

IN THE NATIONAL CONSUMER TRIBUNAL
HELD AT CENTURION

Case number: 58543/2016/114NCA

In the matter between:

Fazhana Yunus

Applicant

vs

RCS

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 Fazhana Yunus (the "Applicant") an adult consumer represented by Accord Debt Solutions CC.
2. The Respondent is RCS, a registered company and credit provider carrying on business from Ground Floor, Liberty Grande Building, corner of Voortrekker Road and Vanguard Drive, Goodwood, Cape Town.

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.

10. The Applicant requested Accord Debt Solutions to assist her with resolving her financial difficulties.
11. Applicant signed a power of attorney allowing Accord Debt Solutions to request a statement of her account from the Respondent.
12. 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.
13. 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

14. 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.
15. 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.
16. The above is premised on the Respondent having been made aware of the application and the allegations against it.
17. In this matter the Tribunal is satisfied that Respondent was properly served with the Application on 11 August 2016 per registered mail as evidenced by the original registered slip filed with the Tribunal.
18. Based on the papers filed with the Tribunal the application was signed on 10 August 2016 and Applicant's certification of service reflects that the application was served via registered post as per the registered postage slip dated 11 August 2016.

19. In arriving at a final determination however the Tribunal has to carefully interrogate 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

20. 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.)"

21. 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 11 May 2016 and again on 20 June 2016, with no success.
22. 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.
23. The Tribunal accordingly finds that the Respondent has an obligation in law to provide the Applicant and / or her agent, at her direction, and with the information as set out in section 110(1) of the NCA.

ORDER

24. The Tribunal accordingly makes the following order -
 - 24.1. The application is granted;
 - 24.2. Respondent is ordered to provide the Applicant and / or her agent, at her direction, with a statement with all or any of the following on her account held under reference number 60102461000003800126 held with Respondent —
 - 24.2.1. the current balance of the consumer's account;
 - 24.2.2. any amounts credited to or debited from the account;
 - 24.2.3. any amounts currently overdue and when each such amount became due; and
 - 24.2.4. any amount currently payable and the date it became due.

24.3. Respondent is ordered to provide the information in 24.2 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

24.4. 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)