



The New Economic Rights Alliance

Supporting victims of corporations who put profits ahead of natural human rights

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The **New Economic Rights Alliance** (www.newera.org.za) is preparing for a Constitutional Court Case that aims to obtain transparency in banking (case number CCT38/12). This is a once-in-history opportunity.

For the first time, a full bench of 11 judges, 22 registrars, eight clerks, four joined advocates and four additional researchers will hear a case that goes to the heart of the banking system. With so much financial turmoil overseas, a case like this has been destined to break. We believe that South Africa is the one country that has the right mix of variables to make a case like this possible.

This is an enormous undertaking and we require 20,000 signatures to have the desired impact. Please sign this online petition: <http://micro2.majesticinteractive.co.za/bf.php?fid=1151> and ask everyone you know to do the same. The time for truth in banking is now.

The following outlines the reasons behind this action:

1. Banks do not "loan" money as their prolific advertisements claim. Money loaned is actually money created, via an elaborate scheme of paper shifting and number crunching. This involves the use of loan application forms and negotiable instruments, the result being debit and credit book entries that have no liquid money value. It can be said that banks make money out-of-thin-air under the "pretence" of a loan, but in reality it is not a loan at all. This is deceptive and misleading as very few South Africans know the truth.
2. It is a common legal principle in our law that one must possess that which one loans. For reasons above, the banks are unable to meet this, a fundamental criteria for a valid borrower / lender contract.
3. Banks are failing to provide simple information to their customers that should be easy to access. Examples include a certificate of balance, audited proof that a lawful "deposit" was actually made and the physical location of original documents, promissory notes and other negotiable instruments. Instead of providing the customer with this information, they choose to take legal action, and foreclose on homes and assets with remarkable alacrity.
4. The banks are acting as intermediary / agent between the customer and other parties. It is a requirement that an agency relationship be fully disclosed up front to the customer. The banks do not disclose this relationship and, as a result, most people are under the complete illusion that they are *borrowing* from their bank in the ordinary sense of the word.

5. Banks engage in a widespread and common practice called *securitisation*. Instead of borrowing from the Reserve Bank on our behalf, banks bundle many loans together and then sell these bundles to investors whereby the loans become securities. This process caused the stock market crash of 2008 and threatens the global economy as we speak. In fact, the betting game being played by the banks, called the *derivatives market*, is currently estimated to be 20 times larger than the GDP of the entire planet. Rather than slowing down, its sheer propensity for profit has led to a rampant growth of the industry in South Africa. The Banks Act makes it crystal clear that securitisation falls outside the business of a bank. Therefore, it is a blatant breach of the Bank Act for a bank to engage in this practice, and rightly so.
6. Banks refuse to disclose the securitisation process to the customer, who has a legal right to this information. When a customer asks for disclosure, the banks do not even bother responding, or respond using unintelligible legal jargon. The entire securitisation process is kept tightly secret while it provides huge profits to those behind the scenes. Instead of securitisation providing a benefit to the customer by way of lower interest rates, the reverse occurs: banks swiftly and relentlessly foreclose on assets in order to satisfy the needs of their investors. It should also be mentioned that banks have been known to securitise a debt several times, and that should a person default those investors are protected by an insurance policy.
7. We have written confirmation from the South African Reserve Bank that, once a bank sells a loan into a securitisation pool, they lose the legal right to that asset. This means that literally tens, if not hundreds of thousands of homes and other assets have been taken away from South Africans illegally because the wrong entity is suing in court.
8. Banks do not use "money," they use negotiable instruments. These instruments are defined clearly in the Bills of Exchange Act and have been used by trading merchants for thousands of years. It is the constitutional right of every South African to have an explanation of how our instruments are being used, traded, and exploited by the banks.
9. Banks are foreclosing on people's homes and assets by using the contract as a shield. Their argument is simple: "*you signed a contract, so you must pay.*" By sticking to the age old axiom: the-agreement-is-king, anyone attempting to look behind the shield is prohibited from doing so. This loan agreement, which is a series of one-way payments with absolutely no risk whatsoever to the bank, is somehow enough to allow them to win in court. We believe that granting summary judgment in such a manner, without the courts listening to the counter argument that the contract is not valid due to malicious deception, is unconstitutional.
10. It is illegal for banks to claim more than double the amount loaned from any borrower (the *in duplum* rule). However, banks are not only breaking this rule, but they are also forcing people to pay the interest on loans up front. In other words, the interest is paid back first, before the principal. This is plainly illegal.
11. The collection processes in banks have become so extreme, that call centre operators have been known to verbally abuse customers. The customer believes, quite wrongly, that the bank is running at a loss and is simply doing its best to get its money back. This illusion is maintained by the banks who continue to refine their well-oiled, clinical machine of repossession and foreclosure.
12. If a bank employee dispenses with an affidavit, it is a legal requirement that the directors of that bank first dispense with a Special Resolution granting permission for that employee to make such an affidavit. This rule is currently being circumvented. Somehow, half-hearted affidavits, made by just about anyone in the bank, are being successfully used to obtain judgment and foreclosures.

13. When a bank makes a *deposit*, they are prescribed by law to adhere to certain administrative procedures outlined in the Banks Act. This is to ensure that the required liquidity procedures are adhered to. Banks are circumventing these procedures and are engaging in unlawful deposits, placing the economy of the entire country at risk.
14. There is an overall sense of conduct and legal justice required for the good of the community (*boni mores*). By opting to merely rubber stamp orders during Summary Judgment (a process which has been called a "draconian measure" by our very own honourable Judges), without so much as even testing these arguments, the courts and banks are tearing down the very fabric of the Constitution.
15. The legal relationship between a bank and its customer is fiduciary, not dissimilar to that of a doctor and his patient, an estate agent and a home owner or a lawyer and her client. By engaging in secret and underhanded dealings, and by not disclosing the full truth up front, the banks are taking full advantage of their customers in the name of profiteering. As such, this fiduciary relationship has been broken which is a most grave and serious crime. This crime is perpetuated when the principal fails to answer, and even bluntly ignores the requests and pleas of their customer in their hour of need.
16. Finally, it is a constitutional right for a person to have a full and fair trial. This right is being circumvented by the courts in favour of swift and harsh Summary Judgments, leading to the loss of assets and homes.

Should this action be successful, what is the benefit for the average South African?

1. Interest rates and fees could be reduced, thus significantly reducing monthly repayments.
2. Banks will become more forgiving when dealing with defaulters, possibly even taking out an insurance policy to protect the customer.
3. Forced austerity measures, currently being implemented in several countries around the world, could be reduced or even avoided here in South Africa.
4. Courts will have more freedom to expand the common law, providing a stronger and fairer defence for South Africans wishing to save their homes. Currently, the banks are ruling the courts and this has got to change.
5. There will be a more competitive choice when loaning money or purchasing a home, as banks will be disallowed to act outside the competition legislation.
6. Secrecy in dealing with a client's money and loan agreements will be a matter of the past, thus transparency shall prevail and people will know the inner workings of the banking system once and for all.
7. Additional stock options should also be available whereby the client can elect to purchase back or extend its borrowings on the open market or through securitisation packages. This alternative form of financing will greatly help to prevent their assets from being taken away.

For justification for the above contentions, and an on-going discussion of the case, please visit www.thebigcase.co.za.