THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable
Case no:15/2024

In the matter between:

TARENTAAL CENTRE INVESTMENTS (PTY) LTD **FIRST APPLICANT**
THE VILLAGE MALL INVESTMENTS (PTY) LTD **SECOND APPLICANT**

and

BENEFICIO DEVELOPMENTS (PTY) LTD **RESPONDENT**

Neutral citation: *Tarentaal Centre Investments (Pty) Ltd v Beneficio Developments* (15/2024) [2025] ZASCA 38 (8 April 2025)

Coram: MOKGOHLOA ADP, HUGHES, SMITH and KOEN JJA and MUSI AJA

Heard: 3 March 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 8 April 2025.

Summary: Usurious transactions – what constitutes – common law requirement of extortion, oppression, or something akin to fraud – judicial power to refuse enforcement of contractual provisions that are against public policy.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Molopa-Sethosa J, sitting as court of first instance):

The application is struck from the roll with costs, including the costs of two counsel, where so employed.

JUDGMENT

Smith JA (Mokgohloa ADP, Hughes, Koen JJA and Musi AJA concurring):

Introduction

[1] On 16 February 2024, the President of this Court referred the decision which refused the applicants leave to appeal against the judgment and order of the Gauteng Division of the High Court, Pretoria (the high court), delivered on 23 August 2023, for reconsideration and, if necessary, variation, in terms of s 17(2)(*f*) of the Superior Courts Act 10 of 2013 (the Act). The first and second applicants are Tarentaal Centre Investments (Pty) Ltd (Tarentaal) and Village Mall Investments (Pty) Ltd (Village Mall), respectively. I also refer to them collectively as 'the applicants', where the context so requires. The respondent is Beneficio Developments (Pty) Ltd (Beneficio).

[2] The high court, among others, ordered the applicants, jointly and severally, to pay to Beneficio outstanding loans in the sum of R16 358 068.25 and interest on that amount at the rate of one percent per week. It also declared certain immovable property owned by the applicants specially executable in favour of Beneficio and dismissed the applicants' counterclaim. The applicant's application for leave to appeal was unsuccessful and they subsequently applied to this Court for leave to appeal in terms of s 17(2)(*b*) of the Act. That application was dismissed on 12 December 2023.

Requirements for reconsideration and leave to appeal

[3] Before I deal with the facts, I find it apposite first to refer to the requirements for leave to appeal under s 17(2)(*f)*. The applicants contend that there are exceptional circumstances which justify the granting of leave to appeal and argued that a grave failure of justice would otherwise result if leave were not granted. Their application is based on the following appeal grounds: (a) the interest rate of one percent per week equates to a nominal interest rate of 52 percent per annum, and is consequently usurious; (b) if the interest rate is found to be usurious, the various clauses of the loan agreements providing for the interest are void and unenforceable; alternatively, if those clauses are not severable from the rest of the agreements, then the loan agreements are void in their entirety.

[4] When the President referred the matter for reconsideration, the jurisdictional requirement for the exercise of her discretion in terms of s 17(2)(*f*) was the existence of 'exceptional circumstances.' That section was subsequently amended by s 28 of the Judicial Matters Amendment Act 15 of 2023, which came into operation on 3 April 2024. In terms of the amended section the jurisdictional facts for the exercise for the President's discretion are, 'circumstances where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute.' The amendment did not alter the nature of the President's discretion in any way since the Constitutional Court in *S v Liesching and Others*[1] (*Liesching*) – which was decided before the amendment - held that the phrase 'exceptional circumstances' encompasses the aforementioned jurisdictional factors.

[5] In *Motsoeneng v South Africa Broadcasting Corporation Soc Ltd and Others*[2], this Court held that, '[t]he necessary prerequisite for the exercise of the President's discretion is the existence of "exceptional circumstances". If the circumstances are not truly exceptional, that is the end of the matter. The application under subsection (2)(*f*) must fail

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[1] *Liesching v* S (CCT304/16); [2018] ZACC 25; 2018 BCLR (CC); 2019 (1) SACR 178 (CC); 2019 (4) SA 219 (CC) para 138.

