

SOUTH AFRICA / JUDGMENT

**National Credit Regulator v Commshey 52 CC t/
a
HW Financial Services (NCT/321444/2024/57(1))
[2024] ZANCT 21 (6 July 2024)
[2024] ZANCT 21**

COURT

National Consumer Tribunal

BEFORE

MC Peenze, Z Ntuli, S Hockey

CASE / FILE NUMBER

NCT/321444/2024/57(1)

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

SAFLII

Note: Certain

personal/private details of parties or witnesses have been
redacted from this document in compliance with the law
and SAFLII

Policy

IN THE NATIONAL CONSUMER
TRIBUNAL

HELD IN CENTURION

Case

number: NCT/321444/2024/57(1)

In

the matter between:

NATIONAL
CREDIT REGULATOR
APPLICANT
and
COMMSHEY
52 CC T/A HW FINANCIAL SERVICES
RESPONDENT

Coram: Dr MC Peenze
Presiding Tribunal
Member
Ms Z Ntuli
Tribunal Member
Mr S Hockey
Tribunal Member
Date of Hearing
4 July 2024
Date of Judgment
6 July
2024

JUDGMENT

AND REASONS

INTRODUCTION

1. The applicant in this matter is the National Credit Regulator (the applicant or the NCR), a juristic person established by section 12 of the National Credit Act, 34 of 2005 (the NCA). At the hearing, the applicant was represented by Ms Renate Garlipp, a senior legal advisor of the applicant.
2. The respondent is Commshey 52 CC T/A HW Financial Services (the respondent), duly incorporated under the company laws of South Africa. The respondent is a registered credit provider with the NCR under registration

number NCRCP 1217. Darrel Wicks, the sole owner and member of the respondent, represented it at the hearing.

3. This is an application made in terms of section 57(1) of the NCA whereby the NCR seeks the cancellation of the respondent's registration because the latter repeatedly contravened various sections of the NCA and failed to comply with its conditions of registration. The NCR further seeks additional orders relating to the alleged contraventions of the NCA, including that such contraventions constitute prohibited conduct, interdictory relief against such further conduct, and an administrative penalty.

TERMINOLOGY

4. A reference to a section in this judgment refers to a section in the NCA.
5. A reference to a regulation refers to the National Credit Act Regulations, 2006[1] (the regulations).
6. A reference to a form refers to a form as prescribed in the regulations.

7. A reference to a rule refers to the Rules of the National Consumer Tribunal^[2] (the Tribunal).

BACKGROUND

8. The respondent has twelve registered branches with the applicant. This application is based on an authorised investigation conducted at the respondent's Mount Frere branch located at 225 Madzikane Street, Ludidi Centre, Mount Frere, Eastern Cape.^[3] On 28 March 2024, the applicant filed this application with the Tribunal Registrar (the Registrar). The applicant served this application on the respondent by registered post on 27 March 2024, and the track and trace report, as issued by the South African Post Office, confirms that the documents were collected.^[4] The Registrar issued a notice of filing to the parties on 3 April 2024, and the respondent filed its answering affidavit on 23 April 2024. The Registrar issued a notice of set down to the parties on 10 May 2024.

INVESTIGATION

9. As mandated by the NCA, the applicant monitors the consumer credit industry in South Africa and investigates alleged NCA contraventions. Section 136(1) determines that a complaint regarding an alleged contravention of the NCA may be submitted to the applicant, whilst section 136(2) confirms the applicant's authority to initiate a complaint in its own name.
10. The applicant was invited for an operation and consumer initiative in the Eastern Cape by the National Regulator for Consumer Specifications (NRCS). It was requested to assist in identifying and preventing credit providers who were unlawfully enforcing credit agreements or contravening the NCA. The applicant also received anonymous tipoffs from members of the community, wherein the respondent was identified as one of the credit providers suspected of contravening the NCA by keeping possession of consumer instruments. In response to this information, the applicant conducted a scouting exercise during which the respondent was one of the identified credit providers. The respondent was observed and identified as displaying an expired window decal and registration certificate at its premises. The respondent's employees advised that it grants short-term credit loans at the fixed interest rate of 30% per month and with the customer base focused on SASSA grant recipients.
11. The observations above and responses gave rise to a reasonable suspicion that the respondent was conducting its business and extending credit in a manner that is not per the provisions of the NCA and, if found true, would constitute prohibited conduct under the NCA.
12. In light of the aforesaid, the applicant, on or about 20 September 2023, initiated a complaint against the respondent in terms of section 136(2) of the NCA and authorised an investigation into the business practices of the respondent in terms of section 139(1)(c) of the NCA.

