

SOUTH AFRICA / JUDGMENT

National Credit Regulator v CMR Group Pty Ltd (NCT/119696/2018/57(1)) [2019] ZANCT 131 (12 August 2019) [2019] ZANCT 131

COURT

National Consumer Tribunal

BEFORE

J Simpson, B Dumisa, K Moodaliyar

CASE / FILE NUMBER

NCT/119696/2018/57(1)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

number: NCT/119696/2018/57(1)

In

the matter between:

NATIONAL
CREDIT
REGULATOR APPLICANT
and
CMR
GROUP PTY
LTD RESPONDENT

Coram:

Adv
J Simpson –
Presiding Tribunal member
Prof
B Dumisa –
Tribunal
member
Prof
K Moodaliyar –
Tribunal Member
Date
of Hearing -
30 July 2019

Date
of judgment -
12 August 2019

JUDGMENT

AND REASONS

APPLICANT

1. The Applicant in this matter is the National Credit Regulator, a juristic person established in terms of section 12 of the National

Credit Act, 34 of 2005 (“the NCA”), (hereinafter referred to as “the Applicant” or “the NCR”).

2. At the hearing the NCR was represented by its employees, Ms R Venugopal, assisted by Ms L Schwartz.

RESPONDENT

3. The Respondent is CMR Group Proprietary Limited, a registered credit provider with registration number NCRCP 5784 (hereinafter referred to as “CMR” or “the Respondent”). Cash Express has a single branch located in Faerie Glen in Pretoria.
4. There was no representative for the Respondent at the hearing.

APPLICATION TYPE

5. This is an application for deregistration of CMR as a registered credit provider in terms of Section 57(1) of the National Credit Act 34 of 2005 (“the NCA”).

BACKGROUND

The NCR’s submissions

6. CMR was registered as a credit provider on 11 January 2017. On 3 March 2017 a director of the Respondent sent an email to the NCR

asking for guidance regarding a query it received from a debt counsellor. The NCR requested a copy of the credit agreement from CMR to assist it with a response. When the NCR considered the credit agreement, it appeared that CMR was engaged in prohibited conduct. The NCR then initiated an investigation into CMR.

7. The NCR investigated a sample of 20 of CMR’s credit agreements. It found that CMR was essentially conducting a business known colloquially as the “Pawning your car and still drive it” scheme. CMR advances funds to the consumer against the consumer’s fully paid-off vehicle subject to a pawn agreement.

It does not conduct any affordability assessment. The consumer can borrow an amount of 30% to 50% of the vehicle's retail value. The consumer hands over the registration documents for the vehicle to CMR and the vehicle is then registered in CMR's name. The consumer continues to use the vehicle while renting it from CMR for a period of up to 12 months. The monthly rental amounts to 25% to 30% of the principle amount borrowed. At the end of the repayment period the consumer is expected to have paid the monthly rental amount and the principle amount borrowed in settlement of the agreement. The vehicle can then be registered back into the consumer's name.

8. The NCR submits that the transactions in question are in fact simulated. The actual intention of CMR is to circumvent the maximum

interest rates prescribed by the NCA. By simulating a pawn and rental contract, it is able to charge interest which far exceeds the maximum rates.

9. The NCR submits that the transaction in question is in fact a secured credit transaction. CMR is therefore required to conduct an

affordability assessment and comply with all the requirements of the NCA when entering into the agreement. CMR may not charge more than the prescribed maximum interest rate applicable to secured loans. The sample agreements list a "financial services charge",

which is not permitted by the NCA.

