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COULD YOUR PROPERTY DEBTS BE CANCELLED?

“How, on these figures, an employee of the bank could conclude that the farming may prove to be successful, is beyond me. It seems that money was just being poured into a bottomless pit.” (Extract from judgment below)

If you are a bank (or other lender), or if you have borrowed money against your property and are facing financial difficulty, you need to know about a recent High Court decision declaring that a bank's loans to a farming couple had been granted “recklessly”, setting aside the loans, and cancelling the mortgage bonds.

The pensioners who went farming; and the bank that funded them

- A couple used their pension moneys to buy a smallholding and develop it into a small scale farming venture. They then started borrowing from a bank to meet shortfalls in their cash flow. The bank secured its loans with two mortgage bonds over the property for a total of R1, 151m, and took a suretyship from the couple's daughter.
- From day one, it seems the farming venture was in trouble and eventually the bank approached the courts for an order to allow it to sell the property in execution. The couple (and presumably their daughter also) risked losing everything.
- However it emerged that –
 - The couple had no fixed income other than an annuity of R647 per month,
 - They were relying on loans from family to make ends meet,
 - They were already retired when the loans were granted, and would have been 85 and 80 years old respectively by the end of the 20 year loan period,
 - The bank had incorrectly taken the daughter's income into account in assessing the loan applications,
 - The farming venture's prospects of success were never good.
- The Court, commenting that the National Credit Act (NCA) obliges a credit grantor to assess the consumer's means, prospects and obligations “reasonably” before granting credit, held that the bank had failed to do so but instead had acted “irrationally.”
- In the circumstances the couple had, with the help of an expert witness, proved (it being up to a debtor to prove any allegations of reckless lending) that the loans fell to be set aside or suspended in terms of the NCA. The extent of the bank's recklessness, the fact that the couple were elderly and the fact that the smallholding was their only home led the Court to set aside the loans altogether rather than just suspending them.

Reckless lending → Consumers off the hook, bank down R1, 74m

The couple must pay the bond cancellation costs, but other than that they – and their daughter who stood surety for the loans – are off the hook altogether. The bank on the other hand is down R1, 74m plus interest and legal costs.

Banks (and other credit providers): Revisit your credit granting procedures urgently!

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