

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Loans Acceptable Funding (Pty) Ltd (NCT/122594/2018/140(1)) [2019] ZANCT 39 (7 April 2019)

[2019] ZANCT 39

COURT

National Consumer Tribunal

BEFORE

M Nkomo, N Maseti, B Dumisa

CASE / FILE NUMBER

NCT/122594/2018/140(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/122594/2018/140(1)

In the matter between:

THE NATIONAL CREDIT REGULATOR

APPLICANT

and

LOANS ACCEPTABLE FUNDING (PTY) LTD

RESPONDENT

Coram:

Ms. M Nkomo – Presiding Tribunal Member

Ms. N Maseti –

Tribunal Member

Prof. B Dumisa – Tribunal Member

Date of Hearing – 28 March 2019

POSTPONEMENT ORDER

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 (“hereinafter referred to as the “NCA” or “the Act”), having its principal address at 127 Fifteenth Road, Randjespark, Midrand, Gauteng province (“hereinafter referred to as “the Applicant” or “the NCR”).
2. At the hearing, the Applicant was represented by its employee, Ms. L. Schwartz.

RESPONDENT

3. The Respondent is Loans Acceptable Funding (Pty) Ltd, a private company duly registered in accordance with the company laws of the Republic of South Africa with its business premises at Number 760, 27th Avenue, Rietfontein, Pretoria, Gauteng province (hereinafter referred to as “the Respondent”). The Respondent is a registered credit provider with the Applicant with registration number NCRP5617.
4. At the hearing, the Respondent was represented by Mr. M. Harmann from Harmann and Botha Attorneys.

HEARING OF THE APPLICATION ON A DEFAULT BASIS

5. The Applicant filed its application of this matter with National Consumer Tribunal (hereinafter referred to as “the Tribunal”) on or about 21 December 2018.
6. In terms of Rule 13 of the Regulations for Matters Relating to the Functions of the Tribunal and Rules for the Conduct of Matters before the National Consumer Tribunal[1] (hereinafter referred to as the “Tribunal Rules”), the Respondent had to respond within 15 days by serving an answering affidavit on the Applicant. The Respondent however failed to do so.
7. Although there was no formal application for a default order filed by the Applicant to have the matter concluded in the absence of the Respondent, the matter was set down for a hearing in default as the Respondent had not filed any papers with the Tribunal opposing this matter.
8. In accordance with Rule 25(3) of the Tribunal Rules, the Tribunal has satisfied itself that the Respondent has been served with the application and notice of set down. Proof of service was found on file.
9. At the hearing, the parties submitted that -

9.1 The Respondent was led to believe that one of the alleged contraventions pursued by the Applicant in this matter, namely, the Intecon fee the Respondent is alleged to be charging consumers, was a matter at the High Court and would not proceed at the Tribunal pending the outcome of the High Court;

9.2 The Respondent in the matter before the High Court had advised the Respondent in this matter that the former would be making an

application to intervene in the current proceedings as an interested party;

9.3 The Respondent was not aware that Applicant had, on 27 March 2019, abandoned the Intecon fees allegation at the High Court, and had reached an agreement with the respondent in that matter;

9.4 In light of the above developments, the Respondent initiated settlement negotiations with the Applicant in the morning of 28 March 2019; and

9.5 The parties had agreed to request that the current proceedings be postponed to give the Respondent an opportunity to present a settlement proposal to the Applicant, and/or file an answering affidavit to the alleged contraventions outlined in the application

in the event that the parties do not reach settlement.

ORDER

10. On the conspectus of the above, the Tribunal makes the following order:

10.1 The matter is postponed sine die;

10.2 The Applicant must submit a written settlement agreement, duly signed by both authorised parties to the Tribunal Registrar by 3 May 2019;

10.3 Once the settlement agreement is received, the Tribunal, would consider it and if appropriate make it an order of the Tribunal;

10.4 If the parties do not reach settlement, the Respondent must file its answering affidavit and application for condonation by 3 May 2019;

10.5 If neither the settlement agreement nor the answering affidavit together with the condonation application is received by 3 May 2019, then the matter would once again be set down for a hearing. The matter would then proceed on a default basis, and no further application for postponement by the Respondent would be considered; and

10.6 No order is made as to costs.

DATED IN CENTURION ON THIS 7TH DAY OF APRIL 2019

[Signed]

Ms M Nkomo

Presiding member

Ms N Maseti (Tribunal Member) and Prof B Dumisa (Tribunal Member) concurring.

[1] Published under GN 789 in GG 30225 of 28 August 2007 as amended.

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