



## CONSTITUTIONAL COURT OF SOUTH AFRICA

### **Chevron SA (Pty) Ltd v Wilson t/a Wilson's Transport and Others**

**CCT 88/14**

**Date of hearing: 24 March 2015**

**Date of judgment: 5 June 2015**

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### **MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

Today the Constitutional Court handed down a judgment confirming a declaration of constitutional invalidity of a provision of the National Credit Act (NCA) concerning a creditor's right not to be arbitrarily deprived of its property.

Mr Wilson had, since 1997, purchased petroleum products on credit from Chevron SA (Pty) Ltd in terms of a credit agreement. In 2010, Chevron initiated proceedings in the Magistrates' Court claiming that Mr Wilson had underpaid amounts owed by approximately R3 million. It became apparent during the proceedings that Chevron was not registered as a credit provider under the NCA. The parties agreed to have the credit agreement declared void and the proceedings were postponed to give Chevron an opportunity to challenge the constitutional validity of the section of the NCA which required a court to order a full refund of all the payments made under credit agreement, in the event that a credit provider is not registered. Had the proceedings not been postponed, the Magistrate would have been obliged to order that Chevron refund R33 million to Mr Wilson.

In the High Court, Chevron successfully challenged the constitutional validity of the relevant provision of the NCA on the basis that it allowed for arbitrary deprivation of its property. The respondents, the Minister of Trade and Industry and the National Credit Regulator, did not oppose the challenge. The High Court declared the section constitutionally invalid because the obligatory nature of the refund was both substantively and procedurally unfair.

While the High Court proceedings were ongoing, the National Credit Amendment Act (Amendment Act) was passed. This Act amended the NCA by requiring that a court must make a just and equitable order when faced with an unlawful credit agreement, including a declaration that the agreement is void. Although it had been passed, the Amendment Act had not yet come into operation. The High Court, therefore, chose to replicate the Amendment Act's wording in its order to remedy the defect for the time being.

Before this Court, the parties were again in agreement on the constitutional invalidity of the impugned section of the NCA. The parties also agreed that even the potential ability of a creditor to launch an unjustified enrichment claim, should it be ordered to provide a refund in accordance with the impugned section, was not enough to save the offending provision.

Madlanga J, in a unanimous judgment, upheld the High Court's declaration of constitutional invalidity. The judgment found that Chevron's affected right undoubtedly amounts to property. Further, ordering a refund of the amounts paid under the credit agreement would amount to a deprivation of property.

The question then became whether the deprivation was arbitrary. Madlanga J found that the fact that the relevant provisions did not allow for a court to exercise any discretion in whether or not to order the refund meant that the provisions were procedurally unfair, as a court could not take the relevant factors of each case into account. The judgment also found that a creditor's unjustified enrichment claim against the debtor did not alleviate arbitrariness because the claim would not be guaranteed to succeed and, even if successful, may be worthless because of the particular debtor's financial circumstances.

Finally, Madlanga J concluded that the arbitrary deprivation of Chevron's property was not reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. This was primarily because the Legislature could easily have used less restrictive means to deal with unlawful credit agreements.