13. On 19 October 2023, the CEO duly appointed Luvo Nkone (Nkone) and Douglas Musandiwa (Musandiwa) as inspectors in terms of section 25 to investigate the respondent.
14. On 25 October 2023, the inspectors appointed by the applicant to investigate the respondent's business conduct visited the respondent's business premises, where they met and interviewed Sandisa Rabe (Rabeu) and Sineke Sindile (Sindile), identified as the respondent's clerks, and Vuyisa Nondonga (Nondonga), identified as the respondent's manager. The respondent's representatives were presented with copies of the section 25 certificates before being interviewed, and their rights per section 139(4) were explained.
15. During the interview and upon request, Nondonga provided an overview and summary of the respondent's loan-granting practices. The following submissions were made during the interview:
 - 15.1 The respondent grants short term credit transactions from R50.00 to R8,000.00, payable in 1 - 2 months;
 - 15.2 The respondent grants loans to all SASSA recipients, including child grant recipients; and
 - 15.3 The respondent grants loans to blacklisted consumers.
16. The inspectors requested and were provided copies of 10 consumer files by the respondent for assessment purposes. Nkone assessed the evidence provided and concluded the investigation by authoring a report with his findings. These sample consumer files are annexed to the investigators' report, marked annexures E1 to E10, and the investigators' report is annexed to the applicant's founding affidavit.

ALLEGED CONTRAVENTIONS OF THE NCA AND THE TRIBUNAL'S FINDINGS

17. The respondent conceded to all the alleged contraventions and did not dispute the evidence submitted.

Failure to conduct affordability assessments in terms of the NCA and reckless credit.

18. Section 81(2) prohibits a credit provider from entering into a credit agreement with the consumer without, amongst others, first taking reasonable steps to assess the consumer's general understanding and appreciation of the risks and costs of the proposed credit and rights and obligations of the consumer under a credit agreement; the debt repayment history of the consumer under credit agreements; and the existing financial means, prospects, and obligations of the consumer. In terms of section 80(1)(a), a credit agreement is reckless if, at the time that it was made, 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.
19. It bears mention that, per section 82(2), the Minister of Trade and Industry (i.e. the Minister responsible for consumer credit matters) made regulations on the criteria to conduct affordability assessments. This is found in regulation 23A. The Tribunal is aware that

regulation 23A(4) was reviewed and set aside in *Truworths Limited and Others v Minister of Trade and Industry and Others*[5] (Truworths). The remainder of regulation 23A remains valid and applicable in relation to a credit provider's obligations to conduct affordability assessments. Indeed, in *Truworths*, the court held that the elimination of sub-regulation (4) removes only the specific provisions for validating gross income and does not do away with the need to ascertain gross income as a step toward calculating discretionary income.[6]

20. An assessment of annexures E1 to E10 reveals that the respondent did not comply with the provisions of section 81(2), nor its obligations detailed in the remainder of regulation 23A. Although the respondent obtained the consumers' credit bureau reports, the information therein should have been considered before granting credit.
21. As evident from the sampled files, the respondent obtained credit bureau reports as a 'tick box' exercise and did not consider the financial responsibilities reflected on the consumer's reports:
 - (i) Annexure E3 to the investigation report: The consumer's credit bureau report was obtained on 18 August 2023, and the two loans granted to the consumer were extended on 20 October 2023, two months after the consumer's credit bureau report was obtained. This indicates that the report may have been for the previous loans the respondent had granted the consumer. The credit bureau report shows that the consumer is a monthly customer of the respondent;
 - (ii) Annexure E7 to the investigation report: The consumer's credit bureau report was obtained on 31 August 2023, while the loan was granted to the consumer a month earlier on 31 July 2023. This indicates that the credit bureau report was not for this loan and was obtained for other loans the respondent had granted to the consumer; and
 - (iii) Annexure E1 to E5 and E8 to the investigation report: These consumers' credit bureau reports inform that they had applied for or were under debt restructuring. This indicator of adverse accounts can also be seen in the various credit bureau reports of the consumers in the sampled credit agreements. The respondent granted these consumers credit against the provisions in section 88(4).
22. As the respondent did not correctly assess the consumers' debt repayment histories before entering into credit agreements with consumers, it contravened section 81(2)(a)(ii) read with regulation 23A(12)(b) and 23A(13).
23. The respondent also did not take any reasonable steps to assess the consumers' existing financial means, prospects, and obligations in contravention of section 81(2)(a)(iii) read with regulation 23A(3) and 23A(12)(c):

