

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD AT CENTURION**

Case No: NCT/29051/2015/149(1) (NCA)

In the matter between:

**Catherina Eckard (nee Brice)
Represented by Renee Marais**

APPLICANT

and

Standard Bank of South Africa

RESPONDENT

Coram:

Ms H Devraj	-	Presiding member
Ms D Terblanche	-	Member
Adv J Simpson	-	Member

Date of hearing: 23 October 2015

JUDGMENT AND REASONS

1. The Applicant is Mrs Catherina Eckard (nee Brice), hereinafter referred to as ("the Applicant") who mandated Renee Marais ("Marais") to act on her behalf in this matter by way of power of attorney dated 3 July 2015. Marais is a debt counsellor registered as such with the National Credit Regulator ("the Regulator") under registration number NCRDC1780. The Applicant was represented by Marais at the hearing held on 23 October 2015.
2. The Respondent is Standard Bank of South Africa, hereinafter referred to as ("The Respondent"). The Respondent is a credit provider registered with the Regulator under registration number

NCRCP15. Adv. Jawaid Babamia briefed by Hogan Lovells incorporated as Routledge Modise Inc. represented the Respondent at the hearing.

3. The Applicant brought this application in terms of section 149(1) of the National Credit Act, Act 34 of 2005 ("the Act" or "the NCA") to the National Consumer Tribunal ("the Tribunal" or "the NCT") for interim relief.

4. Section 149(1) of the NCA allows for interim relief applications by complainants. It provides that –

"At any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the Tribunal for an interim order in respect of that complaint, and the Tribunal may grant such an order if-

(a) there is evidence that the allegations may be true; and

(b) an interim order is reasonably necessary to-

(i) prevent serious, irreparable damage to that person; or

(ii) prevent the purposes of this Act from being frustrated;

(c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and

(d) the balance of convenience favours the granting of the order."

5. The Applicant alleged that the purposes of the Act may be frustrated in the following way:

"The consumer is penalised, discriminated against, the terms and conditions of her original contract will be amended to ther (sic) detriment and the bank is pursuing legal action against her in contravention of section 66(1) of the National Credit Act 34 of 2005 and possibly in contravention of section 11 of the Banking Act in acting as an agent for a subsidiary who is Blue Granite No 2 NCRCP1480."

THE RESPONDENT'S POINTS IN LIMINE

6. The Respondent raised three points *in limine* at the outset of the hearing. The Tribunal decided to determine and pronounce on the points *in limine* before engaging in the merits of the application due to the serious nature of those points going to the heart of the Respondent's ability to answer to the case placed before the Tribunal

7. The Respondent submitted *in limine* that the Applicant –
 - 7.1 Is not a complainant as defined in the NCA and therefore not entitled to bring an application for interim relief to the Tribunal. The Respondent submitted that the application does not contain details and the status of the existing complaint. In this regard the Respondent referred to annexures MR3 and MR4 to its answering affidavit evidencing previous complaints filed by the Applicant with the NCR and closed by the NCR and pointed out that there is no evidence before the Tribunal that the Applicant lodged a further complaint with the Regulator;

 - 7.2 Did not set out the relief she seeks in her application thus rendering the Respondent unable to answer to the relief sought;

 - 7.3 Did not meet the requirements of section 149 in that the Applicant has not put forward evidence that -
 - the allegations may be true;
 - an interim order is reasonably necessary to –
 - prevent serious, irreparable damage to the person; or
 - prevent the purposes of the Act from being frustrated
 - ...
 - the balance of convenience favours the granting of the order

- 8 The effect of the first two objections is that, according to the Respondent, the application is not

properly before the Tribunal for it to rule on it. In respect of the third ground, the Respondent submitted that in order for the Tribunal to grant an interim order, the Applicant has to meet the requirements of section 149(1), which requirements the Applicant failed to meet in each and every respect.

- 9 Furthermore, according to the Respondent there is a general lack of context to the application, bald and wide-ranging allegations and lack of evidence as required by the NCA. Amongst others, the Respondent submitted that the Applicant did not provide any information or evidence about the alleged discrimination and / or to what effect and extent the terms and conditions of the original contract were changed and / or amended to the Applicant's detriment.

THE APPLICANT'S RESPONSE TO THE RESPONDENT'S POINTS IN LIMINE

- 10 In respect of the -

- 10.1 First point *in limine* raised by the Respondent, the Applicant submitted that she filed her complaint with the Regulator on 2 August 2015. The Applicant did not put forward proof of the filing of the complaint and the status of the complaint, stating that she did not have the information and evidence with her at the hearing;
- 10.2 Second point *in limine*, the Applicant submitted that the relief she seeks is not set out or articulated in her application in the relevant part or at all. At the hearing the Applicant submitted that the relief she wants and seeks is for the Respondent to provide her with correct and accurate Certificates of Balance statements and Consent to a proposed debt re-arrangement specifically with the correct credit provider name and its correct National Credit Regulator Credit Provider registration number; and
- 10.3 Third point *in limine* the Applicant submitted that she had in fact not addressed the issues required to be addressed in terms of section 149(1) of the NCA. The Applicant submitted that her failure to do so is due to not being a lawyer.

- 11 There is no evidence before the Tribunal, beyond the Applicant's verbal submission and a copy of a compliant initiation form, that a complaint was lodged with the Regulator. The Applicant claimed that she has proof that she lodged the complaint but that she did not have it with her at the hearing. Even if the Tribunal had to accept that a complaint was lodged, there is no evidence of this complaint being pursued by the Regulator or that it will eventually be brought before the Tribunal. The Tribunal cannot even consider an interim order unless there is a main complaint that will be brought before the Tribunal.
- 12 Interim relief, as envisaged in Section 149(1) of the NCA, is urgent relief and premised on relief to an Applicant facing imminent prejudice or harm. The Applicant has further not put forward any evidence that she faces imminent prejudice or harm for relief to be granted to her in terms of this section.

ORDER OF THE TRIBUNAL

- 13 The Tribunal accordingly makes the following order:

- 13.1 The relief sought by the Applicant is refused.
13.2 No order is made as to costs

Dated this 26th day of October 2015


[Signed]

Ms D R Terblanche

Member

Mrs H Devraj, Presiding Member and Adv J Simpson, Member concurring

Authorised for issue by the National Consumer Tribunal
Case Number: _____
Date: 2015 / 11 / 26
CCYY / MM / DD
National Consumer Tribunal
Ground Floor, Building B
Lakofield Office Park,
272 West Avenue, Centurion 0157
www.thenct.co.za



national consumer tribunal

