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A limit on the limit on interest? The *in duplum* rule and the public policy backdrop: *Verulam Medicentre (Pty) Ltd v Ethekweni Municipality* 2005 2 SA 451

Interest rate caps have for many years been incorporated in legislation as forms of consumer protection and as preventative measures of over extension of consumers. Accordingly the common law, *inter alia*, has developed, fostered and preserved one rule that lends a helping hand in regulating the control over interest rate charges.

The *in duplum* rule is a fastidious consumer protection mechanism. Based on sound public policy rationale, the rule does not prevent the creditor from obtaining all his allowable charges for money loaned or credit extended. It does force the creditor to act with sound fiscal discipline, timeously, as against the debtor. However, despite the creditor not acting within a reasonable time against the debtor, it still does not place a total limitation on the amount, which a creditor may extract from his debtor. The *in duplum* rule only sojourns interest from running on a temporary basis. The only type of interest that may be susceptible to the *in duplum* rule is arrear accrued interest, that is, interest which is owing and payable. Once the debtor initiates payment again, such payment will decrease the interest element of the total amount and interest will run again. It is therefore impossible for a court to foretell what the maximum amount of interest will be. This is not the function of the *in duplum* rule. It does not cap the interest *in toto*. The *in duplum* rule must be understood as a consumer protection regulator. It stops arrear interest from running when that interest has reached unpaid capital. It does not set a maximum amount of interest.

At the same time a debtor who is faced with financial difficulty and who is unable to service his debts, will be protected from an ever-increasing avalanche of interest accruing to him, in view of the rule. The rule prevents the over extension of a debtor's limited financial resources. It grants him however, only temporary reprieve- the avalanche of ever continuing interest is merely tempered by the rule. The creditor may at any time after default (and of course before interest reaches the double) initiate legal action.

Moreover, the rule does not contemplate favouring the defaulting debtor over those debtors that dutifully service their debts. The ambition of the rule does not surpass the fact that the credit relationship is controlled by varying rules of both common and legislative origin. The credit relationship is endowed with its many duties, rights and obligations which fall squarely on both the debtor and creditor, and which are not through the rule negated or annulled. The debtor has a duty to service his debt as per his contractual obligations, nothing (except, perhaps, prescription) can alter this fact, the dutiful debtor is therefore not suffering through the application of the *in duplum* rule on his defaulting counterpart. Interest has not ceased for his corresponding debtor, it has merely been prevented from running non-stop; and immediately after recommencement of instalments (this is not an option otherwise court action with execution follows or possibly even sequestration) the interest constituent of the wayward debtor's debt is revived.

The rule provides such a compelling and fair regulation of interest, that it has found its way into the new credit legislation, The National Credit Act 7 of 2005. Despite it being criticised as 'arbitrary and inappropriate' the rule seems to, now, face an unlimited lifespan.

(Die *in duplum* reël is tans 'n gevestigde gemeenregtelike reël, het as gevolg die tydelike opskorting van die oploop van rente *in duplum.* Met ander woorde die reël behels dat rente

nie die kapitaal som mag oorskry nie. Ten opsigte van die onwikkeling van bogenoemde reël, is die *Verulam*-saak van besondere belang, aangesien die saak dien ter illustrasie van die relevante regsbeginsels wat toespassing vind op hierdie afdeling van die reg. Genoemde beginnsels word dan ook dikwels nie korrek geinterpreteer nie, wat op sy beurt iutloop op ‘n onbevredeginde en gebrekkige toepassing. Dit is van kardinale belang dat die reël, soos wat dit in terme van die regspraak uitgekristaliseer het, korrek aanwending vind ten einde die beskerming wat dit aan die skuldeiser-skuldenaar verhouding bied, veral gesien in die lig van die verwarring meegebring deur, *inter alia*, lompsom betalings.)

- *For full article see De Jure 1 2006 25*