- (i) Annexure E3 to the investigation report: The consumer's bank statement was obtained on 18 August 2023, and the two loans granted to the consumer were extended on 20 October 2023, two months after the bank statement was obtained. This indicates that the bank statement may have been for the previous loans the respondent had granted the consumer. Further to this, the respondent has understated the consumer's debt obligations.
 - (ii) Annexure E7 to the investigation report: The consumer's bank statement was obtained on 31 August 2023, while the loan was granted to the consumer on 31 July 2023. This indicates that the bank statement was not obtained to assess affordability for this loan and may have been obtained for other loans the respondent had granted.
 - (iii) Annexures E6 and E9 to E10 to the investigation report: The consumers in these sampled credit agreements are SASSA child grant beneficiaries, as shown in their bank statements. A SASSA child grant is intended for a child and may not be used as a means of income when conducting an affordability assessment to grant a loan. Where the consumer solely relies on the SASSA child grant, the consumer should be treated as not having any source of income.
24. As the respondent failed to apply the minimum expense norms table and provide evidence of making the necessary calculations, the respondent contravened regulations 23A(9) and 23A(10). Further, due to the respondent failing to obtain and consider the information in the consumer's bank statements and credit bureau reports, the respondent failed to calculate the consumer's discretionary income before extending the credit to consumers. The respondent's conduct in this regard accordingly contravenes regulations 23A(8) and 23A(12) (a).
25. As the respondent failed to make the assessments required by section 81(2), the Tribunal finds that the credit agreements relating to the files marked Annexures E1 to E10 are reckless.

Extending credit to consumers under debt review

26. Section 88(4) stipulates that if a credit provider enters into a credit agreement, other than a consolidation agreement contemplated in this section, with a consumer who has applied for a debt re-arrangement and that re-arrangement still subsists, all or part of that new credit agreement may be declared to be reckless credit.
27. Section 81(3) states that a credit provider may not enter a reckless credit agreement with a prospective consumer. Given that credit may not be extended to consumers under debt review where that re-arrangement still subsists, concluding a credit agreement with a consumer under debt review will be deemed reckless in terms of section 88(4).
28. As evident from Annexures E1 to E5 and E9, the respondent extended credit to consumers whose credit reports reflected notifications of debt restructuring. Accordingly, the respondent contravened sections 88(4) read with 81(3) and 80(1)(a).

Excessive cost of credit and splitting of loans

29. Section 100(1)(b) prohibits the credit provider from charging or imposing a fee or charge exceeding the amount that may be charged in compliance with the NCA.
30. Section 101(1)(b) stipulates that an initiation fee must not exceed the prescribed amount relative to the principal debt.
31. Regulation 42(2) stipulates that the maximum monthly initiation fee in a short-term credit transaction is R165.00 per credit agreement plus 10% of the amount over R1 000, but never to exceed R1 050.00 or 15%.
32. Section 101(1)(c)(iii) states that a service fee must exceed the prescribed amount relative to the principal debt.
33. Regulation 44 stipulates that the maximum monthly service fee is R60.00. Regulation 44(4) further stipulates that a service fee must be charged for the calendar month it is due and payable on a pro-rata basis, where the credit agreement was concluded during that calendar month.
34. The respondent charged the consumer's excessive cost of credit for consumers in Annexures E1 to E3 to the investigation report. The respondent overcharged the cost of credit by splitting loans, in that the respondent extended more than one loan to consumers on the same day. As a result, the consumers paid initiation fees exceeding the maximum allowed and twice the service fee they would have paid if the respondent had not split the loans:
 - (i) Annexure E1 to the investigation report: The respondent granted the consumer two loans on 22 September 2023, both payable in two months. The first loan for R4,030.00 (contract and invoice 289056) charged service fees of R136.00 and initiation fees of R468.00. The second loan for R4,030.00 (contract and invoice no 289055) also charged service fees of R136.00 and initiation fees of R468.00. The consumer paid a total service fee of R272.00 and a total initiation fee of R936.00 for the two loans. Had the respondent not split the loans and granted the consumer a loan of R8,060.00 (total of the two loans), depending on the consumer's affordability,

the consumer would have only paid service fees of R136.00 instead of the R272.00 charged on two loans, and would have paid an initiation

fee of R871.00 for the entire loan amount instead of the R936.00 the respondent charged on the two loans.

