

IN THE NATIONAL CONSUMER TRIBUNAL
HELD AT CENTURION

Case number: 58731 /2016/114(1) NCA

In the matter between:

Inez Carmen Cooke

Applicant

and

ABSA

Respondent

CORAM:

Adv. J. Simpson (Presiding member)

Ms. D Terblanche (Member)

Adv FK Manamela (Member)

Date of hearing – 10 November 2016

JUDGMENT AND REASONS

THE PARTIES

1. The Applicant in this matter is **Inez Carmen Cooke** (the "Applicant") an adult female consumer represented by Accord Debt Solutions CC.
2. The Respondent is ABSA, a registered company and credit provider carrying on business from 6 Lothbury Street, Auckland Park, Johannesburg.

THE APPLICATION

3. The Applicant brought the application in terms of section 114 of the National Credit Act, Act 34 of 2005, as amended (the NCA).

JURISDICTION

4. This National Consumer Tribunal (the Tribunal) has jurisdiction to hear this matter in terms of section 114 of the NCA. The section provides as follows:

"114. If a statement is not offered or delivered within the time required by this Part, the Tribunal, on application by the consumer, may—
(a) order the credit provider to provide the statement; or
(b) determine the amounts in relation to which the statement was sought."

THE HEARING

5. The application was heard on 10 November 2016.
6. The Applicant was represented by Mr Oltman of Oltman Attorneys, appointed by Accord Debt Solutions CC.
7. The Respondent did not enter an appearance to defend the matter and was not present nor represented at the hearing.
8. The matter accordingly proceeded on a default basis.

BACKGROUND

9. The Applicant has a credit agreement with the Respondent under reference number [8...] which appears to be the Applicant's identity number.

10. The Applicant requested Accord Debt Solutions to assist her with her financial situation. She signed a power of attorney allowing Accord Debt Solutions to request a statement of her account on her behalf from the Respondent. Accord Debt Solutions requested the Respondent to provide statements of the Applicant's account on at least two occasions, which had not been provided up to the date of the hearing.
11. This is therefore a straightforward case of a consumer requesting a statement from a credit provider and the credit provider not providing it, forcing the consumer to approach the National Consumer Tribunal (the Tribunal) for relief in terms of section 114 of the NCA.

CONSIDERATIONS BY THE TRIBUNAL

Default judgment

12. As the Respondent did not oppose the application and was not present at the hearing, this matter had been dealt with on a default judgment basis.
13. Rule 13(2) of the Rules of the Tribunal provides that if a party does not dispute allegations made in an application those allegations may be deemed as admitted.
14. In accordance with Rule 25(3) the Tribunal is satisfied that the Respondent was properly served with the Application and advised of the hearing date.
15. In arriving at a final determination however the Tribunal carefully interrogates the allegations and the evidence put forward by the Applicant to come to a determination whether the Applicant on the balance of probabilities had made out a case, entitling the Applicant to the relief sought.

Applicable law

16. Section 110 of the NCA further finds application in this matter. This section provides as follows:

*"110(1) At the request of a consumer, a credit provider
must deliver without charge to the consumer a statement of all or any of the following—*

- (a) the current balance of the consumer's account;*
 - (b) any amounts credited or debited during a period specified in the request;*
 - (c) any amounts currently overdue and when each such amount became due; and*
 - (d) any amount currently payable and the date it became due.*
- (2) A statement requested in terms of subsection (1) must be delivered—*
 - (a) within 10 business days, if all the requested information relates to a period of one year or less before the request was made; or*
 - (b) within 20 business days, if any of the requested information relates to a period of more than one year before the request was made.*
- (3) A statement under this section may be delivered*
 - (a) orally, in person or by telephone; or*
 - (b) in writing, either to the consumer in person or by sms, mail, fax, email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities, as directed by the consumer when making the request.*
- (4) A credit provider is not required to provide—*
 - (a) a further written statement under this section if it has, within the three months before the request is given, given such a statement to the person requesting it; or*
 - (b) information in a statement under this section more than three years after the account was closed.*
- (5) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligations to a consumer in terms of this section if the Tribunal is satisfied that the consumer's requests are frivolous or vexatious.*
(Date of commencement of s. 110: 1 June, 2007.)"

17. Accord Debt Solutions submitted that they had requested a copy of the credit agreement entered into between the Applicant and the Respondent and statements from the Respondent on more than one occasion namely on 5 April 2016 and again on 26 April 2016, with no success.

18. It is clear that section 110 entitles the consumer to require statements from the Respondent (credit provider) and consequently provides a route and a remedy in section 114 for the consumer to use to oblige the credit provider to provide the statement to her should her requests not be met. Accord Debt Solutions CC was lawfully acting on behalf of the consumer in requesting the statement from the Respondent and further attached the Power of Attorney to the

request for the statement.

19. The Tribunal accordingly finds that the Respondent has an obligation in law to provide the Applicant and / or his agent, at his direction, and with the information as set out in section 110(1) of the NCA.

ORDER

20. The Tribunal accordingly makes the following order -

- 20.1. The application is granted;
- 20.2. Respondent is ordered to provide the Applicant and / or his agent, at his direction, with a statement with all or any of the following on his account held under reference number [8...] held with Respondent —
 - 20.2.1. the current balance of the consumer' s account;
 - 20.2.2. any amounts credited to or debited from the account;
 - 20.2.3. any amounts currently overdue and when each such amount became due; and
 - 20.2.4. any amount currently payable and the date it became due.
- 20.3. Respondent is ordered to provide the information in 20.2 above to the Applicant and / or his agent at his direction, by no later 22 (twenty two) business days from the date of this order; and
- 20.4. There is no order for costs.

Thus done and handed down on this 7th day of December 2016.

[signed]

Ms. D Terblanche

Member

CONCURRING:

Adv. J. Simpson (Presiding Member) and Adv FK Manamela (Member)