10. As an example, the agreement with one of the consumers is titled "Pawn and Rental agreements"[1]. "Part A" reflects an amount of R15 000.00 as "Credit advanced against pawned asset". "Part B" reflects an amount of R4 500.00 as the "Financial services charges". The final instalment is R19 500.00, payable in a month. The agreement states that the financial services charges may be renewed for a maximum of 12 months. "Part D" of the agreement can be summarised as stating that if the final full instalment is not paid at the end of each month then the agreement is automatically extended for a further period of 30 days at a time.
11. Another sample agreement[2], breaks down the "Financial Services Charges" in more detail. The amount borrowed is R15 000.00. It lists "Instalment interest 5%" of R750, "Monthly service and administrative fees 15%" of R2 250 and "Vehicle rental instalment 10%" of R1 500.00. The total is R4 500.00.
12. The NCR is asking for a finding that CMR contravened the following sections of the NCA –
- Section 101(1)(d) of the NCA. Charging an excess amount of interest;
 - Section 81(2) of the NCA. Failing to conduct affordability assessments; and
 - Section 100(1)(a) of the NCA. Imposing a charge that is not listed as a permitted charge.
13. The NCR is asking the Tribunal to make the following orders:

- Interdicting CMR from further contraventions;
- Ordering CMR to have an audit done by an independent auditor to determine all the consumers that have been charged unlawful interest and fees. All the consumers must be refunded;
- Cancellation of CMR's registration as a credit provider;
- The imposition of an administrative fine; and
- Any other appropriate order.

CMR's

submissions

14. The answering affidavit was deposed to by Edward Jacobus Pelcher, the sole director of CMR. He submits that he was approached by his stepson, Mr PZ Coertzen, regarding a business proposal. The proposal was that the business would pawn paid-off vehicles and the vehicles would be rented to the borrower. He was assured by Mr PZ Coertzen that the business model was entirely legal and being applied by many companies. CMR then commenced trading in June 2016. In September 2016, Mr Pelcher inquired whether CMR had to be registered as a credit provider. Based on information he obtained from the NCR's website it was not necessary that it be registered. CMR was not able to afford formal legal advice at the time. He subsequently discovered that the information on the website was outdated and that CMR was in fact required to be registered from inception.
15. During November 2016, he submitted the application for registration documents to the NCR. On the form he wrote "Pawn and rental of vehicles" as the activity of CMR. He further wrote "Vehicles pawned at max 40% of the market value. Rented vehicles rented out on a prepaid basis. If not paid vehicle is recovered." Despite this information provided on the form, CMR was registered as a credit provider with effect from 11 January 2017.
16. Seeking to comply with the NCA, Mr Pelcher amended the agreements to provide more detail in the agreement as to how the fees are

constructed. A pre-agreement statement and quotation was added.

17. During March 2017 Mr Pelcher sent an email to the NCR to request advice on whether a pawn transaction could be excluded from debt

review. He provided the NCR with a copy of his pawn agreement. An NCR inspector did an investigation at CMR's premises in March 2017. Mr Pelcher never heard anything further until he received notice of the application with the Tribunal to cancel CMR's registration in November 2018.

18. During September 2018 it came to Mr Pelcher's attention that Mr Coertzen may have defrauded CMR by retaining the proceeds of

vehicles sold by CMR to recover the debt owing on pawn contracts. Mr Coertzen was removed as a director of CMR in September 2018.

19. CMR made numerous and lengthy arguments regarding the lawfulness of its actions and whether prohibited conduct took place. For the

purposes of this judgment it is sufficient to briefly summarise the legal arguments. CMR denies that its agreements are simulated or prohibited. In any event, it submits that it openly declared its business model to the NCR when registering. The NCR is therefore

estopped from now seeking its deregistration. In the alternative it submits that the NCR has infringed on CMR's right to fair administrative action in terms of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). By allowing the registration to take place it failed to apply its mind to the application and permitted the contraventions to take place.

