REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No.: 60498/2014

DATE: 5 JUNE 2015

In the matter between:

FIRSTRAND BANK LIMITED

t/a RMB PRIVATE BANK **APPLICANT**

And

THEMBA DUPLEIX MAZIBUKO **1ST RESPONDENT**

TAFADZWA MAZIBUKO **2ND RESPONDENT**

J U D G M E N T

HIEMSTRA AJ

[1] This is an application for payment of the sum of R1 855 620.73 in respect of a Single Credit Facility Agreement entered into between the applicant and the first and

second respondents, who are husband and wife. The facility was secured by a mortgage bond over fixed property registered in the name of the respondents, namely Erf 1……. R…….. Extension 1……. Township, Registration Division IQ, Gauteng.

[2] The first respondent appeared in person on his own behalf and that of the second respondent.

[3] It is not in dispute that the respondents exceeded the facility by the amount of R355 620.73 on 9 April 2014, rendering the full amount of the balance due and payable. On that date the balance, as certified by an authorised official of the applicant, was R1 856 620.73. The applicant seeks and order declaring the said property specially executable.

[4] The respondents raised a number of defences to the claims, namely:

1. They deny that the applicant had complied with the provisions of the National Credit Act, 34 of 2005, in particular sections 129 and 130 thereof;
2. The respondents did not timeously respond to a settlement proposal made by them;
3. The applicants had referred the credit agreement to a debt councillor, as they had been invited to do in the applicants' letter of demand;
4. The respondents failed to comply with the provisions Paragraph 8.6 of the Code of Banking Practice by failing to advise the respondent prior to instituting legal proceedings of the process and the costs implications thereof;
5. They have complied with a revised payment plan and are accordingly not in arrears.

COMPLIANCE WITH SS 129 AND 130

[5] The applicant attached a letter addressed to the respondents in his founding affidavit that complies with the provisions of ss 129(1) and 130. The letter does not state that it is in compliance with these provisions, but it patently is. The respondents allege that it had been sent to the wrong e-mail address and fax number. That may be so, but it is of no consequence as it was sent by registered post and the first respondent admitted that he

had collected it from the post office. He did not concede this in his answering affidavit, but he admitted as much during argument.

[6] The respondents did not exercise anyone of the two options granted to them in terms of s 129(1), and set out in the letter in compliance therewith, namely to remedy the default or to refer the matter to a debt councillor, alternative dispute resolution agent, the Consumer Court of an ombudsman with jurisdiction. The first respondent claims that they had done so, but they clearly did not do so within the period of 20 business days referred to in s 130(1) and the s 129 letter.

[7] It is now trite law that once a credit provider has given the s 129 notice in respect of a specific credit agreement, a debt review relating to that specific agreement is excluded.[I]

[8] I therefore find that the applicant has complied with the provisions of the National Credit Act.

TIMEOUS RESPONSE TO THE SETTLEMENT PROPOSAL MADE TO BY THE RESPONDENTS

[9] Whatever settlement proposal that may have been made in respect of this specific credit agreement, was made out of time. In any event the credit provider is not obliged to accept such a proposal.

PROCEEDINGS DESPITE THE DEBT REVIEW APPLICATION

[10] There is not pending debt review application. The application referred to by the respondents is out of time.

CODE OF BANKING PRACTICE

[11] The s 129 letter sufficiently complies with the requirements of the Code of Banking Practice. No separate compliance is required.

REVISED PAYMENT PLAN

[I] *Nedbank Ltd v The National Credit Regulator & Another* 2011 (3) SA 581 (SCA)

[12] Whatever payment plan the respondents refer to, is their own plan and was never agreed to by the applicant. The respondents are therefore still in default.

CONCLUSION

[13] The applicant has established its claim and the respondents have failed to disclose any cogent defence.

In the result and order is made in terms of prayers 1, 2, 3, 4 and 5 of the Notice o Motion, except that the word “own” where it appears in prayer 5 is not part of this order.

J. HIEMSTRA
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

Date heard:	1 June 2015
Date of Judgment:	4 June 2015
Counsel for the applicant:	Adv J. Roux
Attorney for the applicant:	Delport van den Berg Inc First respondent

appeared in person.