(ii) Annexure E2 to the investigation report: The respondent granted the consumer two loans on 15 September 2023, both payable in one month. The first loan for R2,020.00 (contract and invoice 288656) charged service fees of R90.00 and initiation fees of R267.00. The second loan for R4 030.00 (contract and invoice no 288655) charged service fees of R90.00 and initiation fees of R468.00. The consumer paid a total service fee of R180.00 and a total initiation fee of R735.00 for the two loans. Had the respondent not split the loans and granted the consumer a loan of R6050.00 (total of the two loans) depending on the consumer's affordability, the consumer would

have only paid service fees of R90.00 instead of the R180.00 charged on the two loans, and would have paid an initiation fee of R670.00 for the entire loan amount instead of the of R735.00 the respondent charged on the two loans.

(iii) Annexure E3 to the investigation report: The respondent granted the consumer two loans on 20 October 2023, both payable in one month. The first loan for R4 500.00 (contract and invoice 294077) charged service fees of R81.34 and initiation fees of R515.00. The second loan for R4 500.00 (contract and invoice no 294075) also charged service fees of R81.34 and initiation fees of R515.00. The consumer paid a total service fee of R162.68 and a total initiation fee of R1 030.00 for the two loans. Had the respondent not split the loans and granted the consumer a loan of R9 000.00 (total of the two loans), depending on the consumer's affordability, the consumer would have only paid service fees of R82.00 instead of the R162.68 charged on the two loans. He would also only have paid an initiation fee of R965.00 for the full loan instead of the R1,030.00 the respondent charged on the two loans.

35. The respondent's conduct is further evident from the consumers' banking statements in Annexures E5, E8, and E10. The statements reflect the multiple loans the respondent had previously granted consumers, which were paid the same day or a day after the other.
36. The respondent's conduct goes beyond overcharging service fees and initiation fees in that the VAT charged on those overcharged fees by the respondent also results in higher VAT fees for which the consumers are liable. A further impact on consumers is also evident in the calculation of interest because the loan amount is inclusive of the overcharged initiation fees, resulting in the consumers paying higher interest amounts than what they would have paid had the respondent only granted them one and not two loan agreements.
37. By its conduct of splitting of loans, the respondent has repeatedly contravened sections 100(1)(b) and 101(1)(b) and (c) read further with regulations 42(2) and 44.

Contraventions of General Conditions of Registration

38. Section 52(5)(c) provides that a registrant must comply with the conditions of registration and the provisions of the NCA. In terms of General Condition 5, the respondent must display a registration certificate and a window decal supplied by the applicant at the entrance of their business premises.
39. The appointed inspector established that the respondent was trading in the premises without the NCR certificate or valid window decal displayed at their entrance or premises. The window decal displayed had expired on 31 July 2019, and the certificate was displayed in the back office, where it is visible to consumers.
40. Accordingly, the respondent has repeatedly contravened section 52(5)(c) read with General Condition 5.

CONCLUSION ON THE EVIDENCE

41. Based on the evidence, the Tribunal finds that the respondent repeatedly engaged in prohibited conduct by contravening the following sections of the NCA:
- (i) Section 81(2)(a)(ii) read with regulation 23A(12)(b) and 23A(13);
 - (ii) Section 81(2)(a)(iii) read with regulation 23A(3) and 23A(12)(c);
 - (iii) Regulation 23A(9) and 23A(10);
 - (iv) Regulation 23A(8) and 23A(12)(a);
 - (v) Section 52(5)(e) read with section 170 read further with regulation 55(1)(b)(vi);
 - (vi) Section 81(3) read together with section 80(1)(a);
 - (vii) Section 88(4) read with section 81(3) and section 80(1)(a);
 - (viii) Section 100(1)(b) and 101(1)(b) and (c) read further with regulation 42(2) and 44;
 - (ix) Section 3(e)(iii) and section 3(g); and
 - (x) Section 52(5)(c) read with General Condition 5 of its Conditions of Registration as a credit provider.
42. The respondent did not conduct affordability assessments for the 10 sampled credit agreements. Per section 83[7], the Tribunal declares these agreements reckless. The consequences of this declaration depend on the specific section that was contravened.
43. The sampled agreements do not exhibit any form of affordability assessment having been conducted. The Tribunal finds that the respondent contravened section 80(1)(a) of the NCA. Therefore, the provisions of Section 83(2)[8] apply. The Tribunal deems it appropriate to set aside all the consumer's obligations under these credit agreements.