20. CMR argues that there is a significant overlap between pawn transactions and secured loans as defined in the NCA. The distinction

between a pawn transaction and a secured loan is subtle but significant. A pawn broker must become the title holder of the vehicle in order to alienate the vehicle pursuant to a pawn transaction. Becoming a title holder is however not the same as ownership, as defined in the National Road Traffic Act 93 of 1996 ("the NTRA"). The NTRA provides for different definitions for a title holder and an owner of a motor vehicle. CMR submits that it became the title holder of the pawned vehicles, not the owner. The NCR further requires the pawn broker to take possession of the goods pawned. It however does not require the pawn broker to actually retain continued possession of the goods. It therefore submits that the NCA does not prevent the pawn and rental agreements it entered into.

21. If the Tribunal finds that the agreements constitute pawn transactions, CMR concedes that some of the transactions may also constitute short term credit transactions. CMR then commits to the restitution of the relevant consumers and to repay them. If the Tribunal finds that the transactions are in fact secured loans, then none of the transactions are in fact short term credit transactions,

as they are applicable for a period longer than 6 months.

22. Based on its financial statements, CMR has been operating at a loss. It has not derived any profit from its activities.

HEARING HELD IN ABSENCE OF THE RESPONDENT

23. After the pleadings had closed, the matter was set down for hearing on 16 April 2019. On the day of the hearing, CMR's attorneys withdrew as attorneys of record. The NCR further informed the Tribunal that CMR had been placed under final liquidation. The matter was postponed to enable the NCR to obtain further information regarding the liquidation.

24. The matter was again set down for hearing on 30 July 2019. There was no appearance by any representative on behalf of CMR.
25. The Notice of set down had been sent to CMR by email. It had also been sent by email to the court appointed liquidator for CMR, Ms

Jacolien Barnard of Barn Trust. Ms Barnard responded to the email on 24 July 2019 confirming that she had been appointed as final

liquidator and would be appearing on the hearing date. She was however not present on the date of the hearing.

26. Rule 24 of the Rules[3] provides as follows:

“Non appearance —(1) If a party to a matter fails to attend or be represented at any hearing or any proceedings, and that party—

- (a) is the applicant, the presiding member may dismiss the matter by issuing a written ruling; or
 - (b) is not the applicant, the presiding member may—
 - (i) continue with the proceedings in the absence of that party; or
 - (ii) adjourn the hearing to a later date.
 - (2) The Presiding member must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).
 - (3) The Registrar must send a copy of the ruling to the parties.”
27. The Presiding member was satisfied that CMR had been properly notified of the date of the hearing. The hearing therefore proceeded

in the absence of CMR, in accordance with Rule 24(1)(b)(i).

FINAL LIQUIDATION STATUS OF CMR

28. Based on the information available, CMR voluntarily applied for liquidation and the final order in this regard has been made by the court. The voluntary liquidation application is based on CMR being insolvent[4]. The application before the Tribunal was filed during November 2018. The provisional liquidation order was granted on 2 May 2019. The application before the Tribunal had already commenced before the provisional liquidation order was granted. The question that arises is whether the current application against CMR can continue before the Tribunal. Further, does the liquidator have to be cited or joined as a party to the application before the Tribunal?
29. The NCR made submissions in this regard.

30. It is firstly important to note that a company retains its juristic status and identity despite a final order of liquidation being granted. In the matter of *Richter v Absa Bank Limited* (20181/2014) [2015] ZASCA 100 (01 June 2015) the court stated; “The correct position is that upon the final order of liquidation being granted the company continues to exist, but control of its affairs is transferred from the directors to the liquidator who exercises his or her authority on behalf of the company.”
31. The status of CMR has therefore not changed in anyway. It remains a juristic entity and it remains a credit provider in terms of the NCA. The Tribunal is therefore still empowered to adjudicate on the application brought against CMR.
32. The process regarding the liquidation of companies is prescribed by the Companies Act 61 of 1973 (“Old Companies Act”). The Old Companies Act has been repealed by the Companies Act Number 71 of 2008, which came into operation on 1 May 2011, in terms of government gazette number 34243 dated 20 April
2011. Schedule 5 of Act Number 71 of 2008 contains transitional arrangements. Item 9 of schedule 5 provides for the continued application of the Old Companies Act to liquidations and winding up by stating that:

“Continued application of previous Act to winding-up and liquidation

9.

