

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Xue Cheng (Pty) Ltd Trading as Golden Sun Cash Loans (NCT/266895/2023/140(1))

[2025] ZANCT 17 (29 April 2025)

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COURT

National Consumer Tribunal

BEFORE

A Potwana

CASE / FILE NUMBER

NCT/266895/2023/140(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

LOCATED IN CENTURION

Case Number: NCT/266895/2023/140(1)

In the matter between: NATIONAL CREDIT REGULATOR APPLICANT and XUE CHENG (PTY) LTD
TRADING AS GOLDEN SUN CASH LOANS RESPONDENT

Coram:

Dr A Potwana - Presiding Tribunal member

CONSENT ORDER RULING

THE APPLICANT

1. The applicant is the National Credit Regulator, a juristic person established under section 12 of the National Credit Act, 2005 (NCA), with its physical address at 127 15th Road, Randjespark, Midrand, Johannesburg, Gauteng.

THE RESPONDENT

2. The respondent is Xue Cheng (Pty) Ltd trading as Golden Sun Cash Loans, a private company and registered credit provider.

APPLICATION TYPE AND JURISDICTION

3. The applicant has filed a settlement agreement with the respondent under section 138(1) of the NCA.

4. Section 27(a) of the NCA empowers the Tribunal to adjudicate this application.

BACKGROUND

5. On 3 April 2023, the applicant filed an application against the respondent in terms of section 140(1) of the NCA with the Registrar of the Tribunal (Registrar). The application documents were served on the respondent via registered mail. The applicant's case is stated in its founding affidavit. The deponent is the applicant's Manageress: Investigations and Enforcement Department, Ms Leanne Schwartz (Ms Schwartz). According to Ms Schwartz, the respondent has been registered as a credit provider with the applicant since 28 October 2019 under registration number NCRCP12798. The applicant initiated an investigation of the respondent after a scouting exercise conducted by the applicant's employees between 24 and 28 October 2022.
6. In its referral papers, the applicant alleged that the respondent repeatedly contravened the following sections and regulations of the NCA:
 - 6.1. section 52(5)(c) read with General Condition 2 of its conditions of registration;
 - 6.2. section 81(2)(a) and regulation 23A;
 - 6.3. section 80(1)(a)(ii) read with regulation 23A(12)(b) and 23A(13);
 - 6.4. section 81(2)(a)(iii) read with regulation 23A(3) and 23A(12)(c);
 - 6.5. regulation 23A(9) and 23A(10);
 - 6.6. regulation 23A(8) and 23A(12)(a);
 - 6.7. section 52(5)(e) and section 170 read with regulation 55(1)(b)(vi);
 - 6.8. section 81(3) read with section 80(1)(a);
 - 6.9. section 100(1)(b) and section 101(1)(c)(iii) read with regulation 44;
 - 6.10. section 100(1)(b) and section 101(1)(b) read with regulation 42(2) and 43(3); and
 - 6.11. section 52(5)(c), (d), and (f) read with General Condition 3, regulation 62(1)(b) and (c), and regulations 64(2) and 66.
7. The applicant sought the following orders against the respondent:
 - 7.1. declaring the conduct of the respondent in contravention of the sections of the NCA listed above as prohibited conduct in terms of section 150(a) of the NCA;
 - 7.2. declaring that the respondent had, by its conduct disclosed above, acted with a disregard for consumer rights generally;
 - 7.3. declaring the agreements annexed to the investigation report marked D2, D3, D5, D6, D8 and D10 to have been granted recklessly;

7.4. ordering the respondent to refund the cost of credit in respect of the agreements recklessly granted;

7.5. ordering the respondent to refund the cost of credit in respect of agreements recklessly extended and marked as annexures D2, D3, D5, D6, D8 and D10; and

7.6. ordering the respondent to refund the overcharged initiation fee and service fee to consumers identified in annexures D1 to D10 within 10 business days of the issuing of the judgment;

7.7. interdicting the respondent from engaging in prohibited conduct in future;

7.8. interdicting the respondent from collecting on any reckless credit agreement;

7.9. ordering the respondent to:

7.9.1. within 30 days, appoint an independent auditor at its own cost to determine and identify all credit agreements extended within the past three years preceding the date of the judgment and from the date of inception, whichever is the shortest, where loans were extended without proper affordability assessments. All such loans are to be referred to the applicant;

