

CLASS ACTION AGAINST HOUSING FINANCE

A. History

The case history is shortly as follows:

Each of the Plaintiffs entered into a contract with HF by signing acceptance to Offers to Advance for various mortgage facilities. The contracts were complete and effective as between the Plaintiffs and HF as Legal Charges were executed to secure payment to HF.

Enforceable Legal liabilities were created between the parties and Payments were made by the Plaintiffs pursuant to the contracts and in reliance on them. Interest was charged by HF and demanded from the Plaintiffs in reliance on the contracts in force.

B. Cause of Action

The Plaintiffs case is that HF is entitled to interest on arrears BUT ONLY AT THE MORTGAGE INTEREST RATE AND NOT A HIGHER PENALTY OR DEFAULT RATE.

The Plaintiffs contracted for and accepted COMPOUND INTEREST. This is automatic from the mode of repayment which was ON MONTHLY RESTS. It also follows automatically from the fact that interest is expressed to be calculated and debited ON MONTHLY RESTS. The Plaintiffs are not disputing HF's right to charge compound interest.

By agreeing to make mortgage repayments on MONTHLY basis and by agreeing that HF would calculate and debit interest on a MONTHLY basis, the Plaintiffs accepted that any interest in arrears would be capitalised and would bear interest at the same rate as the original advance.

Any interest not paid monthly would be automatically converted to principal and yield further interest at the same rate as the original advance. This is what must happen when, as in this case, there is no provision in the contract for interest on arrears to be charged at any rate different, lower or higher than the interest on the original advance – the mortgage interest.

There was no provision at all in either the Offer to Advance or the HF Loan Terms and Conditions 1978 for application of Penalty Interest or Default Charges.

C. SUMMARY

The real dispute in this matter can be summarised as follows;

- Ø HF can't unilaterally levy and charge interests other than in strict accordance with the contract with the Plaintiff

- ∅ HF can't levy penalty interest, default charges or interest on arrears at a rate enhanced from interest on the mortgage advance without any provision in the contract allowing them to do so
- ∅ HF can't levy penalty interest, default charges or interest on arrears at a rate enhanced from interest on the mortgage advance without a re-negotiation of the contract with the Plaintiff
- ∅ A party to a lending and borrowing contract can't unilaterally and for its own benefit vary the contract and levy interest that is not provided for at all

It is a matter of fact and undisputable that there is and was NO provision at all in the Offer to Advance contract executed by each of the Plaintiffs for application by HF of penalty interest, default charges or enhanced/higher interest on arrears of scheduled monthly repayments.

The litigant/Mortgagors are therefore in Court seeking the following orders.

1. A recalculation of interest strictly in terms of the contract; compounding interest monthly, at the interest rate in the Schedule or as varied from time to time, and applying to the entire outstanding amount, including arrears of scheduled repayment; and
2. Consequential orders; write-down of overcharged interest, refund of mortgage accounts in credit after recalculation and redemption of mortgages and return of title deeds where necessary.