

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 13 December 2019

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The National Credit Regulator v Lewis Stores (Pty) Ltd [2019] ZASCA 190

The SCA today dismissed an appeal by the National Credit Regulator against a decision by the Gauteng Division of the High Court, Pretoria, dismissing an appeal from a decision by the National Credit Tribunal. The regulator had conducted an investigation into two aspects of Lewis Stores business, namely the sale of extended warranties and membership of the Lewis Family Club. It lodged a complaint with the Tribunal contending that some extended warranties were invalid because the documents containing the warranties had been incorrectly completed and showed that the warranty was for less than the full period of two years after the expiry of the supplier's warranty. According to the regulator this invalidated the extended warranties and meant that Lewis Stores was charging an amount as part of the consumer's debt that was not permitted by s 102 of the National Credit Act 34 of 2005. In regard to membership of the Lewis Family Club the regulator contended that the agreement for club membership was a supplementary agreement in terms of the NCA and the cost of membership an unlawful cost of credit.

Extended warranties are expressly permitted under s 102(1)(b) of the NCA. The evidence demonstrated that in all instances where a customer

purchased an extended warranty this was entered in the customer's record with Lewis Stores as being for a two year period after the expiry of the supplier's warranty. That was also recorded in the statements of account sent to customers and it was not disputed that claims under these warranties were always honoured for the full two year period. In those circumstances, while some of the documents may not have correctly reflected the terms of the extended warranties they were liable to be rectified and in any event a court dealing with it would have been entitled under the NCA to correct it to reflect the true agreement. Accordingly there was no breach by Lewis Stores of the provisions of the NCA.

As regards membership of the Lewis Family Club this was entirely separate from the credit agreements concluded between Lewis Stores and its customers and it did not impose an additional cost of credit on consumers. Accordingly it did not involve a breach of the NCA. The decision by the National Credit Tribunal was accordingly upheld.