

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Mr Price Group Limited (NCT/81672/2017/140(1)) [2017] ZANCT 133 (9 November 2017) [2017] ZANCT 133

COURT

National Consumer Tribunal

BEFORE

X May

CASE / FILE NUMBER

NCT/81672/2017/140(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD AT CENTURION

Case Number: NCT/81672/2017/140(1)

In the matter between:

NATIONAL CREDIT REGULATOR

APPLICANT

And

MR PRICE GROUP LIMITED

RESPONDENT

Coram: Mr X May· Presiding Member

CONDONATION RULING AND REASONS

THE APPLICANT

1. The Applicant in this condonation application and also in the main matter is the National Credit Regular ("the NCR" or "the Applicant), a juristic person established in terms of Section 12 of the National Credit Act 34 of 2005 ("the Act").
2. The Applicant's Founding Affidavit is deposed to by Jacqueline Peters ("Peters") in her capacity as Manager of Investigations and Enforcement Department of the Applicant.

THE RESPONDENT

3. The Respondent, in the main matter is MR PRICE GROUP LTD, trading from Milady's Building, 4th Floor, 380 West Street Durban in the Province of KwaZulu-Natal in South Africa.
4. For the purposes of convenience the Applicant and Respondent will be treated as in the main application.
5. The Applicant brought an application before the Tribunal, in accordance with section 140(1) of the Act, Section 140 reads: (1) After completing an investigation into a complaint, the National Credit Regulator may-
 - (a) issue a notice of non-referral to the complainant in the prescribed form;
 - (b) make a referral in accordance with subsection(2), if the National Credit Regulator believes that a person has engaged in prohibited conduct,
 - (c) make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application in terms of any provision of this Act, or
 - (d) refer the matter to the National Prosecuting Authority, if the complaint concerns an offence in terms of this Act.
6. In terms of the Rules for the Conduct of Matters before the National Consumer Tribunal (Tribunal Rules), the Applicant is supposed to file a replying affidavit within a stipulated time frame according to the rules.[1]
7. The Respondent's answering affidavit raises new issues and facts which the applicant is obliged to respond to. The Applicant has approached the Respondent prior to the filing of the Replying Affidavit and the Respondent has no objection.
8. On or about 7 July 2017 the Respondent responded and advised that they consent to the delivery of the Applicant's Replying Affidavit

and requested that the Applicant direct the Respondent to the Tribunal Regulations in terms of which the Respondent can condone

late filing.

BACKGROUND

TO THIS APPLICATION

9. Briefly, the NCR in the main application approached the Tribunal for an order in the following terms:
 - (a) A declaration that the Respondents have repeatedly contravened sections of the NCA, 90, section 101(1)(d) and 102(1) of the Act;

- (b) A declaration that the Respondent's repeated contravention of sections 90,100, 101(1) and 102(1), constitutes conduct that is prohibited by the Act;
 - (c) An order directing the Respondent to refund all the consumers who were, from 2007 to date charged club fees by the Respondent;
 - (d) An order directing that an independent audit be done, at the Respondent's cost, of all of its consumers who were charged club fees by the Respondent since 2007 to date in order to identify those consumers who are entitled to refunds, which report must be submitted to the Applicant and Tribunal within 90 days of such order containing the full information of the affected consumers, club fee amount for each consumer and statement of account for each consumers to date;
 - (e) An order declaring all the clauses or provisions relating to the club fees in the credit agreement of consumers with the Respondent referred to the investigation report unlawful provisions;
 - (f) An interdict restraining the respondent from, in future, charging consumers a club fee on credit agreement;
 - (g) The imposition of an administrative fine on the Respondent in the amount of 10% of the Respondent's annual turnover; and
 - (h) Any other appropriate order required to give effect to the consumer's rights in terms of Section 1500) of the Act; and Further and /or alternative relief.
10. This is an application to the Tribunal, in terms of Rule(1)(d) of the Rules for conduct of matters before the National Consumer Tribunal (Rules), for an order to condone the Applicant's non-compliance with procedure laid in Table 2 of the Rules for the late service and filing of the Applicant's replying affidavit in the main application.
11. The Applicant lodged an application in terms of Form 32 against the Respondent (the principal matter). The Applicant attached to this form a founding affidavit together with investigation report.
12. On or about 8 June 2017, the Respondent served its answering affidavit upon the Applicant. The affidavit was served within the
- time period prescribed by the regulations of the Tribunal.
13. In consequence to the Respondent's answering affidavit, the applicant, in terms of the Tribunal Rules was due to deliver its
- replying affidavit on or before 23 June 2017.
14. The applicant has not delivered its replying affidavit, and the Respondent's answering affidavit raises new issues and the facts

which the applicant is obliged to respond to.

