

SOUTH AFRICA / JUDGMENT

Cele v Old Mutual

(NCT/71277/2016/114(1)NCA)

[2017] ZANCT 14 (15 February 2017)

[2017] ZANCT 14

COURT

National Consumer Tribunal

BEFORE

B Dumisa, J Simpson, H Devraj

CASE / FILE NUMBER

NCT/71277/2016/114(1)NCA

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Policy

IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

AT CENTURION

Case

number: NCT/71277/2016/114(1) NCA

In

the matter between:

Nkosingiphile
Phakamani Cele
Applicant

ID:

[7...]
and
OLD
MUTUAL
Respondent

CORAM: Prof.
B Dumisa (Presiding member)
Adv.
J Simpson (Member)
Ms.
H Devraj (Member)
Date
of hearing – 13 February 2017

JUDGMENT

AND REASONS

THE PARTIES

1. The Applicant in this matter is Nkosingiphile Phakamani Cele (the “Applicant”) an adult male consumer represented by Accord Debt Solutions CC.
2. The Respondent is OLD MUTUAL, a registered company and credit provider carrying on business from Mutual Park, Jan Smuts Drive, Pinelands,

Johannesburg.

THE APPLICATION

3. The Applicant brought the application in terms of section 114 of the National Credit Act, Act 34 of 2005, as amended (the NCA).

JURISDICTION

4. This National Consumer Tribunal (the Tribunal) has jurisdiction to hear this matter in terms of section 114 of the NCA. The section provides as follows:

“114. If a statement is not offered or delivered within the time required by this Part, the Tribunal, on application by the consumer, may—

- (a) order the credit provider to provide the statement; or
- (b) determine the amounts in relation to which the statement was sought.”

THE HEARING

5. The application was heard on 13 February 2017.
6. The Applicant was represented by Mr Altman of Altman Attorneys, appointed by Accord Debt Solutions CC.

BACKGROUND

7. The Applicant has a credit agreement with the Respondent under reference number 11475360001 or 1475360001.
8. The Applicant requested Accord Debt Solutions to assist with resolving his financial difficulties.
9. The Applicant signed a power of attorney allowing Accord Debt Solutions to request a statement of his account on his behalf from his credit providers.
10. Accord Debt Solutions sent written requests to the Respondent to provide statements of the Applicant's account on at least two occasions, which had not been provided up to the date of the hearing.

CONSIDERATIONS BY THE TRIBUNAL

Default

judgment

11. The Respondent did not file an answering affidavit to the application and was not present at the hearing.
12. Rule 13(2) of the Rules of the Tribunal provides that if a party does not dispute allegations made in an application those allegations may be deemed as admitted.
13. Based on the papers filed with the Tribunal the application was signed on 12 December 2016 and the Applicant's certification of service reflects that the application was served via registered post as per the registered postage slip dated 12 December 2016.
14. The Tribunal is satisfied that the application was served on the Respondent and the matter therefore proceeds on a default basis.

Applicable law

15. Section 110 of the NCA further finds application in this matter. This section provides as follows:

"110(1) At the request of a consumer, a credit provider must deliver without charge to the consumer a statement of all or any of the following—

- (a) the current balance of the consumer's account;
- (b) any amounts credited or debited during a period specified in the request;
- (c) any amounts currently overdue and when each such amount became due; and
- (d) any amount currently payable and the date it became due.

- (2) A statement requested in terms of subsection (1) must be delivered—
 - (a) within 10 business days, if all the requested information relates to a period of one year or less before the request was made; or
 - (b) within 20 business days, if any of the requested information relates to a period of more than one year before the request was made.
- (3) A statement under this section may be delivered
 - (a) orally, in person or by telephone; or
 - (b) in writing, either to the consumer in person or by sms, mail, fax, email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities, as directed by the consumer when making the request.
- (4) A credit provider is not required to provide—
 - (a) a further written statement under this section if it has, within the three months before the request is given, given such a statement to the person requesting it; or
 - (b) information in a statement under this section more than three years after the account was closed.
- (5) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligations to a consumer in terms of this section if the Tribunal is satisfied that the consumer's requests are frivolous or vexatious.

(Date of commencement of s. 110: 1 June, 2007.)”

- 16. Accord Debt Solutions submitted that they had requested a copy of the credit agreement entered into between the Applicant and the Respondent and statements from the Respondent on more than one occasion namely on 06 July 2016 and again on 13 July 2016, with no success.
- 17. It is clear that section 110 entitles the consumer to require statements from the Respondent (credit provider) and consequently provides a remedy in section 114 of the NCA for the consumer to use to oblige the credit provider to provide the statement. Accord Debt Solutions CC was lawfully acting on behalf of the consumer by virtue of the Power of Attorney signed by the consumer and attached to the request for the statement.
- 18. The Tribunal accordingly finds that the Respondent is required to provide the Applicant and / or his agent, at his direction, with the information as set out in section 110(1) of the NCA.

ORDER

- 19. The Tribunal accordingly makes the following order -

19.1. The application is granted;

19.2. Respondent is ordered to provide the Applicant and / or his agent, at his direction, with a statement with all or any of the following information on his account under reference number 11475360001 or 1475360001 held with Respondent —

19.2.1. the current balance of the consumer's account;

19.2.2. any amounts credited to or debited from the account;

19.2.3. any amounts currently overdue and when each such amount became due; and

19.2.4. any amount currently payable and the date it became due.

19.3. The Respondent is ordered to provide the information in 19.1 above to the Applicant and / or his agent at his direction, by no later 22 (twenty two) business days from the date of this order; and

19.4. There is no order for costs.

Thus done and handed down on this 15th day of February 2017.

[signed]

Ms. H Devraj

Member

CONCURRING:

Prof. B Dumisa (Presiding Member) and Adv. J Simpson (Member)

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