

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Triple Advanced Investments 40 (Pty) Ltd (35431/2015/140(1)) [2017] ZANCT 89 (10 July 2017)

[2017] ZANCT 89

COURT

National Consumer Tribunal

CASE / FILE NUMBER

35431/2015/140(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD AT CENTURION

Case number: 35431/2015/140(1)

In the matter between:

THE NATIONAL CREDIT REGULATOR

APPLICANT

and

TRIPLE ADVANCED INVESTMENT 40 (PTY) LTD

RESPONDENT

SETTLEMENT AGREEMENT

WHEREAS:

1. The National Credit Regulator ("the Applicant") has instituted proceedings in the National Consumer Tribunal held at

Centurion against Triple Advanced Investment 40 (Pty) Ltd ("the Respondent") under case number NCT/35431/2015/140(1).

2. The basis of the Applicant's referral is that:

2.1 the Respondent directly or indirectly, requires or induces or causes consumers to sign a document titled "CONSENT TO JUDGEMENT IN TERMS OF SECTION 58 AND CONSENT TO AN EMOLUMENT ATTACHMENT ORDER IN TERMS OF SECTION 65J OF THE MAGISTRATE'S COURT ACT, 32 OF 1944."

2.2 the consent constitutes a credit agreement as envisaged in section 8(4)(f) of the Act of the Act, accordingly the Respondent has included an unlawful provision in a credit agreement thus contravening Section 90(1) of the Act read with Section 90(2)(k)(vi)(bb) of the Act.

2.3 in the alternative, the Respondent directly or indirectly, required or induced consumers to enter into a supplementary agreement wherein consumers consents to the jurisdiction of a Court which is situated outside the area of jurisdiction of a court having concurrent jurisdiction and in which the consumer does not reside or work or where the goods (the subject matter of the credit agreement) are ordinarily kept thus contravening Section 91(a) read with Section 90(2)(k)(vi)(bb) of the Act.

3. An order was sought in the following terms:-

- a) Declaring the Respondent to be in repeated contraventions of the following Sections of the National Credit Act, 34 of 2005 ("the Act");
 - i. Contravention of Section 90(1) read with Section 90(2)(k)(vi)(bb) of the Act; or
 - ii. Contravention of Section 91(a) read with Section 90(2)(k)(vi)(bb).
- b. Declaring the Respondent's contraventions of the above provisions of the Act and conditions of registration, prohibited conduct.
- c. Ordering the Respondent to provide the Applicant with an audit report within 90 days of the order, compiled by an independent auditor at the Respondent's expense, detailing:-
 - i. All consumers where the Respondent has obtained judgments and subsequent emolument attachment orders on the strength of the "Consent"; and
 - ii. The amounts collected from each consumer's salary through the emolument attachment orders that were issued as a consequence of judgments obtained on the strength of the "Consent".
- d. Interdicting the Respondent or its successor in title or its assignee from collecting any payments from consumers' salaries through the emolument attachment orders that were issued as a consequence of judgments obtained on the strength of the "Consent".
- e. Imposing an Administrative fine in the amount of R1 million or 10% of the Respondent's annual turnover.
- f. In terms of section 150(i), making any other appropriate order required to give effect to the consumers' rights in terms of the Act.

NOW THE PARTIES AGREE AS FOLLOWS:

WHEREAS, the parties are now desirous of settling this matter in the spirit of mutual co-operation and understanding as well as engaging with

each other in

the future on an amicable and cooperative basis.

NOW THEREFORE, the parties record the terms and conditions of settlement as follows:

1. The parties agree that this settlement agreement be made an order of the National Consumer Tribunal.
2. That the Applicant has contravened Section 90(2)(k)(vi)(bb) and that such contravention is declared prohibited conduct.
3. Within 60 days from the date of this settlement agreement:
 - a. The Respondent will provide the Applicant with a report, under oath, detailing all consumers where the Respondent has obtained judgments and subsequent emolument attachment orders on the strength of the "Consent".
 - b. The Respondent will provide to the Applicant any and all information relating to the sale of the Respondent's loan book in regard to the consumers listed in the aforesaid report.
 - c. The Respondent will provide written confirmation that the Respondent hasn't enforced on the Emolument Attachment Orders since 2013.
4. The Respondent undertakes that they will not proceed with the practice of obtaining consents to jurisdiction which is situated outside the area of jurisdiction of a court having concurrent jurisdiction and in which the consumer does not reside or work or where the goods are kept, in the future.
5. The Respondent confirms that the Respondent is no longer operating as a credit provider nor will the Respondent conduct the business of a credit provider in the future.
6. This settlement will constitute final settlement between the parties of the aforesaid matter at the National Consumer Tribunal.
7. Each party to this settlement agreement agrees to settle their own legal costs incurred in this matter and no further claims will be made in this regard.

SIGNED at PRETORIA ON 10th JULY 2017

TRIPLE ADVANCED INVESTMENT 40 (PTY) LTD

For and behalf of the Respondent

SIGNED at PRETORIA on 10JULY2017.

NATIONAL CREDIT REGULATOR

For and on behalf of the Respondent

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/unknown-plaintiff-v-unknown-defendant-national-credit-act-anct-2017>

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