- (1) Despite the repeal of the previous Act, until the date determined in terms of subitem (4), Chapter 14 of that Act continues to apply with respect to the winding- up and liquidation of companies under this Act, as if that Act had not been repealed subject to subitems (2) and (3).”
33. The provisions of the Old Companies Act therefore still apply to the liquidation process of CMR. Section 359 of Chapter 14 of the Old Companies Act contains the following provisions relating to pending civil proceedings against a company in liquidation:

“359. Legal proceedings suspended and attachments void

- (1) When the Court has made an order for the winding-up of a company or a special resolution for the voluntary winding-up of a company has been registered in terms of section 200 –
- (a) All civil proceedings by or against the company concerned shall be suspended until the appointment of a liquidator; and
- (b) Any attachment or execution put in force against the estate or assets of the company after the commencement of the winding-up shall be void.
- (2)

- (a) Every person who, having instituted legal proceedings against a company which was suspended by a winding-up, intends to continue the same, and every person who intends to institute legal proceedings for the purpose of enforcing any claim against the company which arose before the commencement of the winding-up, shall within four weeks after the appointment of the Liquidator, give the Liquidator not less than three weeks' notice in writing before continuing or commencing the proceedings.
 - (b) If notice is not so given the proceedings shall be considered to be abandoned unless the Court otherwise directs.
34. The NCR was therefore required by section 359(2)(a) of the Old Companies Act, to give notice to the liquidator of the continuation of the proceedings against CMR. The Liquidator was provisionally appointed on 2 May 2019. The liquidator has not yet received proof of her final appointment. The NCR sent a copy of the entire application to the liquidator on 31 May 2019 by registered post. The Notice of set down was further emailed to the liquidator on 28 June 2019. The liquidator sent an email to the NCR on 24 July 2019 confirming that she was aware of the hearing date of 30 July 2019 and would attend.
35. The application before the Tribunal was initiated before the application for liquidation was lodged. There is no requirement in the Old Companies Act that the liquidator now be joined in the proceedings or be cited. The Old Companies Act only requires notice to the liquidator.
36. The Tribunal is therefore satisfied that the liquidator was given proper notice in accordance with the Old Companies Act. The matter therefore proceeds against CMR.

CONSIDERATION OF THE EVIDENCE

37. The facts of the matter are not in dispute. CMR extended credit to consumers using their paid-off motor vehicles as security for the loans. The question that arises is whether the transactions are pawn transactions or secured credit transactions. If the transactions are in fact secured credit transactions then the fees charged by CMR are in excess of the prescribed fees and constitute prohibited conduct. CMR will further have failed to do affordability assessments as required by the NCA.
38. The Tribunal will first briefly deal with the points raised by CMR regarding estoppel and administrative justice. They were not described as points in limine but will be dealt with as such.

Estoppel defence

39. CMR has argued that the NCR falsely represented that CMR could be registered, using the business model it mentioned in the registration

application documents. It argues that the NCR must therefore be estopped from now seeking sanctions against CMR. The submissions did not set out any of the requirements for estoppel or any case law supporting the argument.

40. In the matter of Aris Enterprises (Finance) v Protea Assurance 1981(

3) SA 274(AD) at 291D-E the court stated:

“The essence of the doctrine of estoppel by representation is that a person is precluded, ie estopped, from denying the truth of a representation previously made by him to another person if the latter, believing in the truth of the representation, acted thereon to his prejudice (see Joubert The Law of South Africa vol 9 para 367 and the authorities there cited). The representation may be made in words, ie expressly, or it may be made by conduct, including silence or inaction, ie tacitly (ibid para 371); and in general it must relate to an existing fact.”

