

SOUTH AFRICA / JUDGMENT

Van Staden v Experian (Pty) Ltd and Another (NCT/226905/2022/141(1)(b)) [2022] ZANCT 66 (5 December 2022)

[2022] ZANCT 66

COURT

National Consumer Tribunal

BEFORE

CJ Ntsoane, A Potwana, N Maseti

CASE / FILE NUMBER

NCT/226905/2022/141(1)(b)

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IN
THE NATIONAL CONSUMER TRIBUNAL HELD IN CENTURION
Case
number: NCT/226905/2022/141(1)(b)
In

the matter between:

CORNELIS
HENDRICK VAN STADEN
APPLICANT
And
EXPERIAN (PTY) LTD
1ST RESPONDENT
FIRST NATIONAL BANK (PTY)
LTD
2ND RESPONDENT

Coram: Mr
CJ Ntsoane
- Presiding Tribunal Member
Mr
A Potwana
- Tribunal Member
Ms
N Maseti
- Tribunal Member
Date
of Hearing
- 16 November 2022
Date
of Judgment -
05 December 2022

JUDGMENT

AND REASONS

APPLICANT

1. The Applicant in this matter is Cornelis Hendrick Van Staden, an adult male consumer (“the Applicant”), who referred a complaint to the National Credit Regulator (“the NCR”) and received a notice of non-referral from the NCR.

RESPONDENTS

2. The First Respondent is Experian (Pty) Ltd, a credit bureau registered in terms of the company laws of the Republic of South Africa, conducting its business at 35 Ballyclare Drive, Sandton, Johannesburg, Gauteng (“Experian”).
3. The Second Respondent is First National Bank (Pty) Ltd, a credit provider registered with the NCR (“FNB”).

HEARING OF THE MATTER

4. The matter was set down for hearing on 16 November 2022 in chambers. No attendance was required. All parties served and filed their necessary affidavits together with annexures.

APPLICATION TYPE

5. This application was referred to the Tribunal in terms of Section 141 (1)
(b) of the National Credit Act, 2005 (“the NCA”). Section 141 (1) (b) provides that if the NCR issues a notice of non-referral in response to a complaint other than a complaint concerning section 61 or an offence in terms of the NCA, the complainant concerned may refer the matter directly to the Tribunal, with leave of the Tribunal.

6. Before the Tribunal can hear the matter, it must first consider whether leave should be granted.

BACKGROUND

7. The Applicant alleges that his name has been incorrectly and inaccurately listed on an FNB home loan account by Experian since 2006 and Experian refuses to remove his listing even if credible evidence was requested on several occasions as required by the NCA.
8. The Applicant submits that the funds were transferred into his bank account, but he does not bank with FNB.
9. According to him, he has never applied for a loan or a joint loan with FNB.
10. As a result of the listing, when the Applicant applies for a loan, it gets rejected due to the arrears of the home loan flagged by Experian.
11. The Applicant has approached FNB on many occasions in vain to resolve the matter but FNB continues to violate his rights as enriched in the NCA.
12. Therefore, the Applicant requests Experian to remove the listing of his name. Both Experian and FNB dispute the above.

APPLICATION FOR LEAVE

13. Section 141 (1) of the NCA provides that the Applicant may only refer the matter directly to the Tribunal with leave of the Tribunal.
14. Previously, the Tribunal held a formal hearing on leave to refer with all the parties present. In the matter of *Lewis Stores (Pty Ltd v Summit Financial Partners (Pty) Ltd and others*,^[1] the court provided helpful guidance to the Tribunal in decisions regarding leave to refer. It held that a formal hearing on leave to refer was unnecessary, there was no test to be applied, and the decision to consider leave could not be appealed. The court held:

“[15] As the NCA provides for an expeditious informal and cost-effective complaints procedure. Section 141 (1) (b) confers on the Tribunal a wide, largely unfettered discretion to permit a direct referral. The NCA does not require a formal application to be made, and it is not necessary for purposes of the present appeal, nor is it desirable to circumscribe the factors to which the Tribunal should have regard. There is no test to be applied in deciding whether to grant a direct referral to it in respect of a complaint. The purpose of the provision is simply for the Tribunal to consider the complaint afresh, with the benefit of any findings by the Regulator, and to decide whether it deserves its attention.”

Circumstances that may influence its decision may include the prospects of success, the importance of the matter, the allocation of resources, the complainant's interest in the relief sought, and the fact that the Regulator did not consider that it merited a hearing before the Tribunal. The list is not intended to be exhaustive.”

15. The Tribunal will consider the matter as submitted by the Applicant and both Respondents. It must be noted that when the case was referred to the NCR, the Applicant alleged that he does not bank with FNB, that it is not a joint account, and that he has never paid a single instalment on his loan account.
16. The Applicant, in his answering affidavit, acknowledges that he is aware of the FNB home loan account number 3-000-008-670-417, that it is legitimate and up to date, and no payments were missed. He confirms that he is in very good standing with the credit provider, FNB. However, he stated that the said account has nothing to do with

or is unrelated to his FNB home loan account number [...] under dispute.

17. Section 166 of the NCA provides that a complaint may not be referred or made to the Tribunal more than three years after the act or omission occurred. The act that is the cause of the complaint arose in 2007 when the Applicant was reported to Experian. The three-year period ran from 2007 to 2010.
18. The application filed his complaint with the Tribunal on 5 May 2022, more than twelve years after the due date. The NCA does not provide an extension of the time based on when the consumer

discovered the act or omission.

19. The office's High Court confirmed that the Tribunal has no power or discretion to interrupt or extend the time bar.^[2]

CONCLUSION

20. The Applicant is, therefore, time-barred from referring the matter to the Tribunal.

ORDER

21. Accordingly, the Tribunal makes the following order:

21.1 The Application for leave to refer the matter directly to the Tribunal is refused; and

21.2 There is no costs order.

DATED AT CENTURION ON 22 DECEMBER 2022

CJ NTSOANE Presiding Member

Members Mr A Potwana and Ms N Maseti concurring.

^[1] Case no 314/2020) [2021] ZASCA 91 (25 June 2021) SAFLII.

[2] FirstRand Bank Ltd v A Ludick A277/2019 High Court of South Africa, Gauteng, Pretoria Division, 18 June 2020 (unreported).

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