Pinnacle Point Holdings (Pty) Ltd and Property Promotions and Management (Pty) Ltd, for rescission of the judgment granted in favour of Nedbank Limited in case no 3895.

2] No replying affidavits, nor heads of argument were filed in the application by defendants for the rescission of the judgment by the respective dates when they

were directed to do so in terms of an agreed order granted on 26 November 2010. Most relevant factual issues are common to all five matters. For the sake of convenience I will refer to plaintiff in the summary judgment matters as 'Nedbank'. The applications all relate to property developments, either at Wedgewood or Romansbaai, in the Cape. Large sections of the founding affidavits in case 24892A are identical to the defendants' opposing affidavits delivered in the three summary judgment applications.

3] At the hearing of the matters on 23 May 2011 the application for rescission of the judgment under case no 24892A was not proceeded with and there was no opposition to the application to have the stipulated immovable property declared executable under case no 3895. The court accordingly issued orders refusing the rescission of the judgment and declaring the relevant immovable property executable. The judgment in favour of Nedbank in respect of the refusal to grant a rescission of the judgment in case 24892A, effectively rendered a final judgment against the principal debtor in that matter.

4] Initially there were no opposing papers filed under case no 24607/2010, a summary judgment application relating to the development at Romansbaai. Details relating to the defendants in this matter appear in the heading above. In this matter, often referred to as the 'Stratford Trust' matter, trust relief is sought against two sureties, jointly and severally, who are liable for 75% of the principal debt.

5] During the hearing of the matter I was advised that opposing affidavits in the Stratford Trust matter had been filed late on the plaintiff. At my request I received a copy of the opposing papers in due course. No heads of argument were filed on behalf of the defendants in the Stratford Trust matter. The defendants' counsel in all

these matters, Mr Patrick, informed the court that he had been briefed to argue the matter, but he conceded that he could not argue any particular defences on behalf of the sureties in the Stratford Trust matter. He submitted however that the points and arguments that were raised in case 22331/2010, the so-called 'Mostert application', on behalf of the principal debtor, also applied in the Stratford Trust matter.

6] The heads of argument on behalf of the defendants in the remaining two applications for summary judgment were filed one or two court days before the hearing, nearly a week late. Counsel for the defendants apologised in his heads of argument for the late filing and noted that he had been briefed late and had then been instructed that the parties were endeavouring to settle the matters. Plaintiff's counsel requested that the matters should proceed.

7] In the Stratford Trust matter, which relates to the Romansbaai development, one of the issues raised by the defendants was that the liabilities of the two defendants are joint and several and that Nedbank could not take judgment against both defendants for the full amount. I was advised by plaintiff's counsel, Mr Muller, that Nedbank in fact only sought judgment against both sureties jointly and severally, as appeared from the original Particulars of Claim. Despite the absence of opposing affidavits by defendants in this matter, this aspect had been conceded in the heads of argument filed on behalf of Nedbank.

8] Case 22331/2010, the Mostert application, is a summary judgment application also relating to the Romansbaai development where relief is sought against two of the sureties who are jointly and severally liable for the remaining 25% of the principal debt. One of the defences raised by defendants in this matter is that the claim for summary judgment is inconsistent with the prayers in the Particulars of Claim. This

defence was conceded in the heads of argument filed on behalf of Nedbank and plaintiff accordingly sought judgment for the lesser relief as stated in the Particulars of Claim, namely against the first and second defendants jointly and severally, the one paying the other to be absolved.

9] Other defences raised on behalf of the defendants in the three summary judgment applications that I will deal with hereunder, were:

9.1] A reliance on the alleged lack of knowledge by Ms Smalberger, attesting on behalf of Nedbank, with regard to the basis of her personal knowledge regarding Nedbank's claims against the defendants;

9.2] a claim that summary judgment was requested prematurely; and

9.3] a reliance by all the defendants on a claim by certain defendants, as plaintiffs, against Nedbank, as first defendant (of seven defendants), contained and set out in case no 5131/2010, in the North Gauteng High Court, Pretoria.

10] In Case no 20896/2010, the summary judgement application relating to the Wedgewood Development, relief is sought against the principal debtor and sureties. The defences raised in this matter on behalf of second to seventh defendants include, in addition to the defences mentioned above, submissions that summary judgment cannot be granted on a claim for rectification, complaints of *mala fides* and an allegation that the loan term was extended by twelve months.