41. The doctrine is generally used in the context of contracts. It enables a party to preclude the principle from denying that the agent

had authority to conclude a contract on behalf of the principle.

42. In the context of this matter, CMR provided a very scant and cryptic reference to its business model in the application documents.

It can be argued that the NCR should have inquired further once it received the application. However, it cannot be said that the NCR tacitly represented to CMR that its business model was lawful.

43. The conditions for registration as a credit provider in terms of NCA do not set out any specific requirements or restrictions in terms of a business model. The NCR may impose conditions for registration but there is no specific responsibility to review the applicant's business strategy or contracts.

44. The Tribunal can therefore note that the NCR reasonably should have requested further information from CMR when it received the application. However, there is no basis for a finding that it must be estopped from proceeding with this application.

Administrative justice

45. CMR has argued that the erroneous decision to register CMR constitutes an unfair administrative action in terms of PAJA. It submits that the decision to refer the matter to the Tribunal should be set aside and replaced with a compliance notice. This would provide CMR with an opportunity to comply with the notice.

46. The findings made in respect of the estoppel defence apply equally to this aspect. There was no specific duty on the NCR to evaluate CMR's business model. Administratively, the NCR processed the application and granted the registration in accordance with its processes. Even if PAJA were applicable in the context of this matter, the referral to the Tribunal, on the basis of prohibited

conduct, is an entirely separate process. CMR has been granted all its rights in accordance with the Tribunal process. There is no basis for a finding that the referral should be set aside and replaced with a compliance notice.

47. Both points in limine are therefore dismissed.

Pawn or secured credit transactions

48. A pawn transaction is defined in Part A of the NCA as:

“pawn transaction” means an agreement, irrespective of its form, in terms of which—

- (a) one party advances money or grants credit to another, and at the time of doing so, takes possession of goods as security for the money advanced or credit granted; and
- (b) either—
 - (i) the estimated resale value of the goods exceeds the value of the money provided or the credit granted, or
 - (ii) a charge, fee or interest is imposed in respect of the agreement, or in respect of the amount loaned or the credit granted; and
- (c) the party that advanced the money or granted the credit is entitled on expiry of a defined period to sell the goods and retain all the proceeds of the sale in settlement of the consumer’s obligations under the agreement;

49. Section 99 (1) (b) of the NCA further provides:

99. Obligations of pawn brokers.—(1) A credit provider who enters into a pawn transaction with a consumer—

- (a);
- (b) must retain until the end of the credit agreement, and at the risk of the credit provider, any property of the consumer that is delivered to the credit provider as security under the credit agreement; and

50. It is clear from the above that an inherent requirement of a pawn transaction is that the goods must remain in the possession of the credit provider. If the goods are immediately returned to the consumer then the transaction can no longer be described as a pawn transaction. The argument by CMR that the section does not require continued possession of the goods is not convincing. There is a specific purpose for the different descriptions of credit transactions in the NCA. A pawn transaction has specific rights that are accorded to the credit provider. Specifically to sell the goods and retain the proceeds. This right is not applicable to any other credit transaction. A pawn transaction is further not subject to the requirement of conducting an affordability assessment.

51. Therefore, irrespective of the agreement being titled as a pawn agreement, it is not a pawn agreement. The agreement is further titled as “Pawn and rental agreements”. Part 1 is the pawn agreement and Part 2 is the rental agreement. The two agreements are entirely linked to each other and refer to each other. The agreement specifically states “The Parties agrees (sic) that this Rental agreement period is linked to the Pawn agreement.” Pawn agreements in the NCA do not contain any reference to rental or other agreements. The NCA does not provide for any mechanism whereby pawned goods can be rented out to the consumer again. The agreement is therefore not a pawn agreement in nature or in fact.
52. A secured loan is defined in Part 1 of the NCA as “....an agreement, irrespective of its form but not including an instalment agreement, in terms of which a person—
- (a) advances money or grants credit to another, and
 - (b) retains, or receives a pledge to any movable property or other thing of value as security for all amounts due under that agreement;
53. The agreements entered into by CMR reflect all the requirements of a secured loan. The agreement states that “The BORROWER hereby agrees to pay the CREDIT PROVIDER rental as part of the collateral and pawn agreement”.
54. Part D of the agreement refers to a “Pre-finance Checklist”. The following ticked items appear on the list:

“RC1 Original Natis paper received.