SANCTIONS

44. Since the respondent has been found to have engaged in prohibited conduct, the appropriate sanctions must be considered.

Deregistration

45. The Tribunal considered the parties' arguments regarding deregistration. The applicant submitted that the contraventions are serious and indicative of the respondent's total disregard for the consumers' interests and the NCA. It argued that there is no good reason for the respondent to remain registered as a credit provider.
46. The respondent submitted that only one of its twelve branches had been investigated and that no contraventions at the other branches were placed in evidence. According to the respondent, various unregistered credit providers extend credit unlawfully in the area investigated by the applicant, whilst the respondent attempts to assist consumers within the parameters of the law. The respondent acknowledged that some of its employees did not comply with the procedures as required by the respondent and outlined that some of its

employees attempted to assist existing clients unlawfully. The respondent conducted an internal investigation into the conduct of its employees and implemented various control measures. Apart from putting the branch manager on suspension, the respondent consulted compliance specialists to ensure that it rectified its errors and that no similar contraventions take place in the future. The respondent also undertook to adjust fees and interest in compliance with the requirements. It further expressed willingness

to refund its clients and write off all their cost of credit. In addition, the respondent conducted training of its staff members and implemented a system of regular compliance checks to ensure that all staff follow the procedures strictly.

47. The respondent submitted that it is not a rogue enterprise and that the contraventions were attributed to the actions of selective employees who had since been disciplined and their actions corrected. The respondent argued that the business as an entity is credible, focused on compliance with the law, and willing to address any non-compliance immediately.
48. The respondent also outlined that it employs 45 people dependent on it for their livelihood. If the respondent is deregistered, the employees in the other branches will also lose their livelihood despite the absence of transgressions in the other branches.
49. Having considered the interventions and corrections made by the respondent, the Tribunal believes that deregistering the respondent would not be in the interest of justice. The respondent is a first-time offender, and no compliance notice has ever been issued in terms of section 55.
50. The respondent provided convincing arguments that its business model is in line with the NCA, prohibiting the practices that some employees at this particular branch engaged in. It is similarly accepted that these employees were subsequently disciplined. The evidence before the Tribunal confirms that the respondent had enhanced internal controls to ensure that all employees strictly comply with the prescribed steps in future credit loaning activities.
51. The purpose of the NCA is to promote a fair and non-discriminatory marketplace for access to consumer credit. The deregistration of a credit provider is considered within the conspectus of each case's circumstances. In this matter, the Tribunal is persuaded that the deregistration of the respondent is not warranted, as the prohibited conduct was not apparent in all its branches, and the required controls were put in place to prevent a recurrence of such prohibited conduct in the particular branch investigated. In the circumstances of this matter, the Tribunal is further persuaded that the specific transgressions could be addressed through the other forms of relief as requested by the applicant.
52. Accordingly, the application for deregistration is dismissed.

Interdict

54. The applicant requested the Tribunal to interdict the respondent from engaging in prohibited conduct in the future and from extending

credit to consumers. Given that the respondent may not engage in prohibited conduct, an interdict along the lines applied would serve no purpose.[9]

55. However, the respondent will be prohibited from collecting on any of the agreements found to be reckless in terms of section 83(2). Further, based on the evidence of unlawful practices by the respondent's employees at the Mount Frere branch, the Tribunal is persuaded that an interdict is warranted to prevent any loan-granting activities until the finalisation of an audit at the Mount Frere branch.

Fine

56. Lastly, the applicant seeks an administrative fine to be imposed on the respondent. Section 151 provides that the Tribunal may impose an administrative fine in respect of prohibited conduct and that such a fine may not exceed the greater of 10% of the respondent's annual turnover or R1 000 000.00, whichever is the greater. Section 151(3) lists various factors the Tribunal must consider when determining an appropriate fine. These factors are discussed under the sub-headings below:

56.1 The nature, duration, gravity, and extent of the contraventions.

The purpose of the NCA is to encourage responsible borrowing, avoid over- indebtedness, and fulfil obligations by consumers. The NCA furthermore discourages reckless lending by credit providers. The respondent's conduct is in total disregard of these safeguards built into the NCA.

56.1.2 Loss or damage suffered as a result of the contraventions.

The consumers concerned suffered loss or damage by not being subjected to affordability assessments.

56.3 The behaviour of the respondent.

The respondent co-operated with the applicant during the investigation. However, as a registered credit provider, the respondent should have better monitored the compliance with its statutory obligations under the NCA.