7.9.2. the independent auditor must identify all agreements extended in the past three years where the Respondent charged an initiation fee and service fee in excess of the prescribed maximum. Within 30 days after identifying the agreements and the overcharged amounts, the respondent must refund all affected consumers;

7.9.3. The audit report and a written report by the respondent must be concluded and presented to the Tribunal within 90 days of the judgment being issued;

7.10. the imposition of an administrative fine on the respondent in the amount of 10% of its annual turnover or 1 million Rand, whichever is greater;

7.11. any other appropriate order to give effect to consumers' rights in terms of section 150(j) of the NCA; and

7.12. granting the applicant such further or alternative relief as the Tribunal might consider appropriate to give effect to consumers' rights in terms of section 15(i) of the NCA.

8. The respondent filed an answering affidavit opposing the application.

APPLICATION FOR A CONSENT ORDER

9. On 13 March 2025, the applicant filed an application for a consent order in terms of section 138 of the NCA and a copy of a signed settlement agreement. The "Notice of Application to the National Consumer Tribunal for a Consent Order in terms of Section 138 of the National Credit Act, 2005" and the settlement agreement were signed by the applicant's Manager: Investigations and Enforcement Department, Tebogo Ntsimane. Xue Cheng signed the settlement agreement on behalf of the respondent. Both signatories confirmed that they were duly authorised to negotiate and sign the settlement agreement on behalf of their

principals.

THE LAW

10. Section 138 (1)(b) of the NCA states, “If a matter has been investigated by the National Credit Regulator, and the National Credit Regulator and the respondent agree to the appropriate terms of an appropriate order, the Tribunal or a court, without hearing any evidence, may confirm that resolution or agreement as a consent order.”

ANALYSIS OF THE EVIDENCE

11. Among others, in the settlement agreement, the parties agree as follows:

11.1. The respondent accepts liability and admits that it contravened the following sections and regulations of the NCA:

11.1.1. section 80(1)(a)(ii) read with regulation 23A(12)(b) and 23A(13);

11.1.2. section 81(2)(a)(iii) read with regulation 23A(3) and 23A(12)(c);

11.1.3. regulation 23A(9) and 23A(10);

11.1.4. regulation 23A(8) and 23A(12)(a);

11.1.5. section 81(3) read with section 80(1);

11.1.6. section 100(1)(b) and section 101(1)(c)(iii) read with regulation 44;

11.1.7. section 100(1)(b) and section 101(1)(b) read with regulation 42(2) and 43(3);

11.1.8. section 52(5)(c), (d), and (f) read with General Condition 3, regulation 62(1)(b) and (c), and regulations 64(2) and 66; and

11.1.9. section 52(5)(e) read with section 170, regulation 55(1)(b) and regulations 56.

11.2. The respondent admits that its conduct constitutes prohibited conduct as defined in the NCA.

11.3. The respondent concedes that the agreements annexed to the investigation report were granted recklessly.

11.4. The respondent agrees to pay, in instalments, an administrative fine of R50,000.00 in two instalments to the National Revenue Fund within six months of the signature of the settlement agreement.

CONCLUSION

12. In *Eke v Parsons*,^[1] Madlanga J wrote, “The effect of a settlement order is to change the status of the rights and obligations between the parties. Save for litigation that may be consequent upon the nature of the particular order, the order brings finality to the lis between the parties; the lis becomes *res judicata* (literally, “a matter judged”). It changes the terms of a settlement agreement to an enforceable court order.” In the present matter, the application for a consent order is competent. It brings finality to the matter the applicant referred to the Tribunal. Accordingly, the settlement agreement entered into by the parties may be confirmed as a consent order in terms of section 138 of the NCA.

ORDER

13. The Tribunal orders that:

13.1. The settlement agreement between the applicant and the respondent annexed hereto and marked “Annex A to National Credit Regulator v Xue Cheng (Pty) Ltd trading as Golden Sun Cash Loans (CIPC Registration Number: 2019/426165/07), NCT/266895/2023/140(1), Settlement Agreement” is hereby confirmed as an order of the Tribunal.

13.2. No order is made as to costs.

Thus, done and dated on 29 April 2025.

Dr Andisa Potwana

Presiding Tribunal Member

^[1] [2015] ZACC 30 at para 31.

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Prepared on 8 October 2026 · Esheria