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IN THE NATIONAL CONSUMER TRIBUNAL
HELD AT CENTURION

Case number: NCT/17894/2014/148(1)(P)

In the matter between:

HANS REINHARD PETTENBURGER-PERWALD

APPELLANT

OBO

BENNIE MARTINUS BLIGNAUT

1st Consumer

ID NUMBER: [.....]

LETIA JO-ANNA BLIGNAUT

2nd Consumer

ID NUMBER: [.....]

and

DIRECT AXIS (SA) (PTY) LIMITED

FIRST RESPONDENT

SA HOME LOANS (PTY) LIMITED

SECOND RESPONDENT

FIRST RAND BANK LIMITED

THIRD RESPONDENT

STANDARD BANK OF SOUTH AFRICA LIMITED

FOURTH RESPONDENT

MASSMART HOLDINGS LIMITED

FIFTH RESPONDENT

RCS CARDS (PTY) LIMITED

SIXTH RESPONDENT

ABSA BANK LIMITED

SEVENTH RESPONDENT

Coram:

Mr F Sibanda – Presiding member

Adv FK Manamela – Member

JUDGMENT AND REASONS

THE PARTIES

1. The Appellant is Mr Hans Reinhard Pettenburger-Perwald a debt counsellor registered in terms of the National Credit Act, No 34 of 2005 (“the NCA”) with registration number NRDC49 (hereinafter referred to as “the Appellant”). The Appellant is acting on behalf of Mr Bennie Martinus Blignaut and Ms Letia Jo-Anna Blignaut, consumers who applied for the restructuring of their debt in terms of the NCA.
2. The first to seventh Respondents are credit providers registered in terms of the NCA.

JURISDICTION

3. The Appellant lodged an appeal against the decision of a single member of the Tribunal in terms of section 148(1) of the NCA, which states that –
“(1) A participant in a hearing before a single member of the Tribunal may appeal a decision by that member to a full panel of the Tribunal”
4. The Tribunal has jurisdiction to hear this matter.

ISSUES TO BE DECIDED

5. The Tribunal must determine whether or not a single member of the Tribunal erred in not granting an order confirming the rearrangement of debt application.

BACKGROUND

6. On 10 June 2014 the Appellant lodged an application with the Tribunal in terms of section 86(8) of the NCA, on behalf of Mr Benni and Ms Letia Blignaut to have a debt re-arrangement agreement made an order of the Tribunal in accordance with section

138(1) of the NCA.

7. The application was considered by a single member, Prof J. Maseko on 23 August 2014. Prof Maseko refused to grant the application for the following reasons:
 - 7.1 *The Application / Draft Consent Order cites the First Credit Provider as Direct Axis (SA) (Pty) Limited, while the acceptance was clearly written for First Rand Bank Limited*
 - 7.2 *The Third Credit Provider is cited in the Application/ Draft Order as First Rand Bank Limited while the acceptance is clearly from First National Bank, a division of First Rand Bank Limited*
 - 7.3 *The Fifth Credit Provider is cited in the Application/ Draft Order as Massmart Holdings Limited, and yet the acceptance letter tendered in the evidence is clearly from MDD.*
8. On 15 September 2014 the Appellant lodged an appeal on behalf of the First and Second Consumers, against the decision of the single member.
9. A Notice of Complete Filing was sent to the parties on 30 September 2014, followed by a Notice of Set Down dated 19 November 2014. The matter was set down for hearing on 10 December 2014.

THE HEARING

10. At the hearing the Consumer was represented by Mr Rynard De Lange ("De Lange") who appeared via Skype video and audio conference. There was no appearance by any of the Respondents or their representatives at the hearing.
11. The Notice of Set Down sent to the parties stated that the Respondents had to respond within 15 days by serving an answering affidavit on the Appellant. The Respondents however failed to do so.
12. Rule 13(5) of the Rules for the Conduct of Matters before the National Consumer

Tribunal (the Rules) ¹provides that:

“Any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit, will be deemed to have been admitted”

13. In the absence of any answering affidavit filed by the Respondent, the Appellant's application and all of the allegations contained therein remain uncontroverted
14. Rule 24(1)(b) further provides that the Presiding member may continue with the proceedings in the absence of the Respondents if the Respondent fails to attend or be represented at the hearing.
15. Rule 24(2) states that the Presiding member must be satisfied that the Respondents were properly notified of the date, time and venue of the proceedings.
16. The Presiding member is satisfied that all the parties were properly notified of the hearing. The Tribunal therefore proceeded to hear the matter.
17. De Lange explained to the Tribunal that Direct Axis (Pty) Ltd, the First Respondent, acts on behalf of First Rand Bank and therefore all correspondence should go through Direct Axis (SA) (Pty) Ltd. Furthermore the acceptance letter from the Credit Provider clearly states that it is from Direct Axis (SA) (Pty) Ltd.
18. Further that, First National Bank is part of First Rand Bank Limited and are both registered under NCRCP20. For that reason, they are one entity and the same credit provider
19. Appellant further argues that MDD refers to Massmart Discounters, which is in fact Massmart Holdings Limited. This acronym, he alleges, is commonly used as such and no consumers have ever been prejudiced by the usage thereof. According to the Appellant, for all intents and purposes, MDD refers to Massmart Holdings Limited.

¹ GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007

20. The Appellant contends that the acceptance letters were in the original application and the Tribunal is asked to take this assertion into consideration.

CONSIDERATION OF THE EVIDENCE

21. The Tribunal considered the oral submissions by the Appellant and the documents filed of record.
22. Page 10 of the original application for debt re-arrangement contains a letter of acceptance on a Direct Axis letterhead. The address on the top right hand corner of the letter cites FirstRand Bank Limited but then indicates that Direct Axis is an agent of the Credit Provider. The letter indicates at the bottom after the signature that it is from Direct Axis, on behalf of FirstRand Bank. Furthermore, page 34 of the original application for debt re-arrangement states that Direct Axis is a subsidiary of FirstRand Bank Limited with registration number NCRCP20.
23. The Appellant claims that Massmart Holdings Limited is the same company as MDD and that the Tribunal should accept this assertion. However, nothing in the bundle of documents before the Tribunal suggests that the two are the same company or a subsidiary of the other. In fact the only place where MDD is cited is in the draft consent order dated 10 June 2014, page 8 thereof. Yet, on page 9 of the draft order, Massmart Holdings Limited is cited. This is confusing.
24. It is not for the Presiding member adjudicating a consent application to decipher or second-guess who is who. The application must be clear, and the parties cited correctly.
25. The Presiding member, in the circumstances, dispensed an appropriate ruling.

CONCLUSION

26. The Tribunal is satisfied that Direct Axis is an agent and a subsidiary of FirstRand Bank Limited. Citing either Direct Axis (Pty) Ltd or FirstRand Bank as the credit

provider does not change the material facts of the case nor does it prejudice any of the parties. The problem with this application is that the other part of the application regarding MDD vis-à-vis Massmart, affects the entire initial application for debt rearrangement, based on the reasoning in paragraphs 23 to 25 above.

ORDER

27. Accordingly, the Tribunal makes the following order:

- 27.1 The appeal against the refusal by a single member to grant a debt re-arrangement order is dismissed
- 27.2 The Debt Counselor is directed to resubmit a new application as soon as possible.
- 27.3 There is no order as to costs.

DATED THIS 3rd DAY OF March 2015

[signed]

Adv FK Manamela (Member)

Mr F Sibanda (Presiding Member) and Ms P Beck (Member), concurring.