[2] *George Hlaudi Motsoeneng v South Africa Broadcasting Corporation Soc Ltd and Others* (Case no 64/2023) [2024] ZASCA 80; 2024 JDR 2195 (SCA) at para 14.

and falls to be dismissed.' Once the President has referred the decision of the two judges refusing leave to appeal for reconsideration, 'the court effectively steps into the shoes of the two judges' and may. upon reconsideration, grant or refuse the application.[3]

[6] The question whether we are entitled, or for that matter obligated, to consider first whether exceptional circumstances warranted the exercise of the President's powers in terms of s 17(2)(*f*) did not arise in this appeal, nor was any argument presented to us in this regard.[4] This was because in argument before us, the applicants' counsel accepted that they bore the onus of establishing exceptional circumstances, either in the sense of a probability of a grave failure of justice or the administration of justice being brought into disrepute. In this regard counsel submitted that a failure to reconsider the decision refusing leave to appeal will result in a 'grave injustice.'

[7] The Constitutional Court cautioned in *Liesching* that s 17(2)(*f*) is not intended to afford litigants a further attempt at procuring relief that has already been refused. It is instead 'intended to enable the President to deal with a situation where an injustice might otherwise result. It does not afford litigants a parallel appeal process in order to pursue additional bites at the proverbial cherry.'[5]

The facts

[8] At the heart of the dispute between the parties is the lawfulness of the interest rate charged in respect of various loan agreements concluded between Tarentaal and Beneficio, and in the case of Village Mall, in respect of a suretyship agreement. The applicants contend that the interest rate of one percent per week, capitalised monthly, was usurious, against public policy and unconstitutional.

[9] It is common cause that the applicants are part of the Nova Group of Companies (Nova Group). Having decided to pay debenture holders, the Nova Group decided to sell

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[3] Ibid para 14.

[4] This question was considered in *Bidvest Protea Coin Security (Pty) Ltd v Mandla Mabena* (986/2013) [2025] ZASCA 23 (26 March 2025), which was delivered after this matter was argued.

[5] *Liesching* fn 2 above para 139.

certain immovable properties to fund the payment. Although the properties were sold, there was a delay in the transfers and by December 2017 Tarentaal, being the entity through which the debenture holders would be paid, urgently needed the money.

[10] None of the entities in the Nova Group could approach traditional banks or financial institutions for the money and they elected to approach Beneficio for short term bridging finance. Mr Myburgh and another director of the Nova Group had known Beneficio's sole director, Dr Oto Laäs (Dr Laäs), through previous dealings between him and the Nova Group. Pursuant to negotiations between the parties during 13 December 2017 and 3 December 2018, Tarentaal and Beneficio concluded various loan agreements and addenda thereto, in terms of which amounts totalling some R55 million were lent and advanced by Beneficio to Tarentaal. The loans were payable within three months. Village Mall bound itself as surety and co-principal debtor for the due performance of Tarentaal's contractual obligations by virtue of a written suretyship executed on 13 December 2017.

[11] The interest rate of 1.25 percent that applied to previous transactions between the parties was reduced through negotiations to one percent per week, capitalised monthly. As security, mortgage bonds were registered over the applicants' unincumbered immovable property, valued at some R47 200 000.

In the high court

[12] In June 2020, Beneficio instituted civil action against the applicants, jointly and severally, for, *inter alia*: payment of the sum of R16 35 068.25, which it alleged was due in terms of the loan agreements concluded between the parties; interest on that amount at the rate of one percent per week, capitalised monthly; and an order declaring certain immovable property owned by the applicants specially executable in favour of Beneficio.

[13] The applicants defended the action and filed a counterclaim, averring that the interest rate charged by Beneficio was usurious and unenforceable for reasons more fully explained below. In their plea and counterclaim the applicants asserted that: (a) when the various 'putative agreements' were concluded, the positions of Tarentaal and Beneficio

were not ‘equipoise’; (b) Beneficio knew that the loan amount was needed and would be used by the Nova Property Group of Companies to fund certain essential capital requirements and that it had been unable to secure loan finance by conventional means from recognised banks or financial institutions; (c) Tarentaal was compelled to agree to the imposed interest rate, even though ‘such rate was, and remains, excessive, unconscionable, unlawful and a contravention of the first respondent’s constitutional rights, to *inter alia*, property and freedom of trade’; (e) Beneficio’s insistence on charging the imposed interest rate and to compel Tarentaal to accept same was ‘extortionate and/or oppressive and the imposed interest rate, being excessive and unconscionable, is usurious and falls to be set aside as being void and unenforceable as being against public policy, unlawful and unconstitutional.’

