

# The in duplum rule: some insights

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Interest stops running when the unpaid interest equals the amount of the outstanding capital claim. This principle is referred to as the *in duplum* rule.

The *in duplum* rule is founded on public policy considerations. In *Paulsen and Another v Slip Knot Investments 777 (Pty) Limited* [2015] ZACC 5 ("the Paulsen case"), the Constitutional Court stated,

"the purpose of [in duplum] is to protect debtors from being crushed by the never-ending accumulation of interest on an outstanding debt"[1].

The Constitutional Court went further and highlighted the general economic status quo in South Africa which reflects an inequality of arms between debtors and creditors.

The *in duplum* rule is not, however a linear matter of restricting a creditor from claiming more on the debt than twice the capital.

Notably:

- interest pending litigation is treated separately to interest after judgment has been obtained
- the law views the legal (prescribed) rate of interest differently to contractual rates of interest, and as such, may treat *in duplum* differently.

## *In duplum pending litigation*

The *in duplum* rule operates whilst legal proceedings are pending. In other words, up to the point of judgment, interest accrues until it reaches the cap.

This issue was explored in the Paulsen case where Madlanga J considered the interests of debtors and creditors in circumstances where a debtor litigated vexatiously with a view to hitting the cap on interest long before judgment could be reached, thereby precluding further recovery.

It was established in this matter that notwithstanding the complaint, interest is capped in accordance with the *in duplum* rule. It was suggested by the court that in such circumstances, a party with a claim could have recourse to reprieve under summary judgment proceedings, alternatively by means of punitive costs awards.

## *In duplum post-judgment*

In terms of the common law, once judgment has been handed down, the original debt and interest awarded on that debt (capped at the value of the original debt) is at that point consolidated, and interest is accrued, post-judgment, on the new consolidated amount[2].

Therefore, the *in duplum* rule does not preclude a creditor from claiming more than double the original debt. In other words, the creditor can claim:

- the original debt
- interest accrued on the original debt both before and after the institution of legal proceedings up to the point of judgment; and
- interest accrued on the combined sum of the above two amounts until the judgment debt (plus this further interest on it) is settled in full.

A most recent example of the application of the *in duplum* rule as described above, is found in the SCA matter of *MEC: Police, Roads and Transport Free State Provincial Government v Bovicon Consulting Engineers CC and Another*[3].

In this case, an amount of R 1,171,774.83 was owed to Bovicon by the MEC. Bovicon instituted legal proceedings for this outstanding amount and the interest on 19 August 2014. Interest was claimed at the then legal rate of 15.5%.

On 12 September 2019, the interest became equal to the value of the original debt and the amount due to Bovicon was capped by the *in duplum* rule at R 2,343,549.66.

On 5 December 2019, judgment was handed down in favour of Bovicon and the MEC was ordered to pay the R1,171,774.83 plus interest (duly capped).

Seven months after the judgment was handed down, the MEC paid an amount of R 2,343,549.66 to Bovicon. Bovicon contended that it was entitled to further post-judgment interest in the amount of R 220 332.09.

The MEC, when challenging a writ for the recovery of this sum, was directed to make payment of the additional post judgment interest sum, together with further interest on the post judgment interest sum.

## ***In duplum and the Prescribed Rate of Interest Act 55 of 1975 ("the Act")***

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Where the interest on a debt is not specified by agreement or legislation, then it attracts *mora* interest under the Act. The *in duplum* rule does not necessarily apply to *mora* interest.

Acting Judge Kendall traversed the issue in *Da Cruz*[4]. Firstly having regard to the purpose of *mora* interest, he noted that *mora* interest has a compensatory element and "*is awarded as compensation for loss of damage resulting from default*" and in this regard differs from contractual interest.

Secondly, he pointed out that section 1(1) of the Act expressly provides that courts have a discretion to determine the applicable interest where special circumstances allow for such.

It is for these reasons that Acting Judge Kendall concluded that *mora* interest is distinguishable from contractual interest and on this basis, that *mora* interest may be precluded from the scope of application of the *in duplum* rule[5].

Whilst his finding in this regard does not go so far as to suggest that there is no cap on *mora* interest, it does leave the door open to a court, in the exercise of its discretion, allowing interest to accrue beyond the limitations of *in duplum*.

It is apparent therefore that the *in duplum* rule is not as straightforward as it might, at first glance, appear. It is, in fact most interesting.

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[1] *Paulsen and Another v Slip Knot Investments 777 (Pty) Limited* [2015] ZACC 5

[2] *Da Cruz v Bernardo* [2022] 1 All SA 414 (GJ)

[3] (278/2022) [2023] ZASCA 99 (14 June 2023)

[4] *Ibid*

[5] Paragraph 57.5 of his judgment



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