11] The examination of the defences of the defendants in the summary judgment applications entail an enquiry to establish whether there are facts sufficiently disclosed by the defendants to show that summary judgment should be refused.

The second leg of the enquiry is whether the defences are good in law, more particularly as regards an alleged potential counterclaim. Thirdly the court is at liberty to consider exercising a discretion in favour of the defendants. The plaintiff in these three matters does not object to insufficient disclosure, but rather complains that defendants did not advance a defence or counterclaim that is good in law.

12] I was referred to the *locus classicus,* the judgment of Corbett JA in Maharaj v Barclays National Bank Ltd[1] and I quote from the headnote:

> In an application for summary judgment the requirements of sub-rule (2) of Rule of Court 32 are *(a)* that the affidavit should be made by the plaintiff himself or by any other person who can swear positively to the facts; *(b)* that it must be an affidavit verifying the cause of action and the amount, if any, claimed and *(c)* that it must contain a statement by the deponent that in his opinion there is no *bona fide* defence to the action and that the notice of intention to defend has been delivered solely for the purpose of delay.
> As to *(a)*, *supra*, the mere assertion by a deponent that he can swear positively to the facts' is not regarded as being sufficient, unless there are good grounds for believing that the deponent fully appreciated the meaning of these words.
> The word 'fully' in Rule 32 (3) *(b)* connotes that while the deponent need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a *bona fide* defence. At the same time the defendant is not expected to formulate his opposition to the claim with the precision that would be required of a plea; nor does the Court examine it by the standards of pleading.

Defences: The aspect of lack of knowledge:

13] Ms Susan Smalberger is a senior loss control manager employed at Nedbank Corporate Property Finance. She stated on oath that the facts contained in her affidavits under all the relevant case numbers are within her personal knowledge and

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[1] 1976 (1) SA 418 (A)

are to the best of her belief both true and correct. Detailed particulars relating to the basis of her personal knowledge relating to Nedbank's claims were set out in her affidavit filed under case no 24607/2010. *Inter alia* she had access to all business records of Nedbank relating to the relevant accounts and was personally involved in settlement negotiations and agreements. She was involved in obtaining the judgment against the principal debtor in cases 22331/2010 and 24607/2010. She personally checked the amounts due and issued certificates to this effect regarding balances due.

14] In the premises Ms Smalberger submitted that she could and did swear positively to and verified the facts, causes of action and amounts claimed in the various summonses. The allegations contained in her affidavits comply with the requirements set out under High Court Rule 32 (2).

15] Sub Rule 32 (2) contemplates that the affidavit is made by a person '*who can swear positively to the facts*'. This ability to swear positively to the facts is essential for the effectiveness of the affidavit as a basis for summary judgment. The court must be satisfied, *prima facie,* that the deponent is a person who can swear positively to essential facts. For example, this requirement excludes an affidavit by someone whose knowledge is based on hearsay evidence. Even where some of the strict requirements of the rule are not met, it has been held that the court will not hold the affidavit defective for that reason, as long as the deponent is someone who would ordinarily be presumed to have personal knowledge of the essential aspects of the matter.

16] There is nothing contained in Smalberger's affidavits that casts doubt on the question as to whether she in fact has the requisite personal knowledge.[2] As argued on behalf of Nedbank, I agree that Ms Smalberger was ostensibly personally extensively involved in agreements and amendments to original agreements and was able to rely on bank records and documents regarding original agreements, an aspect that has not been disputed by defendants. Accordingly this defence is rejected as unfounded.

Rectification in Summary Judgment:

17] In case 20896/2010 the defendants contend that it is not competent for the court to grant summary judgment on a claim for rectification.[3] The prayers relating to rectification under this case are to rectify the acknowledgement of debt and loan agreement by changing the number '401' and substituting it with '402', (this amendment relates to the number of an immovable property) and to rectify the deed of suretyship by changing 'IC Stratford Trust' to 'IC Stratford Family Trust'.[4]

18] It was argued and pointed out on behalf of plaintiff that the error that plaintiff sought to rectify was a clear, patent error, which only appeared in the Notice of Intention to Apply for Summary Judgment. The error was not continued in the affidavit filed in support of any of the applications. In her affidavit Ms Smalberger correctly confirmed the allegations, cause of action and quantum claimed from defendants as contained in the Particulars of Claim. There is no dispute that the agreements stand to be rectified as alleged and Mr Ivor Stratford ('Stratford') himself,

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[2] See Erasmus, Superior Court Practise, Main Volume, B1-215 to B1-216 and cases cited there.

