

SOUTH AFRICA / JUDGMENT

Denny v Nedbank Limited (NCT/78050/2017/141(1)) [2017] ZANCT 138 (10 December 2017) [2017] ZANCT 138

COURT

National Consumer Tribunal

BEFORE

X May

CASE / FILE NUMBER

NCT/78050/2017/141(1)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN PORT ELIZABETH

Case

number: NCT/78050/2017/141(1)

In

the matter between:

LOREITE
MARY
DENNY
APPLICANT
And
NEDBANK
Limited
RESPONDENT

Coram:

Mr.
X May· Presiding Member
Date
of Hearing - 31 October 2017 (Port Elizabeth)

JUDGEMENT

AND REASONS

APPLICANT

1. The Applicant is Lorette Mary Denny, (hereinafter referred to as "Denny or the Applicant") an adult female Consumer residing at Hofmeyer, in the Province of the Eastern Cape. At the hearing the Applicant represented herself.

RESPONDENT

2. The Respondent is Nedbank Limited (hereinafter referred to as "Nedbank or Respondent"), registered with the National

Credit Regular (hereinafter referred to as the "NCR" or "Regulator") as a Credit Provider under registration number NCRCP16. At the hearing the Respondent was represented by Tania Abbotts from Hammond Pole Attorneys

APPLICATION TYPE

3. This is an application in terms of Section 141(1)(b) of the National Credit Act 34 of 2005 ("the NCA")

4. Section 141(1) of the NCA states the following-

if the National Credit Regulator issues a notice of non-referral in response to a complaint other than a complaint concerning section 61 or an offence in terms of this Act, the complainant concerned may refer the matter directly to -

- (a) the consumer court of the province within which the complainant resides, or in which the respondent has its principal place of business of that consumer court, or provincial legislation governing the operation of that consumer court; or

- (b) the Tribunal, with the leave of the Tribunal.

5. In an application of this nature the Tribunal must therefore first consider whether it will grant the Applicant leave to hear the matter. If the leave is granted then the Tribunal will consider the main merits of the Application in a separate hearing.

BACKGROUND

6. The complaint was lodged directly to the National Credit Regulator in terms of Section 136 on the 12/05/2016.
7. The complainant claims to be the victim of reckless lending as she alleges that no proper affordability assessment was conducted by Respondent

8. The Nedbank account number in question is Account No [8...] for personal loan where she applied for the personal loan and was granted, an amount of R22940.00 on 20 September 2013, over a term of 60 months at the interest rate of 31.00%, the total monthly instalment being R923.75. The total of all instalments including fees, interest and insurance would have been R55420.20.
9. At the time of application for the credit with Nedbank the Applicant declared 3 sources of income namely: 2 pensions and additional income from Blue Lakes, and these amounts were verified by documentation as well as bank statements.
10. Accordingly it should be noted that in the application for the personal loan the Applicant declared living expenses of R700 per month from the Net income of R6380 from (2 pension) and the amount of R1450 from the additional income and this brings her Total Minimum income to R7830.
11. It is noted that Applicant's Debt Obligation after the personal loan was granted automatically increased to R4432.67 as per Nedbank statement reflected in the loan agreement statement dated 20 September 2013.
12. According to the abovementioned figures and calculations it appears that the Applicant had sufficient funds available for living expenses (after settlement of personal loans) hence it also appears that she purposefully under-declared same.
13. The personal loan in question was a consolidation loan. At the time of applying, the complaint had various loans with different Credit Providers. So; the purpose of this personal loan was to consolidate all these loans
14. The Applicant lodged a written complaint with the National Credit Regulator (NCR) against Nedbank Loans on 09 December 2015. She alleged that Nedbank Loans had not done a proper credit assessment when granting her personal loan credit facility. The NCR responded in writing on 01 December 2016, by means of a Notice of non-referral, essentially stating that Nedbank Loans (at the time).

APPLICATION FOR LEAVE

15. In the matter of Coertze and Burger v Young the Tribunal considered the factors which must be evaluated regarding leave. The Tribunal held that the two factors should be considered:
 - 15.1 The Applicant's reasonable prospects of success with the referral; and
 - 15.2 Whether the matter is substantial importance to the Applicant or Respondent
16. It is firstly very clear that matter is substantial importance to both parties. The Applicant has gone an extra mile of effort to lodge the complaint with the NCR and further applied for the condonation to the Tribunal. Similarly, the Respondent has a vested interest in defending the allegation of reckless lending and the same has been witnessed during the hearing proceedings.

17. The prospects of success however require more extensive consideration.

Prospects of success on the merits

18. Section 79 to 82 of the NCA deals with issues such as over-indebtedness, reckless credit and the assessment mechanisms and procedures that must be applied by a credit provider, for the purposes of this judgment it is not a necessity to reflect all the

sections in detail. In a nutshell at the time that the Applicant was granted the personal loan credit facility, the Respondent had taken reasonable steps to assess the proposed consumer's general understanding and the appreciation of the risks and the costs of the proposed credit, the rights and obligations of the consumer under a credit agreement, and debt re-payment history of the consumer under credit agreements and the consumer's existing financial means, prospects and obligations. Nedbank loans could determine for itself the evaluative mechanisms or models and procedures to be used in meeting its assessment obligation under this section, provided that any such mechanism, model or procedure results in a fair and objective assessment.

19. In this regard the Respondent answering affidavit with the extracts of internal documents from the Bank's internal consultant that constitutes a conversation between the bank's representative (Creed Masocha) illustrates it very clear that an assessment was done, and for the purposes of this judgment it is not necessary to set out this information in detail. In addition to her two pensions the Applicant.
20. The Applicant appears to have had an additional income from Blue Lakes Company, and then she had enough to be granted this loan in question. In summary it is very clear according to the answering affidavit by the Respondent; that; the Applicant has failed to disclose her living expenses and debt obligations. This included the Middle ground Trading Account which was opened 14 days prior to an application for this personal loan.
21. In her Replying affidavit the Applicant did not offer any clear or substantial responses to the Respondent's assertions. She stated that Nedbank Loans did not do a proper assessment. She also further averred that Nedbank employees failed to fully and honestly capture the information she provided.

CONCLUSION

22. Based on the evidence before the Tribunal, Nedbank Loans did do an assessment of Ms Denny/ Applicant income and expenditure before granting her Credit Loan facility. This resulted in a clear conclusion that she could afford the repayments of the loan in question taking into account her additional income. Ms Denny/ Applicant confirmed her two pension's income and other additional

income and her living expenses.

23. There is no basis for a finding that there is a reasonable prospect of Ms. Denny/Applicant being able to show that Nedbank Loans engaged in reckless lending.

24. It needs to be noted that the loan application took place before the new NCA affordability assessment regulations came into operation on 13 September 2015.

ORDER

25. Accordingly, the Tribunal makes the following order:-

- (1) The Applicant's application for leave to refer the matter directly to the Tribunal is refused; and
- (2) There is no order as to costs.

DATED ON THIS 10th DAY OF DECEMBER 2017

[Signed]

X May

Presiding Member

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