Copy of owner ID

Copy of sale transaction signed by both parties/Letter of transfer of title.

Proof of residence received

Copy of titleholder ID (if not the same as the ID)

Proof of borrower address”

55. No sale transactions were attached to any of the agreements on the record. The conclusion is however inescapable that the vehicles

were sold, or at the very least, the title to the vehicle was transferred to CMR. It is only on this basis that CMR could prevent

the consumer from selling the vehicle while still being in possession of it.

56. Based on these clear elements of the transaction between the parties, the transactions were in fact secured loans. All the provisions in the NCA relating to secured loans are therefore applicable to the credit transactions entered into by CMR.

57. The Tribunal can note that the facts of this matter bear a strong resemblance to the facts in the matter of National Credit Regulator v Allied Capital (Pty) Ltd.[5] In this matter the Tribunal also dealt with the “Pawn your car and still drive it” scheme and found it to be prohibited in terms of the NCA.
58. The NCA prescribes that the credit provider must conduct an affordability assessment when receiving an application for a secured loan[6]. The credit provider must further comply with the maximum fees and charges as set out in Section 101 of the NCA.
59. CMR did not conduct any affordability assessments in accordance with section 81 of the NCA. It further imposed charges and fees not provided for by the NCA and well in excess of the interest rates prescribed by Regulation 42[7] read with Section 101 of the NCA.
60. CMR is therefore found to have committed prohibited conduct by contravening Sections 101(1)(d), 81(2) and 100(1)(a) of the NCA.

SANCTIONS

61. The NCR has requested that CMR be deregistered as a credit provider. Considering the extreme nature of the prohibited conduct by

CMR this appears to be an appropriate and suitable sanction.

62. It further follows that CMR must be interdicted from continuing its operations as a credit provider.

63. The Tribunal considered the imposition of an administrative fine but considering the fact that CMR is now under liquidation, it would

not be appropriate. It would be more appropriate for the liquidator to use whatever assets the company may have to reimburse consumers.

64. Section 80(1)(a) of the NCA states:

“80. Reckless credit.—(1) A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119 (4)—

- (a) the credit provider failed to conduct an assessment as required by section 81 (2), irrespective of what the outcome of such an assessment might have concluded at the time; or”

65. The Tribunal has found that CMR failed to conduct an assessment as required by section 80(1)(a) of the NCA.

66. Section 83 of the NCA states:

“83. Declaration of reckless credit agreement.—

- (1) Despite any provision of law or agreement to the contrary, in any court or Tribunal proceedings in which a credit agreement is being considered, the court or Tribunal, as the case may be, may declare that the credit agreement is reckless, as determined in accordance with this Part.
- (2) If a court or Tribunal declares that a credit agreement is reckless in terms of section 80 (1) (a) or 80 (1) (b) (i), the court or Tribunal, as the case may be, may make an order—
 - (a) setting aside all or part of the consumer's rights and obligations under that agreement, as the court determines just and reasonable in the circumstances; or
 - (b) suspending the force and effect of that credit agreement in accordance with subsection (3) (b) (i)."
67. The Tribunal therefore finds that the credit agreements entered into by CMR were reckless. The conclusion is inescapable that CMR intentionally disguised the transactions to evade the requirements of conducting affordability assessments and the prescribed interest rates. The Tribunal therefore deems it just and reasonable that all the consumer's obligations under those agreements be set aside. All the consumers are therefore to be reimbursed with all fees and charges paid to CMR under those agreements.
68. It follows that any current legal proceedings initiated by CMR to sell or attach vehicles under the credit agreements cannot continue. Any judgments obtained by CMR against consumers must also be rescinded.