[3] P 219, par 15, p 227, par 18 and 289, par 155

[4] P 35

on behalf of the defendants, confirms this in his affidavit in respect of the acknowledgement of debt, the loan agreement and the suretyship. [5]

19] Plaintiff argued, correctly in my view, that the issue should be determined in accordance with the binding authority of PCL Consulting (Pty) Ltd t/a Phillips Consulting SA v Tresso Trading 119 (Pty) Ltd.[6] The defendants have not placed in issue the rectification of the agreements, but merely submit that summary judgment should not be granted. I agree with the submissions on behalf of Nedbank that this defence should be rejected.

Mala fides.

20] The vague allegations by defendants in their affidavits relating to *mala fides* on the part of Nedbank were not proceeded with in their heads of argument or the argument in court, save to the extent that this aspect was dealt with under the defence of the alleged wrongful conduct of Nedbank, that I will deal with later.

Extension of loan term.

21] In case 20896/2010 Stratford contended on behalf of the defendants in that matter that the defendants were given an extension of one year to repay Nedbank on certain conditions. The extension was allegedly given telephonically to a Mr Hennie Pretorius, the CEO of the Pinnacle Point Group of companies. Since no confirmatory affidavit was filed by Pretorius, this allegation amounts to inadmissible hearsay evidence and in any event the allegations are contrary to non-variation clauses in the relevant Mortgage Bond, Acknowledgement of Debt and loan agreement.

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[5] P 218 par 14, p 227 par 18 and p 288 par 154

[6] 2009 (4) SA 68 SCA, particularly 71 C-D

22] Stratford alleges that this extension also applies to the Romansbaai development, but no mention thereof is made in the relevant cases, being case no 24896A/2010 and case no 22331/2010. In case 20896/2010 Mr Mostert filed a confirmatory affidavit, but in case 22331/2010, where he was a deponent, he omitted any reference of this so-called extension that was allegedly applicable to both developments and in fact the contents of his affidavit in that matter are contradictory to any such extension.[7]

23] This aspect was not argued on behalf of defendants at the hearing of the matter and I agree with plaintiff that this allegation is so inherently implausible and unreliable that it does not constitute a basis to refuse summary judgment.

Wrongful conduct/potential counterclaim.

24] The defendants allege certain facts upon the basis of which they claim that Nedbank's actions caused the principal debtors in these matters to be unable to repay Nedbank. The Pinnacle Point Group of companies, ('PPG') (which group of companies includes Danger Point), some of whom are included among the defendants in the summary judgment applications, have taken action against Nedbank in the North Gauteng High Court under case no 5131/2010, alleging that the wrongful conduct of Nedbank, of which the defendants complain, has caused huge financial losses to them.

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[7] Case 22331/2010 page 140 par 52

25] Our courts have held that a debtor can rely on the wrongful conduct of its creditor to excuse its failure to perform, where the conduct of the creditor has made performance by the debtor impossible. [8]

26] The defendants allege that Nedbank's wrongful conduct caused the inability of the principal debtors to repay Nedbank. In the affidavits opposing summary judgment in case no's 20896 and 22331, the Wedgwood and Mostert applications, the defendants allege that the first defendant, a company that is part of PPG, could not have met its obligations in terms of the loan agreement with Nedbank for the reason that, by its own conduct, Nedbank had jeopardised the standing of the entire PPG. It is alleged that a material determinant of the ability of the PPG to raise capital is the share price of the listed company, being PPG, and that the conduct of Nedbank led to the collapse of the PPG share price.[9] *Inter alia* it is alleged that Nedbank acquired 89,33% of the issued share capital in the listed PPG company '*by stealth*'.

27] In cases 24892A, 20896 and 22331 the defendants make detailed allegations regarding the alleged manipulation of share prices by Nedbank and the alleged contravention of legislative requirements by them relating to the control of companies. It is submitted that Nedbank failed to make certain disclosures and that its conduct in doing so manipulated share prices so as to over-inflate the value of the currency comprising PPG shares.

