

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Golden Mile Loans CC t.a Cash 4 U (NCT/158460/2020/57(1)) [2021] ZANCT 44 (28 April 2021)

[2021] ZANCT 44

COURT

National Consumer Tribunal

BEFORE

A Potwana, K Moodaliyar, L Best

CASE / FILE NUMBER

NCT/158460/2020/57(1)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

number: NCT/158460/2020/57(1)

In

the matter between:

NATIONAL
CREDIT
REGULATOR APPLICANT
and
GOLDEN
MILE LOANS
CC RESPONDENT
TRADING
AS CASH 4 U

Coram: Mr
A Potwana –
Presiding
Tribunal
member
Prof
K Moodaliyar –
Tribunal member
Dr
L Best
–
Tribunal
Member
Date
of Hearing: 7 April 2021
POSTPONEMENT

RULING

APPLICANT

1. The Applicant in this matter is the National Credit Regulator (NCR), a juristic person established in terms of section 12 of the National Credit Act.[1] At the hearing, Mr R Stocker (Mr Stocker), the Applicant's Senior Legal Advisor, represented the Applicant.

RESPONDENT

2. The Respondent is Golden Mile Loans CC trading as Cash 4 U, a close corporation that is duly incorporated and registered in terms of the Republic of South Africa's corporate laws. The Respondent is registered with the Applicant as a credit provider. During the hearing, the Respondent was represented by Ms Lizelle Squirra (Ms Squirra), an attorney from Bosch Marais & Associates.

TYPE OF APPLICATION AND JURISDICTION

3. The Applicant seeks cancellation of the Respondent's registration with the Applicant in terms of section 57(1) of the NCA.
4. In terms of section 27 of the NCA, the National Consumer Tribunal (Tribunal) has jurisdiction.[2]

BACKGROUND

5. On 26 March 2020, the Applicant filed an application against the Respondent in terms of section 57(1) of the NCA with the Registrar of the Tribunal (Registrar). The Applicant's case is stated in its founding affidavit. The deponent is Anne-Carien Du Plooy (Ms Du Plooy), the acting manageress in the Applicant's Investigations and Enforcement Department.

6. According to Ms Du Plooy, the Respondent has been registered with the Applicant since 24 March 2017 under registration number NCRCP9018. The complaint stems from information received by the Applicant from the South African Social Services Agency (SASSA) regarding the business practices of certain credit providers within the Pretoria North and Pretoria Central areas. These credit providers were allegedly overcharging consumers on interest and extending credit recklessly in contravention of the NCA. The Applicant also received an anonymous tip-off in which the same allegations were made, and the Respondent was identified as one of the perpetrators. Based on the received information, the Applicant formed a reasonable suspicion that the Respondent was contravening the NCA provisions. On 19 June 2019, the Applicant initiated a complaint in its name against the Respondent in terms of section 136(2) of the NCA and authorised an investigation into the business activities of the Respondent in terms of section 139(1)(c) of the NCA.
7. On 15 August 2019, the Applicant's Chief Executive Officer appointed two inspectors to investigate the Respondent's

activities. The inspectors went to the Respondent's Pretoria North Branch and discovered that the premises were temporarily closed for renovations. The inspectors then went to the Rosslyn branch, where an onsite investigation was conducted. During the

investigation, an interview was conducted with Ms Agnes Matlakala (Ms Matlakala), who identified herself as a consultant in the employ of the Respondent. Ms Matlakala provided an overview of the Respondent's credit granting practices. The Applicant's inspectors requested and were provided with files relating to ten consumer credit agreements concluded by the Respondent. The files were assessed and an investigation report compiled. The comprehensive assessment of the documents obtained from the Respondent revealed that the Respondent contravened the provisions of the NCA in the following manner:

7.1. the Respondent failed to comply with all applicable legislation relating to the operation of a credit provider in contravention of Condition 1 of its conditions of registration;

7.2. the Respondent failed to operate its business in a manner consistent with the purposes and requirements of the NCA, thereby contravening

Condition 2 of its conditions of registration;

7.3. the Respondent failed to conduct proper affordability assessments, thereby contravening section 82(1) read with regulations 23A(8), 23A(12) and 23A(9) of the NCA;

7.4. the Respondent entered into credit agreements without first taking reasonable steps to assess consumers' debt repayment histories

and without first taking reasonable steps to assess consumers existing financial means, prospects and obligations in contravention

of section 81(2)(a)(ii) and (iii) read regulations 23A(8), 23A(12) and 23A(9) of the NCA;

7.5. the Respondent entered into reckless credit agreements in contravention of section 81(3) read with section (80(1)(a) of the NCA;

7.6. the Respondent failed to keep proper documentation in contravention of section 170 read with Regulation 55(1)(b)(vi) of the NCA;

7.7. the Respondent charged excessive service fees in contravention of section 100(1)(b) of the NCA read with section 101(1)(c)(iii) and Regulation 44 of the NCA;

7.8. the Respondent induced consumers to enter into supplementary agreements or sign documents that required consumers to pay transaction

processing fees which amounted to monthly service fees exceeding the prescribed maximum amount for monthly service fees in contravention

of section 91(2) read with section 100(1)(b), 101(c)(iii) and Regulation 44 of the NCA; and

7.9. the Respondent failed to submit Annual Financial Statements and Annual Financial and Operational returns timeously or at all in

contravention of section 52(5)(c) read with General Condition 3 of its General Conditions of Registration as well as Regulations 65 and 66 of the NCA.