56.4. The market circumstances in which the contravention took place.

The respondent extended small short-term loans to consumers in desperate financial circumstances. Undoubtedly, these consumers belong to the most vulnerable sectors of our population, and the provisions of the NCA are specifically designed to protect them.

56.5. The level of profit derived from the contraventions.

The respondents' statistical returns and annual financial statements for the previous financial year were submitted. According to Form 39 (Statistical Returns), the respondent concluded 14,933 credit agreements in the previous financial year, and according to Form 40 (Annual Financial Statements), the respondent generated total revenue from NCA credit extensions amounting to R21,225,452.00 for the year ending February

2023. The respondent's income for this financial year was calculated at R1,682.878. Substantial profit has been derived from its activities.

56.6. The degree to which the respondent has co-operated with the applicant.

The respondent co-operated with the investigators during the investigation.

56.7. Prior contraventions by the respondents.

The NCR did not submit evidence of any prior contraventions.

57. The Tribunal considered all the above factors and found that an administrative fine of R250,000.00 is appropriate under the circumstances.

ORDER

58. In the result, the following order is made:

58.1. It is declared that the respondent contravened:

- (i) Section 81(2)(a)(ii) read with regulation 23A(12)(b) and 23A(13);
- (ii) Section 81(2)(a)(iii) read with regulation 23A(3) and 23A(12)(c);
- (iii) Regulation 23A(9) and 23A(10);
- (iv) Regulation 23A(8) and 23A(12)(a);
- (v) Section 52(5)(e) read with section 170 read further with regulation 55(1)(b)(vi);
- (vi) Section 81(3) read together with section 80(1)(a);
- (vii) Section 88(4) read with section 81(3) and section 80(1)(a);
- (viii) Section 100(1)(b) and 101(1)(b) and (c) read further with regulation 42(2) and 44;
- (ix) Section 3(e)(iii) and section 3(g); and
- (x) Section 52(5)(c) read with General Condition 5 of its Conditions of Registration as a credit provider.

58.2 The contraventions listed in paragraph 58.1 above are declared prohibited conduct.

58.3 By its contraventions listed above, the respondent brought the consumer credit industry into disrepute.

58.4 It is declared that the credit agreements in the files marked as annexures E1 to E10 to the investigation report were recklessly granted, and the respondent is prohibited from collecting on these agreements in terms of section 83(2).

58.5 Within 60 days of the issuing of this judgment, the respondent shall, at its own cost, appoint an independent auditor, who is a chartered accountant, to investigate whether any further similar transactions (besides those which form part of annexures E1 to E10) were concluded within the last three years from the date of the issuing of this judgment. Within six months, the auditor must submit a report to the applicant regarding such transactions and the amounts that could be reimbursed to consumers for the applicant to assess and possibly refer those transactions to the Tribunal for further relief.

58.6 The respondent is prohibited from engaging in credit loaning activities at its Mount Frere Branch until the auditor, appointed in terms of paragraph 58.5, has submitted its report to the applicant.

58.7 The respondent shall pay an administrative fine of R250,000.00 within three months of the issuing of this judgment into the bank account of the National Revenue Fund, the details of which are as follows:

Bank: The Standard Bank of South Africa Account holder: Department of Trade and Industry

Branch name: Sunnyside Branch code: 10645 Account number: 3[...] Reference:

NCT/321444/2024/57(1) and the name of the person or business making the payment.

58.8 There is no order as to costs.

[signed]

DR MC PEENZE

Presiding Tribunal member

Tribunal members Ms Z Ntuli and Mr S Hockey concur.

[1] Published under Government Notice R489 in Government Gazette 28864 of 31 May 2006.

[2] 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).

[3] See page 10 of the record.

[4] See page 199-200 of the record and the further track and trace report submitted during the hearing on 4 July 2024.

[5] 2018

(3) SA 558 (WCC).

[6] Truworths at para 67.

[7] “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.”

[8] “(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). [Subs.(2) amended by s. 25

(c) of Act No. 19 of 2014.]”

[8] “(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). [Subs.(2) amended by s. 25

(c) of Act No. 19 of 2014.]”

[9] The interdict applied for is of a final nature. It is well established that the grounds for a final interdict are (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the lack of an adequate alternative remedy. See *Setlego v Setlego* 1914 AD 221.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF’s page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANCT/2024/21.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/national-credit-regulator-v-commshey-unknown-topic-anct-2024>

Prepared on 9 October 2026 · Esheria