[14] At the trial, the following witnesses testified on behalf of the applicants: Mr Cornelius Fourie Myburgh, an attorney and director of the applicants and other companies that form part of the Nova Group and Mr Allan Greyling, who testified as an expert. Dr Laäs and Mr Jakob Jan Dekker, as an expert witness, testified on behalf of Beneficio. It is common cause that none of the witnesses presented any evidence of extortion, oppression or fraud on the part of Beneficio,

[15] Mr Myburgh, in his testimony, said that at the time of the negotiations he was of the view that the interest rate was unreasonably high. He did, however, not raise any objections because he knew that the Nova Group desperately needed the money to pay debenture holders. He conceded that the interest rate of one percent per week was commensurate with the usual interest charged by lenders in respect of short term bridging finance.

[16] The high court, correctly considering itself bound by the judgment of this Court in *African Dawn Property Finance 2 (Pty) Ltd v Dreams Travel and Tours CC*[6] (*African Dawn*), found that the applicants had failed to discharge the onus of showing that the

[6] *African Dawn Property Finance 2 (Pty) Ltd v Dreams Travel and Tours CC* [2011] ZASCA 45; 2011 (3) SA 511 (SCA); [2011] 3 All SA 345 (SCA).

interest rate 'was usurious in the sense that it amounted to extortion or oppression or something akin to fraud; nor had they made out any case for a counterclaim.' The high court accordingly granted judgment in favour of Beneficio and dismissed the applicants' counterclaim with costs.

In this Court

The parties' submissions

[17] The applicants argued that the decision of this Court in *African Dawn* is out of touch with the changed economic circumstances, does not take account of the importance of interest rates charged by lenders, and ought to be revisited. The test restated in that judgment is inappropriately exacting and is contrary to fairness, reasonableness, good faith and *ubuntu*. It also does not pass constitutional muster as it allows excessively high interest rates to prevail in the lending industry. This impacts the economy and violates s 22 of the Constitution namely, the ability of a person or entity to trade. The test is consequently not in accordance with the spirit, purport and objects of s 39(2) of the Constitution.

[18] The question whether a transaction is usurious, the applicants contended, must be determined in accordance with the ordinary principles applicable to the enforcement of contractual provisions that are contrary to public policy, and not the inappropriately high test enunciated in *African Dawn*. They submitted that, applying those principles to the facts of this matter, there are reasonable prospects that a court of appeal will find that the interest rate provided for in the loan agreements is usurious and the enforcement thereof will be contrary to public policy.

[19] The applicants contended further that, in addition to the circumstances pleaded in their plea and counterclaim, the following common cause facts compel such a finding: (a) there was very little risk to Beneficio. Apart from the fact that Beneficio itself considered the risk as being low, the value of the immovable property which the applicants put up as security far exceeded the value of the loans; (b) Tarentaal was known to Beneficio since they previously had business dealings; (c) the mark-up on the interest

Beneficio charged Tarentaal was more than 400 percent; (d) the interest rate was not commensurate with the rates charged by banks and other financial institutions; and (e) the applicants regarded the rate as being too high.

[20] Beneficio submitted that the legal principles requiring contracts which have been entered into freely and voluntarily to be honoured and for courts to enjoin compliance with their provisions, are founded both on the common law and on constitutional values. For this submission they relied on the decisions in *Merry v Natal Society of Accountants* [7] (*Merry*) and *African Dawn*. They submitted that the applicants did not show that those decisions were palpably wrong. A court of appeal would accordingly be loath to depart from those decisions because of the *stare decisis* rule. The applicants also did not present any evidence to show that the transactions were against public policy and hence unenforceable. Beneficio further asserted that the applicants failed to establish the existence of exceptional circumstances or that there are reasonable prospects of success on appeal.

Analysis and discussion

[21] Before us, the applicants submitted that a grave failure of justice would result if they were not granted leave to appeal. However, they face several formidable hurdles in their endeavour to show exceptional circumstances or for that matter, reasonable prospects of success on appeal.