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[8] Academy of Learing (Pty) Ltd v Hancock and Others 2001 (1) SA 941 (C) par 33 at 952 F-G

[9] Affidavit opposing summary judgment in Wedgewood application, p 33 and 34, p 239 of record and affidavit opposing summary judgment in Mostert application, par 55, p 141 of record.

28] It is pointed out in the affidavits of the defendants in the Wedgwood and Mostert applications that the SRP has investigated their claims, expressed its concern and submitted its ruling to the *'relevant regulators'* to investigate whether reckless trading and/or market manipulation took place. In response to these allegations Nedbank denied all the allegations of unbecoming conduct and pointed out that the SRP has dismissed the complaints.[10]

29] On behalf of Nedbank it was argued that the allegations by defendants might have amounted to a claim in reconvention for unliquidated damages by some of the sureties, but that it cannot be considered as a claim in reconvention in these matters presently before court, as it is not being asserted as one in the cases presently entertained by this court and therefore, those defendants to whom the North Gauteng matter relates, cannot raise it as a defence in these proceedings. It is argued that the reported decisions relied on by defendants,[11] would only apply if the claims asserted in the North Gauteng court were asserted in the matters presently before court and as that claim is not asserted in the actions before court, it cannot be considered as a defence in any of the actions before this court.

30] On behalf of the defendants it was submitted that a counterclaim already seriously pursued and not merely in answer to an application for summary judgment stands to be accorded more weight and not less weight than a counterclaim raised for the first time at the summary judgment stage. It was pointed out that the defendants allege that Nedbank's wrongful conduct caused the inability of the

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[10] Case 24892A p 410-442

[11] Truter v Degenaar, 1990 (1) SA 206 (TPD) and Soil Fumigation Services v Chemfit Technical Products 2004 (6) SA 29 SCA

principal debtors to repay Nedbank[12] and a debtor will enjoy a direct defence where the debtor can rely on the creditor's wrongful conduct to excuse his/her failure to perform or where the creditor has made performance by the debtor impossible. Mr Patrick argued that the categorisation of the defence is not clear and that Brand J stated in the Hancock matter[13] that the defence was one of impossibility, able to be objectively demonstrated by a debtor. This is however not an issue to consider in a summary judgment application.

31] Mr Muller argued that in the present matters before court, the defendants have not shown an objective impossibility to pay their debts and he further, correctly in my view, disagreed that the categorisation of the defence was not clear. He pointed out that the learned Judge had found that the debtor had a defence where the wrongful conduct of a creditor made performance by the debtor impossible, but Brand J, as he then was, continued to find:[14]

'I believe, however that this situation constitutes the defence of supervening impossibility. In order to succeed with this defence, the debtor must prove that his/her performance became objectively, and not merely subjectively impossible....'

32] In the Hancock judgment Brand J also made it clear that the impecunious status of a debtor is not necessarily an excuse for non-payment if the debtor can show some wrongful act of comission or omission by the creditor. It was further argued on behalf of Nedbank that even in the event that this court should find that this aspect is available as a defence, the following considerations should be

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[12] See *inter alia* affidavit opposing summary judgment in the Wedgwood application, p 239 para 33 and 34.

[13] Academy of Learing (Pty) Ltd v Hancock and Others 2001 (1) SA 941 (C) par 33 at 952 G

[14] At par 33 p 952 G

entertained when regard is had to the relevant Particulars of Claim and Plea in the North Gauteng High Court, namely:

> 32.1] The principal debtors for each of the developments, Wedgewood Village Golf and Country Estate (Pty) Ltd ('Wedgewood') and Danger Point Ecological Development Company (Pty) Ltd ('Danger Point'), are not plaintiffs and do not have claims in that action. As such, these allegations do not prevent summary judgment from being granted against Wedgewood or provide a ground for setting aside the judgment granted against Danger Point.
>
> 32.2] As regards case no 20896/2010, the allegations contained in the North Gauteng matter are only relevant in respect of second, third and sixth defendants, being the plaintiffs in the North Gauteng court case and the allegations are irrelevant as far as the other defendants are concerned. In case 22331/10 the allegations are only relevant insofar as the second defendant is concerned, who is also the plaintiff in the North Gauteng case, case 5131/2010. In case 24607/2010 these allegations have not been made, but would in any event not be relevant as the defendants are not plaintiffs in case 5131/2010.

