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Prescription of claims: on-demand loans

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A loan which is repayable on demand becomes due the moment it is advanced to the debtor. Accordingly, such a debt will prescribe (or be extinguished) three years after the date on which the loan is advanced, unless prescription is interrupted by an acknowledgment of liability by the debtor or the service on the debtor of any process whereby the lender claims payment of the debt. This was the finding of the Supreme Court of Appeal in *Trinity Asset Management (Pty) Ltd v Grindstone Investments (Pty) Ltd* (1040/15) [2016] ZASCA 135 (29 September 2016), despite the fact that the loan agreement in question provided that the loan would only be "due and payable" within 30 days from the date of delivery of the lender's written demand.

The court distinguished between when a debt is "claimable" (ie when it becomes due) and when it is "payable". The fact that the debtor may be given 30 days following demand within which to repay the loan does not alter the principle that the loan becomes due the moment it is advanced and, therefore, prescription starts running from that date. In this case, the lender had demanded repayment of the loan more than three years after the loan was advanced and the court held that the debt had, by that time, already prescribed.

The court considered the proposition that, if the parties clearly indicate that they intend demand to be a condition precedent for the debt to become due, prescription will only begin to run from the date of demand. However, the court did not feel it was necessary to decide whether this proposition was correct as, in its view, it was far from clear that the parties in this case had such an intention.

Until the courts have provided clarity on whether (and on what terms) parties may agree that an on-demand loan will only become due (and prescription will therefore only commence running) once demand for repayment of the loan has been made, lenders would be well-advised to structure their lending arrangements and internal processes in such a way as to minimize the risk of an on-demand debt owing to them being inadvertently extinguished in circumstances similar to this case.

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