SUMMARY OF THE JUDGMENT

ADJUDICATOR DISMISSES PENSION FUND HOME LOAN COMPLAINT

Fortuin v Cape Municipal Pension Fund & Another

In an interesting adjudication issued by the Pension Funds Adjudicator, it was confirmed that an employee who receives a home loan through his employment pension fund ultimately remains responsible for the loan. The fact that the employer omitted to subtract the installment from the employee’s salary and pay it to the Fund on the employee’s behalf, did not relieve the employee from the obligations under the loan or from the additional interest that accrued as a result. It was the employee’s duty to check that the repayments were deducted from his salary.

The Judgment can be viewed here.

FACTS

Mr Fortuin, an employee of the City of Cape Town municipality (‘the City’), was granted a home loan of R25,000 in 1999 by the Cape Municipal Pension Fund, which is administered by Alexander Forbes Financial Services (‘the Fund’). Between April 2000 and November 2002, the City omitted to deduct the repayments, and interest accrued on the unpaid balance.

When the non-payment was noticed by the Fund, they contacted Fortuin and advised him that his repayments had to resume and that the amount of the installment as initially agreed upon, must now be increased due to the accumulated interest on the unpaid balance. Consequently, Fortuin's home loan balance had increased and not decreased. After the deductions were reinstated, his payments increased from R333 to R800 a month.

In a complaint lodged with the office of the Pension Funds Adjudicator, Fortuin claimed that it was not his fault that the repayments had not been deducted from his salary, resulting in his loan falling into arrears. He argued further that as a result of the increased deduction, the loan should have been paid off in full by now. He asked for the loan to be written off as it was the City’s responsibility to deduct the necessary home loan repayments from employees’ salaries.

DETERMINATION BY ADJUDICATOR:

- The fact that the loan repayment installments were deducted from Fortuin’s salary and paid over to the Fund caused the arrear interest to be added to the capital.
This, however, did not have the effect of altering Fortuin’s obligation arising from the loan agreement entered into with the Fund. By accepting the loan, Fortuin also accepted that the primary responsibility to repay the loan was his. He should therefore have checked his salary slips to ensure that the amounts were being deducted.

The Pension Fund could also not be faulted for the employer’s failure to effect the deductions. As such they could not be ordered to write-off the arrear interest on the outstanding amount or the loan. They had not committed any act or omission as a result of which Fortuin suffered a loss.

The claim was therefore dismissed.