33] In response to these submissions it was argued that the affidavits filed on behalf of defendants show that funding of all the companies in the PPG of companies was interdependent and related to the fortunes of the listed entity. It was submitted that the argument that the defendants/trusts are outside the group and that the court can therefore not exercise a discretion in their favour with regards to this matter, is incorrect, since the trusts do not argue this aspect in their own right, but *apropos* the principal debtors for whom they stand surety. It was also argued

that in fact and in law the fortunes of the principal debtors are dependant upon the fortunes of the listed entity.

34] Mr Patrick submitted that where the *bona fide* defence takes the form of an unliquidated counterclaim which is for a lesser amount than that of the plaintiff's claim, the court should exercise its overall discretion, taking into account the different considerations that arise at that time, as opposed to the instance where the defence is put forward by way of a plea.[15]

35] It was thereupon further submitted on behalf of Nedbank that if the claim in case 5131/2010 had been a counterclaim asserted in these proceedings currently before court, the court would have had a discretion whether to allow the claim in convention to proceed, or whether the claim in reconvention should be entertained first. In support of this submission I was again referred to Truter v Degenaar, [16] a matter that dealt with the discretion of the court in a case where a counterclaim had been instituted in the same court in the same matter, where the court found:

'Die diskresie is nie beperk tot gevalle waar die teeneis beuselagtig of kwelsugtig is en ingestel word bloot om vonnis op die eis te vertraag nie. Die diskresie is wyer en die goeie redes wat 'n hof daartoe bring om dit uit te oefen ten gunste van 'n eiser is nie vooraf vatbaar vir definisie nie'.

36] Finally it was submitted, in my view correctly, on behalf of Nedbank, that the court should take the following factors into account in consideration of the exercise of its discretion, in relation to the relevant defendants only and not such defendants

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[15] Soil Fumigation Services Lowveld CC v Chemfit Technical Products (Pty) Ltd 2004 (6) SA 29 (SCA) 351-36 A

[16] 1990 (1) SA 206 (TPD) 211 E-F

who did not assert any claims in reconvention, who have not established a valid defence to Nedbank's claims:

36.1] The defendants' counterclaim has not been instituted in these proceedings or even this court;

36.2] the facts or legal issues in case 5131/2010 are not common to the present proceedings before court but relate to a different set of facts and allegations;

36.3] the claims in the cases before this court are commercial loans for which the repayment date has long passed;

36.4] there is no dispute that the loans were made, monies advanced and that repayment of the money is due;

36.5] upon a proper perusal thereof, the claims in the North Gauteng court are '*convoluted and weak*';

36.6] the claims relate to only some of the sureties and not the principal debtors;

36.7 it needs to be noted that Nedbank will be able to pay any judgment that may theoretically be made against it in case 5131/2010 in the North Gauteng High Court and in the circumstances there is no prejudice to defendants in this regard;

36.8] the claims were instituted long after many of the extensions to the loan agreements, i.e. the claim was raised long after the debtors had acknowledged their liability. They were aware of their alleged claims

underlying the North Gauteng case months before agreed extensions to loan repayments;

37] It was also argued on behalf of Nedbank, persuasively and correctly in my view, that the probability existed that the claim instituted in the North Gauteng court is not a genuine claim and that it should not be regarded as a *bona fide* reason to refuse summary judgment in circumstances where a commercial loan was made years before and where the debtors had agreed to amend agreements several times, without raising any counterclaim.

38] I was requested to take into account and to consider whether this court should exercise a discretion in favour of the same parties who launched an application for a rescission of a judgment in circumstances where they had previously agreed to the judgment and where, in their founding papers before this court, they had pretended otherwise. I agree with Mr Muller that this is a factor militating against this court exercising a discretion in favour of defendants. I also agree that the answering papers of defendants indicate conclusively that their allegations relating to the rescission of judgment application were devoid of all truth. Their actions in regard to buying time with a rescission of judgment application, only to abandon such an application at the last minute, is certainly not conducive to earning the sympathy of the court, extending to the exercise of a discretion in their favour.

39] In view of the circumstances pertaining to this matter, as raised and argued on behalf of Nedbank and as set out above, neither the alleged conduct of Nedbank nor the claim instituted by certain defendants in case 5131/2010 in the North Gauteng court, should be considered as a defence in any of the applications for summary judgment before court.

40] In the premises I find that the defendants have not persuaded the court that they have, or any one of them has a *bona fide* defence to the plaintiff's claims in the three summary judgment applications presently before me.