[22] First, there is the decision in *African Dawn*, where this Court considered a challenge to an interest rate of between five percent and 6.5 percent, in circumstances where neither the Usury Act 73 of 1968 nor the National Credit Act 34 of 2005 was applicable. Restating the test enunciated in *Merry*, this Court confirmed that the question whether the transaction was usurious had to be decided in terms of the common law, which does not fix a rate of interest beyond which a transaction becomes usurious. This Court further held that the fact that the amount of interest may seem high is not enough

[7] *Merry v Natal Society of Accountants* 1937 AD 331.

to make it usurious and the test is whether it has been shown that there was 'oppression, or extortion, or something akin to fraud.'[8]

[23] Second, the applicants will face the arduous onus of convincing a court of appeal to overturn *African Dawn* and to find that the test of 'extortion, oppression or something akin to fraud' sets the bar too high. They are effectively contending for the jettisoning of a principle that has been consistently applied by our courts in a long line of cases since 1904.[9] It is trite that this Court will not readily depart from its previous decisions and will observe the *stare decisis* principle unless it is convinced that the prior decision was clearly wrong. In *Bloemfontein Town Council v Richter*[10] the Court said:

'The ordinary rule is that this Court is bound by its own decisions and unless a decision has been arrived at on some manifest oversight or misunderstanding, that there has been something in the nature of a palpable mistake a subsequently constituted Court has no right to prefer its own reasoning to that of its predecessors – such preference, if allowed, would produce endless uncertainty and confusion. The maxim "*stare decisis"* should, therefore, be more rigidly applied in this the highest Court in the land, than in all others.'[11]

[24] This Court's reluctance to depart from established jurisprudence was confirmed in in *Brisley v Drotsky* [12] (*Brisley*). In that matter the Court was asked to develop the common law so as to depart from the so-called *Shifren*[13] principle, which holds that a contractual provision requiring alterations to a written contract to comply with certain formalities in order to be valid, was not *contra bonis mores* and thus binding. In dealing with an argument that a contractual clause providing that an amendment will only be valid if it is reduced to writing offends the equality clause of the Constitution in that it protects the 'strong' at the expense of the 'weak', the Court said:

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[8] *African Dawn* fn 1 para 20.
[9] *Reuter v Yates* 1904 TPD 855.
[10] *Bloemfontein Town Council v Richter* 1938 AD 195.
[11] Ibid at 232.
[12] *Brisley v Drotsky* 2002 (4) SA 1 (A); 2002 (12) BCLR 1229 (SCA).
[13] The principle was enunciated in *SA Sentrale Ko-op Graanmaaskappy Bpk v Shifren en Andere* 1964 (4) SA 760 (A).

'The appellant's attack invites us to reconsider that [the *Shifren*]. decision We are obliged to do so in the light of the Constitution and of our "general obligation", which is not purely discretionary, to develop he common law in the light of fundamental constitutional values. For the reasons the joint judgment gives, I do not consider that the attack can or should succeed. The *Shifren* decision represented a doctrinal and policy choice, which on a balance, was sound. Apart from the fact of precedent and weighty considerations of commercial reliance and social certainty, that choice in itself remains sound four decades later. Constitutional considerations of equality do not detract from it. On the contrary, they seem to me to enhance it.'[14]

[25] Third, the applicants did not present any evidence of oppression, extortion or 'something akin to fraud' that could render the transaction usurious. They instead relied on considerations of public policy for their submission that the test enunciated in *African Dawn* and other cases places the bar too high. They argued that the test accordingly does not pass constitutional muster and is contrary to fairness, reasonableness, good faith and *ubuntu*. The right of freedom to trade enshrined by s 22 of the Constitution is also violated in circumstances where excessively high interest rates impact upon the ability of a person to trade. It is therefore not in accordance with the spirit, purport, and objects of the Bill of Rights as contemplated in s 39(2) of the Constitution. The applicants accordingly contend for the development of the common law through the formulation of a rule that the question whether a transaction is usurious must be determined in accordance with the ordinary principles applicable to contractual provisions or the enforcement thereof being contrary to public policy.

[26] The contention that the common law rule falls short of the spirit, purport and objects of the Constitution, was considered by this Court in *African Dawn.* The Court held that in considering whether there was a need to develop the common law, it had to undertake the two-stage enquiry postulated in *S v Thebus*,[15] namely: (a) given the objectives of s 39(2) of the Constitution, whether the common law should be developed beyond existing precedent – if the answer to this question is no, then it is the end of the enquiry;

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[14] *Brisley* fn 10 above para 90.

