

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA, MAIN DIVISION, WINDHOEK

RULING APPLICATION: SUMMARY JUDGMENT

Case no: HC-MD-CIV-ACT-CON-2018/01116

In the matter between:

**SMALL AND MEDIUM ENTERPRISES LIMITED APPLICANT/PLAINTIFF
REPRESENTED BY BRUNI & MCLAREN**

and

**COLGAR INVESTMENT CC
COLGAR SISAMU MASWAHU**

**FIRST RESPONDENT/DEFENDANT
SECOND RESPONDENT/DEFENDANT**

Neutral Citation: *Small and Medium Enterprises Limited represented by Bruni & McLaren v Colgar Investment CC* (HC-MD-CIV-ACT-CON-2018/01116) [2018] NAHCMD 349 (5 November 2018)

CORAM: PRINSLOO J
Heard: 11 OCTOBER 2018
Delivered: 05 NOVEMBER 2018

Flynotes: Practice – Summary Judgment – Defendant opposing summary judgment application on grounds of payment of interest as prayed for by the plaintiff – Interest – Compound interest – Compound interest only payable where statute provides for compound interest – Common law rule is that simple interest payable unless agreement to contrary – No reference made in the particulars of claim that compound interest to be calculated daily and capitalized monthly – Clear dispute between the parties in respect of interest to be paid – Summary judgment application dismissed.

ORDER

- a) Summary judgment application is dismissed.
 - b) The costs of this application are ordered to follow the event.
 - c) Matter is postponed to 06 December 2018 at 15:00 for Case Planning Conference.
 - d) Joint case plan must be filed on or before 03 December 2018.
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RULING IN TERMS PRACTICE DIRECTION 61

PRINSLOO J:

[1] The plaintiff, SME Bank issued action against the first and second defendant on 23 March 2018.

[2] The plaintiff claims the following relief against the first and second defendant jointly and severally, the one paying the other to be absolved, for:

- 'a) Payment of N\$465 934.22;
- b) Compound interest calculated daily and capitalized monthly on the amount of N\$ 465 934.22 at the rate of 15.50% calculated from 1 February 2018 to date of final payment;
- c) Cost of suit on an attorney/client scale.'

[3] The defendants thereupon filed a notice of its intention to defend the matter on 15 June 2018.

[4] In response, the plaintiff applied for a summary judgment on the basis that the defendants have no *bona fide* defence.

[5] One of the aspects that the defendants took issue with in their answering affidavit is the issue of the interest claimed in the particulars of claim.

[6] It is alleged by the plaintiff in paragraph 5 of the Particulars of Claim that the material terms of the agreement, which is marked as "A", are that:

'5.1 The Plaintiff shall provide an Overdraft Facility to the First Defendant in the amount of N\$ 400 000 (Four Hundred Thousand Namibian Dollars).

5.2 The facility shall bear interest at a rate equal to the Plaintiff's Prime Lending Rate plus 5% and shall be debited to the First Defendant's account in arrears on a monthly basis.

5.3 The interest rate may be altered by the Plaintiff at its discretion from time to time.'

[7] Paragraph 5 of the particulars of claim is in line with the agreement reached between the parties as follows:

'INTEREST RATE

That interest rate to be applied to the Overdraft Facility in the amount of **NS 400,000.00 (Four Hundred Thousand Namibian Dollars only)** is Prime Lending Rate (currently 10.25%) per annum plus 5% (effective interest rate 15.25%).

The amount of interest will be debited in arrears to your account on monthly basis.'

[8] In its prayers in the particulars of claim, the plaintiff endeavours to claim compound interest calculated daily and capitalised monthly.

[9] It is my understanding, in very simplified terms, that simple interest is calculated on the principal, or original, amount of a loan whereas compound interest is calculated on the principal amount and also on the accumulated interest of previous periods, and can thus be regarded as "interest on interest."

[10] There can be a big difference in the amount of interest payable on a loan if interest is calculated on a compound rather than a simple basis. The reference to the fact 'that interest will be debited in arrears to the account on monthly basis' appears to be reference to compound interest. However, nowhere in the agreement is there reference to compound interest or what it meant, nor is reference made to the word 'compound' or 'compounded'¹ or how the interest will be calculated and capitalized at certain intervals and the agreement is ambiguous in this regard.

[11] In the Certificate of Balance interest claim is referred to as follows:

'Interest: 15.50 % (Prime plus 5% per annum) from February 2018 to date of final payment (both dates inclusive)'

¹ The word compound does appear in the definition of 'prime rate' but appears completely out of context.

Therefor there is no reference made to the prayer as set out in the particulars of claim, i.e. compound interest calculated daily and capitalized monthly.

[12] There is a clear dispute between the parties regarding the interest claimed and the calculation of the outstanding amount.

[13] In the result, I then make the following order:

- a) Summary judgment application is dismissed.
- b) The costs of this application are ordered to follow the event.
- c) Matter is postponed to 06 December 2018 at 15:00 for Case Planning Conference.
- d) Joint case plan must be filed on or before 03 December 2018.

J S Prinsloo

Judge

APPEARANCES:

FOR THE PLAINTIFF/APPLICANT:

K Kamuhanga

of Angula Co. Inc., Windhoek

FOR THE DEFENDANT/RESPONDENT:

T Ipumbu

of Titus Ipumbu Legal Practitioners,
Windhoek