

SOUTH AFRICA / JUDGMENT

National Credit Regulator v PCL Trust t/a PCL Cash Loans-Trichardt (NCRCP1520) (NCT/103940/2018/57(1)) [2019] ZANCT 143 (7 August 2019)

[2019] ZANCT 143

COURT

National Consumer Tribunal

BEFORE

B Dumisa, K Moodaliyar, L Best

CASE / FILE NUMBER

NCT/103940/2018/57(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/103940/2018/57(1) Rule 15

In the matter between:

NATIONAL CREDIT REGULATOR

APPLICANT

and

PCL TRUST t/a PCL CASH LOANS – LOUIS TRICHARDT RESPONDENT

(NCRCP1520)

Coram:

Prof B Dumisa - Presiding Tribunal Member

Prof K Moodaliyar - Tribunal Member

Dr L Best -

Tribunal Member

Date of Hearing - 7 August 2019

RULE 15 JUDGMENT AND ORDER

APPLICANT

1. The Applicant is the NATIONAL CREDIT REGULATOR (the Applicant), a juristic person established by Section 12 of the National Credit Act, 2005 (the Act) with its physical address at 127 15th Road, Randjiespark, Midrand, Johannesburg, Gauteng.
2. The Applicant was represented by Ms Leanne Schwartz, the Applicant's Legal Advisor responsible for Investigations and Enforcement.

RESPONDENT

3. The Respondent is PCL TRUST t/a PCL CASH LOANS – LOUIS TRICHARDT (Registration Number IT 5627/07), a private company duly registered as a credit provider, registered as from the 10th of September 2007 under registration number NCRCP1520 situated at 28 Songozwi Street, Louis Trichardt.
4. The representative of the Trust was in attendance at the Tribunal hearing, BUT did not enter himself on record, hence he was not

regarded as officially in attendance, simply because they did not oppose the Rule 15 application, though they have entered their

opposition to the main application for the deregistration.

APPLICATION TYPE

5. This is an application in terms of Rule 15 in terms of the Regulations of the National Consumer Tribunal, which reads thus:

“15 Amendment of documents

- (1) An Applicant or Respondent may at any time prior to the conclusion of the hearing of the matter, apply by way of Form T1.r15 for an order authorising an amendment of the application of the application or response.
 - (2) A party affected by an amendment may respond within a time allowed by the Tribunal”
6. The Applicant lodged a fully compliant Rule 15 application, on the 4th of June 2019.
 7. The Applicant's application was accompanied by the Applicant's Founding Affidavit in support of the application in terms of Rule 15, duly signed by Anne-Carien Du Plooy, the Applicant's Acting Manager responsible for Investigations and Enforcement, on the 3rd of June 2019.

BACKGROUND

8. The Applicant lodged an application (on the main matter), dated the 28th of March 2018, for the deregistration of the Respondent, on various grounds of alleged breaches of the Act, which the Applicant concluded that those breaches constituted prohibited conduct.

9. This Application, on the main matter, listed PCL Trust as the Respondent, as cited above.
10. The Applicant's application, on the main matter, was accompanied by the Applicant's Founding Affidavit, duly signed by Jacqueline Peters, the Applicant's Manageress in the Investigations and Enforcement Department, on the 27th of March 2018. This Founding Affidavit clearly listed all the alleged breaches of the Act by the Respondent.
11. The first hearing set down for the 3rd of July 2018 could not proceed on a default basis, as the Respondent had not responded to all the correspondence as served. The Tribunal ordered the Applicant to also serve the application on the verified physical address of the Respondent no later than 13 July 2018.
12. The matter was again set down for a hearing on the 21st of September 2018; but was subsequently removed from the roll on the 20th September 2018 at the behest of the Applicant, and the Respondent consented to the postponement.
13. The matter was set down for the third time for a hearing on the 26th of November 2018.
14. On the 23rd of November 2018 the Respondent, through their attorneys Barnard Incorporated, lodged an application for an order, in terms of Rule 34, allowing them the late filing of an answering affidavit. As part of their motivations for the late filing of their answering

affidavit, they stated:

14.1 They would be opposing the main application on grounds of a "Non-joinder, misjoinder and improper citation", arguing that the husband (Leon Antonius Du Plessis) and wife (Eulien Du Plessis) who are trustees must be cited as the Respondents Nomine Officii; and

14.2 They also argued that they had also been improperly cited on grounds that they are no longer credit providers, as they had sold those credit providing businesses as going concerns to other people.

15 The Applicant, on the main matter, in its Rule 15 Application countered that the Respondent was a registered credit provider at the time of the investigation; but was nonetheless readily prepared to amend its papers to cite the Respondents as argued by the latter.

ANALYSIS

16 The Applicant, in its Rule 15 Application, has addressed some or more of the critical issues raised by the Respondent in its submissions.

CONCLUSION

17 The Tribunal is persuaded that the Applicant has, in its Rule 15 Application, adequately motivated why it was important to amend its papers, primarily in order to remove further factors which may unnecessarily lead to further delays in the finalization of this matter, which has by now been with the Tribunal for a very long time already.

ORDER

18. Accordingly, the Tribunal makes the following order:

18.1 The Applicant's amended citation of the Respondents is granted as follows;

18.2 First Respondent is LEON ANTONIUS DU PLESSIS Nomine Officii; and

18.3 Second Respondent is EULIEN DU PLESSIS Nomine Officii

19. The Applicant must re-serve the Respondents the amended papers, not just indicating the proper citation of parties but also encompassing all the other relevant changes occasioned by the changes to the identities of the parties, wherever necessary.

20. All the other necessary processes that follow, as per Tribunal Rules, will strictly apply.

21. There is no order as to costs.

Dated on this the 19th August of 2019.

(signed)

Prof B Dumisa

Presiding Tribunal Member

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

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