[15] *Thebus and Another v S* [2003] ZACC 12; 2003 (6) SA 505 (CC); 2003(1) BCLR 1100 (CC); 2003 (3) SACR 319 (CC) para 26.

and (b) if the answer is yes, the next enquiry is how the common law should be developed and which court should do it.

[27] This Court also cautioned that leaving the interpretation of the term 'usurious' to 'the whim of a particular judge', depending on his or her personal perceptions of fairness and good faith, would militate against a clear formulation of the law that makes a transaction usurious. In finding that the rule endorsed in *Merry* does not offend Constitutional values, the Court held that it: restrains unwarranted judicial interference in contracts freely and voluntarily concluded; clearly defines the circumstances in which judicial interference with such contracts is permitted; and effectively strikes a balance between the need for judicial deference for the volition of contracting parties and the need for judicial oversight to curb unacceptable abuses of the freedom to contract.[16] As was the case in *Brisley*, the Court was of the view that 'the common-law rule is not inimical to the values that underlie our constitutional democracy.'[17]

[28] I am not persuaded that the judgments of this Court in *Merry* and *African Dawn* were based on some manifest mistake or oversight and are palpably wrong. The reasoning and findings in those decisions have withstood the test of time and they remain sound and unassailable despite the evolving social and economic conditions. In terms of the *stare decisis* rule, those decisions will accordingly be binding on a court of appeal.

[29] I now turn to consider the applicants' arguments regarding the development of the common law. In considering whether there is a need to develop the common law beyond the rule restated in *Merry* and *African Dawn* on the basis contended for by the applicants, the first question that arises is: what is the state of our law regarding judicial power to declare a contractual provision unenforceable because it offends against public policy?

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[16] *African Dawn* fn 1 para 28.
[17] Ibid para 29.

[30] In *AB v Pridwin Preparatory School*,[18] (*Pridwin*) this Court pronounced the following principles that govern judicial discretion to invalidate or refuse to enforce contracts that are contrary to public policy: (a) public policy demands that contracts freely and voluntarily entered into must be honoured; (b) a court will declare invalid a contract that is *prima facie* inimical to a constitutional value or principle, or otherwise contrary to public policy; (c) where a contract is not prima facie invalid but its enforcement in particular circumstances is, a court will not enforce it; (d) a party who assails the contract or is enforcement bears the onus to establish the facts; (e) a court will use the power to invalidate a contract or not to enforce it, sparingly, and only in the clearest of cases in which harm to the public is substantially incontestable and does not depend on the idiosyncratic inferences of a few judicial minds; (f) a court will decline to use this power where a party relies directly on abstract values of fairness and reasonableness to escape the consequences of a contract because they are not substantive rules that may be used for this purpose.

[31] The Constitutional Court authoritatively pronounced on that issue in *Beadicia 231 CC and Others v Trustees of the time being of the Oregon Trust and Others*[19] (*Beadicia*). Commenting on the principles enunciated in *Pridwin*, the Constitutional Court stated that 'there has, in fact, largely been general uniformity of principles between the two courts' and that those principles 'are derived from a long line of cases and find support in the decisions of this Court.'[20]

[32] The Constitutional Court, however, highlighted two areas of conceptual differences between the two courts, namely, this Court's view regarding the centrality of *the pacta sunt servanda* principle in our law; and the doctrine of "perceptive restraint", which has been 'repeatedly espoused by the Supreme Court of Appeal.' In terms of the latter

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[18] *AB and Another v Pridwin Preparatory School and Others* [2018] ZASCA 150; [2019 (1) All SA 1 (SCA); 2019 (1) SA 327 (SCA); 2019 (8) BCLR 1006 (SCA) para 27.

[19] *Beadicia 231 CC and Others v Trustees of the time being of the Oregon Trust and Others* (CCT109/19) [2020] ZACC 13; 2020 (5) SA 247 (CC); 2020 (9) BCLR 1098 (CC) (17 June 2020).

[20] Ibid para 82; See also: *Barkhuizen v Napier* [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC).

principle, courts must use the power to invalidate a contract or not to enforce it, sparingly, and only in the clearest of cases.

