

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

Case number: NCT/36127 /2015/149(1)NCA

In the matter between:

**Solomon, Deborah**

APPLICANT

and

**IEMAS FINANCIAL SERVICES (CO-OPERATIVE) LIMITED**

RESPONDENT

Coram:

Ms D Terblanche \_ Presiding Member

Adv. J Simpson \_ Member

Ms L Best \_ Member

Date of Hearing – 3 May 2016

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**JUDGMENT AND REASONS**

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**APPLICANT**

1. The Applicant in this matter is Deborah Solomon, a major female Debt Counselor registered under registration number NCRDC689, practicing from Cape Town (“the Applicant”). The Applicant brings this application on behalf of, a certain Ms. J Naidoo, a consumer.

**RESPONDENT**

2. The Respondent is **Iemas Financial Services (Co-Operative) Limited**, a credit provider registered under registration number NCRCP1332 and carrying on business from Centurion, Gauteng (“the Respondent”).

## **APPLICATION TYPE AND ORDER SOUGHT**

3. This is an application in terms of section 149(1) of the National Credit Act, Act 34 of 2005, as amended, for an order of interim relief against the Respondent.
4. The interim order sought by the Applicant is coached in the following terms:  
*“Pending the outcome of the reckless and unlawful credit investigation, no legal action may be instituted against my client as the matter in terms of section 86 and regulation 24 will be referred to the Magistrate’s Court.”*

## **BACKGROUND**

5. Applicant’s client, the consumer in this matter, entered into a credit agreement with Respondent on 20 August 2013.
6. On approximately 18 February 2015, Applicant commenced with a debt review process on behalf of the consumer.
7. On 18 March 2015 the Applicant requested credit information in respect of the credit agreement from the Respondent.
8. It is common cause and from the papers before the Tribunal, that this information was provided by the Respondent on 8 April 2015.
9. It appears from the papers filed that, between March 2015 and August 2015, there was no communication between the Applicant and the Respondent in respect of the debt review. Nor have any payments been made in terms of the credit agreement to the Respondent directly or via payroll deduction since end May 2015.
10. The Applicant alleges that she filed a complaint with the National Credit Regulator on approximately 30 October 2015 against the Respondent with regard to reckless lending.

## **THE PROCEEDINGS AT THE HEARING**

11. The matter was set down and heard on 3 May 2016.

12. Applicant represented herself and the Respondent was represented by counsel, briefed by a firm of attorneys.
13. The Tribunal first heard the points *in limine* and then proceeded to hear the main application, reserving its judgment on the points *in limine* to be issued with the judgment on the main matter, as both parties were ready to proceed with the main application.

## **ISSUES TO BE CONSIDERED BY THE TRIBUNAL**

### THE PRELIMINARY ISSUES (*POINTS IN LIMINE*)

#### **Respondent's submissions**

14. At the outset of the hearing Respondent raised two points *in limine* –
  - 14.1 Firstly, in that the complaint lodged with the regulator had not been consented to by the consumer as required in terms of regulation 24(4) of the Regulations to the Act; and
  - 14.2 Secondly, in that the substance of the complaint does not fall squarely within the parameters of the types of complaints and the persons who may lodge those types of complaints in terms of regulation 3(1)(c) for interim relief.

#### **Applicant's responses to the preliminary submissions**

15. Applicant conceded that the consumer did not sign consent to the complaint filed with the Regulator, but that she has authorised and consented to her filing the complaint on her behalf in terms of a power of attorney she provided to her. Applicant stated that she has the power of attorney and would have provided it had it been requested. Over and above the above submission in respect of the consent, Applicant did not substantially address the other matters raised but reiterated the submissions she made in her main application.
16. As the Tribunal also considered the main application, we will not make findings in respect of the points *in limine*.

## THE MAIN APPLICATION

### Applicant's submissions in the main application

17. Applicant submitted that the alleged contraventions relate to reckless credit and contraventions of ...*"sections 3, 66(1)(b)&(d), 86(5)(b), 90(1)& (2)(a)(i) & (g), and 157 of the NCA and amendments"*.
18. The Applicant placed no further allegations, information or any evidence about the alleged contraventions of the sections of the Act above before the Tribunal.
19. Applicant further submitted that the following serious, irreparable damage may result i.e. *"the consumer will likely lose her assets"*.
20. Beyond the statement in para 19 *supra*, Applicant did not place any other or further allegations, information or any evidence before the Tribunal bolstering her allegation of serious and irreparable harm to the consumer.

### Respondents' responses to the submissions in the main application

21. Respondent countered Applicants' submissions by stating his embarrassment and inability to respond to the application due to the lack of information and evidence put forward by the Applicant in her application, save for bald statements and hearsay evidence from the Bar.

## CONSIDERATION OF THE APPLICABLE LAW AND THE TRIBUNAL'S FINDINGS

22. 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.*”

23. As is clear from the above, interim relief, as envisaged in Section 149(1) of the NCA, is urgent relief and premised on relief to an Applicant facing “serious, irreparable damage to the person; or...” resulting from the respondent engaging or having engaged in prohibited conduct in terms of the Act. Read within the context of the Act as whole the Applicant has the burden to show evidence that allegations of prohibited conduct may be true, which burden Applicant did not discharge.
24. The granting of interim relief is not relief that will be granted lightly by the Tribunal. Section 149 affords an Applicant extra-ordinary relief and then only when there are no other relief available to the Applicant to prevent imminent and irreparable harm or damages.
25. The Applicant has not put forward any evidence of allegations of prohibited conduct by the Respondent nor of any “*serious, irreparable damage to the person; or...*” resulting from the respondent engaging in or having engaged in prohibited conduct. Applicant made one bald statement in her application that the consumer’s assets will be sold, and nothing more as the basis for interim relief to be granted to her in terms of this section
26. Accordingly, the Tribunal makes the following order –
- 26.1 The application for interim relief is refused; and
- 26.2 There is no order as to costs.

Dated at CENTURION on this 10<sup>th</sup> day of May 2016

[Signed]

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Ms D Terblanche  
Presiding member

Ms L Best (member) and Adv J Simpson (member) concurring