ORDER

69. Accordingly, the Tribunal makes the following order:
 - 69.1 The Respondent's registration as a credit provider is hereby cancelled as of the date of issuing of this judgment;
 - 69.2 The Respondent is interdicted from entering into any further credit transactions with consumers or operating as a credit provider;
 - 69.3 All the credit agreements entered into between consumers and CMR are declared reckless. All the consumer's obligations in terms of these agreements are set aside. All the consumers are to be reimbursed with all fees and the charges paid to CMR in terms of those agreements;
 - 69.4 The Respondent is interdicted from proceeding with any current civil proceedings against consumers under the credit agreements. The Respondent is to rescind any judgments obtained against any consumers.

69.5 The Tribunal further orders that the Respondent appoint an independent auditor at its own cost. The auditor must determine all the amounts paid by the consumers under the credit agreements with CMR. All the amounts paid must be reimbursed to all the consumers. The auditor must provide a comprehensive report, regarding the consumers identified and the refunded amounts, to the NCR within 90 days of this judgment being issued; and

69.6 There is no order as to costs.

DATED ON THIS 12th DAY OF AUGUST 2019

[signed]

Adv J Simpson

Presiding Tribunal member

Prof K Moodaliyar (Tribunal member) and Prof B Dumisa (Tribunal member) concurring.

[1] Annexure “D” to the founding affidavit (page 73 of the case file).

[2] Annexure “E” to the founding affidavit (page 76 of the case file).

[3] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters

before the National Consumer Tribunal, 2007 (Government Gazette No. 30225) as amended by Notice Government Gazette Date GN 428 34405 29 June 2011 GNR.203 38557 13 March 2015

[3] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters

before the National Consumer Tribunal, 2007 (Government Gazette No. 30225)

as amended by Notice Government Gazette Date GN 428 34405 29 June 2011 GNR.203 38557 13 March 2015

[4] The email from the liquidator dated 24 July 2019 states “This is still an insolvent estate”

[5] (NCT/41672/2016/140)

[2017] ZANCT 77 (28 April 2017) SAFLII

[6] “81. Prevention of reckless credit.—(1) When applying for a credit agreement, and while that application is being considered by the credit provider, the prospective consumer must fully and truthfully answer any requests for information made by the credit provider as part of the assessment required by this section.

(2) A credit provider must not enter into a credit agreement without first taking reasonable steps to assess—

(a) the proposed consumer’s—

- (i) general understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement; (ii) debt repayment history as a consumer under credit agreements; (iii) existing financial means, prospects and obligations; and
 - (b) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.”
- [6] “81. Prevention of reckless credit.—(1) When applying for a credit agreement, and while that application is being considered by the credit provider, the prospective consumer must fully and truthfully answer any requests for information made by the credit provider as part of the assessment required by this section.
- (2) A credit provider must not enter into a credit agreement without first taking reasonable steps to assess—
- (a) the proposed consumer’s—
 - (i) general understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;
 - (ii) debt repayment history as a consumer under credit agreements;
 - (iii) existing financial means, prospects and obligations; and
 - (b) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.”
- [7] GNR.489 of 31 May 2006: Regulations made in terms of the National Credit Act, 2005 as amended by Notice Government Gazette Date GNR.1209 29442 30 November 2006; GNR.604 30713 29 May 2008; GNR.202 38557 13 March 2015 w.e.f. 13 September 2015*.
- [7] GNR.489 of 31 May 2006: Regulations made in terms of the National Credit Act, 2005 as amended by Notice Government Gazette Date
- GNR.1209 29442 30 November 2006;
- GNR.604 30713 29 May 2008;
- GNR.202 38557 13 March 2015 w.e.f. 13 September 2015*.

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