[33] In respect to the first issue, the Constitutional Court said, '[i]n our new constitutional era, *pacta sunt servanda* is not the only, nor the most important principle informing the judicial control of contracts. The requirements of public policy are informed by a wide range of constitutional values. There is no basis for privileging *pacta sunt servanda* over other constitutional rights and values. Where a number of constitutional rights and values are implicated, a careful balancing exercise is required to determine whether enforcement of the contractual terms would be contrary to public policy in the circumstances.'[21]

[34] Regarding the principle that courts must exercise 'perceptive restraint', the Constitutional Court, while commending that guarded approach as sound, cautioned that courts 'should not rely upon this principle of restraint to shirk from their constitutional duty to infuse public policy with constitutional values in deserving cases. The Court, nevertheless, emphasised that the differences between it and this Court are more perceived than real and confirmed that 'the principle of *pacta sunt servanda* gives effect to the "central constitutional values of freedom and dignity" and that 'in general public policy requires that contracting parties honour obligations that have been freely and voluntarily undertaken.'[22]

[35] In my view, the first question, namely whether there is a need to develop the common law, must be answered in the negative. This Court, in *Pridwin* and the Constitutional Court in *Beadicia*, undertook comprehensive surveys of our jurisprudence regarding the question of judicial power to interfere with contracts freely and voluntarily concluded. The Courts judiciously considered the extent to which the principle of *pacta sunt servanda* might implicate constitutional values and 'the weighty considerations of commercial reliance and social certainty.' Based on those considerations the Courts have formulated legal rules that strike a fair balance between the compelling principle that

[21] *Baedicia* fn 17 above para 87.
[22] Ibid para 90.

contracts freely concluded must be honoured and the power of courts to interfere where the right of freedom to contract has been abused. In my view those decisions provide clarity and certainty regarding the circumstances in which judicial interference with contractual freedom would be warranted. There are accordingly no reasonable prospects that a court of appeal will find any rationale for the development of those common law principles.

[36] The question then arises whether, in the light of those legal principles, the applicants have shown that the transactions were against public policy. In my view they failed to do so.

[37] The material facts of this matter are on all fours with those in *African Dawn*. It is common cause that the parties in this matter entered into the loan agreements freely and voluntarily. The applicants are wealthy business entities who required the funds for commercial transactions. They were aware of the conditions on which Beneficio would provide bridging finance, having had previous business dealings with it.

[38] Tarentaal's complaint that its position was not 'equipoise' with that of Beneficio was also belied by the fact that it was represented by an experienced commercial attorney throughout the negotiations that preceded the conclusion of the contracts. It was able to negotiate a reduction in the interest rate from 1.25 percent to one percent and have thereafter concluded similar agreements with Beneficio for further loans over a period of several months. It was also common cause that the Nova Group had realised funds from the sale of immovable properties but chose not to repay the loans and instead took further loans from Beneficio. The interest rate was also in line with that usually charged for bridging capital in the industry.

[39] Another important consideration that the applicants have underplayed is that although interest was calculated daily and capitalised monthly, and as they were at pains to point out – amounted to 52 percent per annum – the loans were only for periods of

three months. This means that if Tarentaal had complied with its contractual obligations, it would have paid approximately 15 percent interest for the periods of the loans.

Findings and order

[40] In summary then, I find that the common cause facts established that the loan agreements were *bona fide* commercial transactions, voluntarily concluded by business entities. The agreements were preceded by *bona fide* negotiations that yielded a reduction in the interest rate and as mentioned earlier, resulted in the conclusion of several loan agreements over a period of months.

[41] In my view, the applicants have failed to show that there is any legal basis on which a court would depart from the principles restated in *Merry* and *African Dawn* or that the transactions were against public policy based on the principles enunciated in *Beadicia* and *Pridwin*. They have failed to establish exceptional circumstances in terms of s 17(2)(*f*), nor have they shown that there are reasonable prospects of success on appeal. The application for reconsideration must therefore fail. There is no reason why costs should not follow the result.

[42] In the result, I make the following order:

The application is struck from the roll with costs, including the costs of two counsel, where so employed.

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J E SMITH

JUDGE OF APPEAL

Appearances

For the appellants:	L Hollander and M Mahlangu
Instructed by	VFV Attorneys Inc, Pretoria
	McIntyre Van der Post, Bloemfontein
For the respondent:	FH Terblanche SC and AJ Wessels
Instructed by:	Laäs Döman Inc, Pretoria
	Van Wyk & Preller, Bloemfontein.