APPLICABLE SECTIONS OF THE ACT AND CASE LAW

15. Rule 34 (1) [2]states that a "A party may apply to the Tribunal in FormTlr.34 for an order to:
 - (a) Condone late filing of the document or application;
 - (b) extend or reduce the time allowed for filing or serving; and
 - (c) condone any other departure from the rules or procedure.
16. Rule 34 (2) states that "The Tribunal may grant the order on good cause shown"
17. Rule 13 (1) states that "Any person required by these Rules to be notified of an application or referral to the Tribunal may oppose the application or referral by serving an answering affidavit on:
 - (a) the Applicant, and
 - (b) every other person on whom the application was served
18. Rule 13 (2) "An answering affidavit to an application or referral other than an application for interim relief must be served on the parties and filed with the Registrar within 15 business days of the date of the application".
19. To condone means to "accept or forgive an offence or wrongdoing". The word stems from the Latin term condonare, which means to "refrain from punishing"[3] It can also be defined to mean "overlook or forgive (wrong doing)".[4]
20. In the Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others[5]. It was held that the standard of considering an application of this nature is the interests of justice.
21. Whether it is the interest of justice to grant condonation depends on the facts and circumstances of each case. It requires the exercise of discretion on the objective conspectus of all the facts. Factors that are relevant include but not limited to:
 - (a) the nature and relief sought,
 - (b) the extent and cause of the delay,
 - (c) the effect of the delay on the administration of justice and other litigants;
 - (d) the reasonableness of the explanation for the delay,
 - (e) the importance of the issue to be raised in the intended appeal; and
 - (f) the prospects of success.[6]
22. In Melane v Santam Insurance Company Limited[7]it was held that

"The approach is that the Court has discretion, to be exercised judicially upon a consideration of all the facts, and in essence it is a matter of fairness to both sides. Among the facts usually relevant are the degrees of lateness, the explanation therefore, the prospects of success and the importance of the case.

These facts are inter-related: they are not individually decisive. What is needed is an objective conspectus of all the facts. A slight delay and good explanation may help to compensate for prospects of success which are not strong. The importance of the issue and strong prospects of success may tend to compensate for long delay".

23. From the dictum in *Melane* it was held that these factors are interrelated and should not be considered separately.

CONCLUSION

24. In evaluating the merits of this application the Tribunal considered the following:

24.1 that the application for condonation is not opposed by the Respondent.

24.2 that the Respondent will not suffer prejudice if such condonation is granted

24.3 that the Applicant has approached the Respondent for filing this application in which the Respondent was advised that the Applicant is in the process of finalizing its Replying affidavit. The Respondent was humbly requested to grant the applicant an indulgence until 7th of July to file its Replying Affidavit.

24.4 On or about 7 July 2017 the Respondent responded and advised that they consent to take delivery of the Applicant's Replying Affidavit and requested that the applicant direct the Respondent to the Tribunal Regulations in terms of which the Respondent can condone late filing.

ORDER

25. Accordingly, for the reasons setout above, the Tribunal makes the following ruling:-

25.1 Condonation is hereby granted for the Applicant to file its Replying Affidavit.

25.2 No order is made as to costs.

Dated on this 9th day of November 2017

[SIGNED]

X May

PRESIDING MEMBER

- [1] Regulations for Matters Relating to the Functions of the Tribunal and Rules for the Conduct of Matters before the National Consumer Tribunal, 2007
 - [2] Regulations for matter Relating to the Functions of the Tribunal for Conduct of Matters before the Tribunal. 2007
 - [3] Oxford English Dictionary, Second Edition page 151
 - [4] Collins English Dictionary and Thesaurus, Fourth Edition 2011 , at page 170
 - [5] 2003
 - (11) BCLR 1212 (CC) at para [11]
 - [6] Van Wyk v Unitas Hospital and others 2008(4) para 20 as applied in Camagu v Lupondwana Case No 328/2008 HC Bhisho
 - [7] 1962(4) SA-531(A) at 532 C-F
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