8. The Applicant seeks an order in the following terms:

8.1. Declaring that the Respondent repeatedly contravened the above-mentioned provisions of the NCA and its regulations;

8.2. Declaring the repeated contraventions referred to above as prohibited conduct;

8.3. Cancellation of the Respondent's registration as a credit provider in terms of section 57 of the NCA;

8.4. Interdicting and restraining the Respondent from in future engaging in prohibited conduct;

8.5. Imposing an administration fine of 10% of the Respondent's annual turnover or R1000 000, whichever is the greater;

8.6. Declaring the Respondent's credit agreements contained in annexures D1 to D10 of the investigation report reckless in terms of section 80(1)(a) of the NCA, setting aside all consumers' obligations under those credit agreements and ordering the Respondent to refund all the costs of credit charged and recovered from consumers under all such agreements;

8.7. Ordering the Respondent to refrain from taking any enforcement action against such consumers and, to the extent that the Respondent may already have taken enforcement action which is pending against such consumers, the Respondent shall formally withdraw such action and tender payment of the consumers' legal costs where the action is defended or opposed;

8.8. Ordering the Respondent to take all reasonable steps as may be necessary in order to ensure that:

8.8.1.1. Any adverse credit bureau records which may have arisen as a result of consumers having concluded such credit agreements with the Respondent are removed;

8.8.1.2. Any civil judgements taken by the Respondent against such consumers in respect of such agreements are rescinded or, if rescission is not possible, abandoned;

8.8.1.3. Within 30 days, appoint an independent auditor, at its own costs, to identify all credit agreements which the Respondent concluded in the three years to determine if any consumers were overcharged on service fees (including Nupay fees), and provide a list of such consumers as well as the amount by which each consumer was overcharged;

8.8.1.4. Once the aforesaid auditor has compiled the above-mentioned report; the Respondent will, within 30 days from the date of the auditor's report, do the following:

8.8.1.4.1. Refund the consumers all costs which exceeded the prescribed maximum amounts allowed by the NCA;

8.8.1.4.2. Take the same steps as set out in paragraph 8.8.1.1 and 8.8.1.2 above;

8.8.1.4.3. Once the refunds have been made as stated above, the Respondent must provide the auditor's written report to the Applicant detailing the identity of the consumers, the refunds made, and further steps taken as contemplated in paragraph 8.8.1.1 and 8.8.1.2 above. This report is to be provided to the Applicant within 120 days from the date of the Tribunal's order;

8.9. Ordering the appointed auditor, as part of the report referred to above, to identify all credit agreements which the Respondent entered into without conducting proper assessments in terms of section 81(2)(a)(ii) and/or (iii) of the Act and, once so identified, declare those agreements as reckless in terms of section 80(1)(a) of the Act and set aside all of the consumers' obligations under those agreements;

8.10. Ordering the Respondent to, at its own cost, take the same steps as set out in 8.8.1.1 and 8.8.1.2 above in respect of the agreements identified by the auditor;

8.11. In terms of Section 150(i), any other appropriate order required to give effect to consumers' rights in terms of the NCA; and

8.12. Further or alternate relief.

9. On 7 April 2020, the Registrar issued a Notice of Filing and served it on the parties. The Respondent did not file an answering affidavit. On 8 October 2020, the Registrar issued a Notice of Set Down for the matter to be heard on 7 April 2021 and served it on the parties.

10. To limit the risk of the Covid-19 transmission and to observe the physical distancing protocol, all the parties appeared via a ZOOM

technology link.

APPLICATION FOR POSTPONEMENT

11. On the day of the hearing, Ms Squirra requested that the hearing of the matter be postponed to allow the parties to conclude settlement negotiations. She informed the Tribunal that the Respondent ceased operating on 25 February 2021, and its registration with the Applicant was cancelled on 14 March 2020. Mr Stocker opposed the request for postponement. He submitted that the application was served on the Respondent more than a year ago, but the Respondent failed to file an answering affidavit. Furthermore, the Applicant rejected the Respondent's settlement proposals more than two weeks before the date of the hearing. In replication, Ms Squirra submitted that the Respondent only received the application documents during November 2020 and that the Respondent did not wish to oppose the application.

ISSUE TO BE DECIDED

12. The issue to be decided is whether the Respondent's request for the hearing to be postponed should be granted.

THE LAW

13. Rule 18(2) of the Tribunal Rules[3] states-

"A party to the proceedings may apply for a postponement and, if permitted by the presiding member, the Registrar may notify the other parties of the postponement by issuing a supervening notice of set-down."

CONSIDERATION OF THE APPLICATION TO POSTPONE THE HEARING

14. The Tribunal considered the submissions made by both parties. In view of the fact that the Respondent's legal representative submitted that the Respondent wished to conclude settlement negotiations, the Tribunal reasoned that the interests of justice demand that the parties be afforded an opportunity to pursue settlement and granted the application *ex tempore*. The Presiding Tribunal member informed the parties that if they fail to reach a settlement by 3 May 2021, the Registrar will set the matter down for hearing on a default basis.

ORDER

15. The Tribunal makes the following order: -

15.1. the hearing of the application is postponed *sine die*;

15.2. if the parties fail to conclude settlement negotiations by 3 May 2021, the Registrar must set the matter down for hearing; and

15.3. there is no order made as to costs.

Thus, done and signed on 28 April 2021.

{signed}

Mr A Potwana

Presiding Tribunal Member

Prof K Moodaliyar (Tribunal Member) and Dr L Best (Tribunal Member) concur.

[1] 34 of 2005 as amended (NCA/Act).

[2] Section 27(a)(i) of the NCA provides that: ‘The Tribunal or a member of the Tribunal acting alone in accordance with this Act or the Consumer Protection Act, 2008 may adjudicate in relation to any application that may be made to it in terms of this Act in respect of such an application.’

[3] Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer

Tribunal, 2007 (as amended) published on 28 August 2007 under GN 789 in Government Gazette No. 30225.

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