

IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

CASE NUMBER: NCT/40652/2016/149(1)

DATE: 19 AUGUST 2016

In the matter between:

GEORGE WEBB

APPLICANT

And

XCESLIOR LOANS

RESPONDENT

JUDGMENT

APPLICANT

1. The Applicant in this matter is George Webb, ID number [7.....], who resides at 457 Wouter Malan Street, Silverton Ridge (the Applicant).
2. The Applicant represented himself at the hearing.

RESPONDENT

3. The Respondent is Xcelsior Financial Services (Pty) Ltd with registration number [2.....]. The Respondent is a financial services provider which effectively operates its business as a pawn broker. It accepts fully paid vehicles as security for the loans that are granted to consumers who require financial assistance.
4. The Respondent was represented by JI Van Niekerk at the hearing.

APPLICATION

5. This is an application in terms of Section 149 (1) of the National Credit Act, 2005 (the Act) in which the Applicant, is seeking an interim order in the following terms:

That the first respondent and all other persons having authority in the company or with his authority be directed and or interdicted in terms of an interim order to sell the following vehicle

BMW X5

Registration Number [R.....]

Model 2004

Vin Number [W.....]

ENGINE NUMBER [5.....]

Until the complaint laid at the national credit regulator be heard and properly adjudicated by the relevant department of the credit regulator's office.

BACKGROUND

6. On 2 November 2015 the Applicant entered into an agreement with the Respondent in terms of which he was granted a loan of R45 000. He surrendered his motor vehicle to the Respondent as security for this loan.
7. The term of the loan was for one month and in terms of the agreement and once all other fees and charges were added the Applicant was required to repay to the Respondent the sum of R53 892.00.
8. For various reasons which are not relevant for this judgment, the loan was not repaid as per the agreement. The Applicant did however make periodic payments to the Respondent.
9. The Applicant then approached the National Credit Regulator (NCR) as he was concerned about certain aspects regarding the loan, specifically relating to the initiation fee and the interest charged. He is of the view that these charges were not in accordance with the Act.
10. The Applicant filed this application for interim relief with the Tribunal on 8 March 2016 as he was concerned that the Respondent would sell his motor vehicle on public auction before the NCR had finalised its investigation.
11. Notwithstanding this application for interim relief, and before the matter could be dealt with by the Tribunal, during April 2016 the Applicant's motor vehicle was sold on public auction by the Respondent.
12. The matter was set down for hearing by the Tribunal on 26 June 2016.

APPLICABLE RULES OF THE TRIBUNAL

13. Section 149(1) of the Act reads as follows:

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;
- (d) the balance of convenience favours the granting of the order.

THE HEARING

14. At the hearing it was established that it is common cause that the Applicant's motor vehicle has already been sold on public auction.
15. It is also common cause that the motor vehicle was sold after the Applicant filed the application for interim relief with the Tribunal
16. The Respondent argued that as there was no order preventing it from selling the motor vehicle on public auction it was entitled to do so.

ISSUES TO CONSIDER

17. The Tribunal must consider whether or not it can grant the interim relief which the Applicant has requested.
18. The interim relief which the Applicant is requesting is an order in terms of which the Respondent is prevented from selling his motor vehicle.

CONSIDERATION

19. As stated above, it is common cause that the motor vehicle has already been sold on public auction.
20. This means therefore that the Tribunal is unable to grant the application for interim relief.
21. It is unfortunate that the Respondent sold this motor vehicle despite the fact that the Applicant had applied to the Tribunal for interim relief.
22. It seems that there is nothing in the Act which prevents the Respondent acting as it did and the Tribunal is of the view that this is an issue which should be referred to the legislative committee for consideration when proposed amendments to the Act are being considered.
23. This matter can be compared to another application for interim relief, involving the sale of a house, heard on the same day by the Tribunal where the Respondent indicated that it immediately ceased legal proceedings against the Applicant when it received the application for interim relief. It was of the view that the interim relief application had to be dealt with first before it could proceed (see *Excel Shabangu v First Rand Bank Limited* heard on 26 July 2016).

ORDER

24. For the reasons set out above, the Tribunal is unable to grant the application for interim relief.
25. The Application is refused.
26. There is no order as to costs.

Signed

Prof T Woker

Tribunal Member.

Adv F Manamela : Mr X May

Tribunal Member

Tribunal Member