41] It was argued on behalf of defendants that Nedbank's concession that it could not obtain judgment against both defendants cumulatively in matter 22331/2010, but that it could only obtain summary judgment against one paying, the other to be absolved, has the consequence that opposition to that end has been successful, warranting an adverse costs order. I do not agree with this proposition. The error of plaintiff was clearly a patent one, not contained in the body of the founding affidavits and as such not confirmed by Ms Smalberger. In addition plaintiff pointed out in its heads of argument (apparently filed even before Mr Patrick was briefed), that a mistake had been made which would be rectified at the hearing of the matter. There was no necessity in the circumstances for defendants to continue to pursue this argument or to oppose the applications due to this patent error. In the circumstances, I do not believe the plaintiff should be mulcted in costs for this error.

42] Accordingly, the orders in favour of plaintiff in each of the three matters is annexed hereto, marked '**A**', '**B**' and '**C**'.

E STEYN J

27 September 2011

'A' 27.09.11

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Cape Town, Tuesday 27 September 2011 **CASE NO: 20896/2010**
Before the Honourable Justice E Steyn

In the matter between:

NEDBANK LIMITED	Plaintiff
and	
WEDGEWOOD VILLAGE GOLF AND COUNTRY ESTATE (PTY) LTD	1st Defendant
PINNACLE POINT HOLDINGS (PTY) LTD	2nd Defendant
PROPERTY PROMOTIONS AND MANAGEMENT (PTY) LTD	3rd Defendant
THE TRUSTEE OF THE CLIFTON TRUST	4th Defendant
THE TRUSTEES OF THE IC STRATFORD FAMILY TRUST	5th Defendant
NEW PORT FINANCE COMPANY (PTY) LTD	6th Defendant
DAVID CARL MOSTERT	7th Defendant

ORDER

Having read the papers filed of record and having heard counsel for the plaintiff and counsel for the defendants,

IT IS ORDERED that :

Judgment is entered against the first to seventh defendants, jointly and severally, the one paying, the other to be absolved, for

1. Payment of the amount of R 54 974 122.50;
2. Interest thereon at the plaintiff's prime lending rate calculated daily and debited monthly on the capital balance outstanding, from 5 August 2010 to date of payment, both days inclusive;
3. Costs of suit on a scale as between attorney and client, including the costs of two counsel.

BY ORDER

REGISTRAR OF THE HIGH COURT

CAPE TOWN

'B' 27.09.11

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Cape Town, Tuesday 27 September 2011 **CASE NO: 22331/2010**
Before the Honourable Justice E Steyn

In the matter between:

NEDBANK LIMITED Plaintiff

and

DAVID CARL MOSTERT 1st Defendant

NEW PORT FINANCE COMPANY (PTY) LTD 2nd Defendant

ORDER

Having read the papers filed of record and having heard counsel for the plaintiff and counsel for the defendants,

IT IS ORDERED that :

Judgment is entered against the first and second defendants, jointly and severally, the one paying, the other to be absolved, for

1. Payment of the amount of R 10 285 178.68;
2. Interest thereon at the plaintiff's prime lending rate calculated daily and debited monthly on the capital balance outstanding, from 2 September 2010 to date of payment, both days inclusive;

3. Costs of suit on a scale as between attorney and client, including the costs of two counsel.

BY ORDER

REGISTRAR OF THE HIGH COURT

CAPE TOWN

'C' 27.09.11

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Cape Town, Tuesday 27 September 2011 **CASE NO: 24607/2010**
Before the Honourable Justice E Steyn

In the matter between:

NEDBANK LIMITED Plaintiff

and

THE TRUSTEES OF THE IC STRATFORD FAMILY TRUST 1st Defendant

THE TRUSTEE OF THE CLIFTON TRUST 2nd Defendant

ORDER

Having read the papers filed of record and having heard counsel for the plaintiff and counsel for the defendants,

IT IS ORDERED that :

Judgment is entered against the first and second defendants, jointly and severally, the one paying, the other to be absolved, for

1. Payment of the amount of R 30 855 536.04;
2. Interest thereon at the plaintiff's prime lending rate calculated daily and debited monthly on the capital balance outstanding, from 2 September 2010 to date of payment, both days inclusive;

3. Costs of suit on a scale as between attorney and client, including the costs of two counsel.

BY ORDER

REGISTRAR OF THE HIGH COURT

CAPE TOWN