

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

Case number: NCT/70993/2017/141(1)

In the matter between:

DEBRA BASSON

APPLICANT

and

THE STANDARD BANK OF SOUTH AFRICA LTD

RESPONDENT

Coram:

Adv. J Simpson – Presiding member

Ms. D Terblanche – Member

Ms. H Devraj – Member

Date of Hearing – 18 July 2017 (Cape Town)

JUDGMENT AND REASONS

APPLICANT

1. The Applicant in this matter is Ms Debra Basson, a major female (hereinafter referred to as “the Applicant or “Ms. Basson”). Ms. Basson appeared in person at the hearing and represented herself.

RESPONDENT

2. The Respondent is the Standard Bank of South Africa Ltd, a registered credit provider (hereinafter referred to as “the Respondent” or “Standard Bank”). At the hearing the Respondent was represented by Mr D Raath, an attorney from the firm Van Hulsteyns Attorneys Inc.

APPLICATION TYPE

3. This is an application in terms of Section 141(1)(b) of the National Credit Act 34 of 2005 ("the NCA").
4. Section 141(1)(b) of the NCA states the following –

141. Referral to Tribunal.—(1) *If the National Credit Regulator issues a notice of nonreferral in response to a complaint other than a complaint concerning [section 61](#) or an offence in terms of this Act, the complainant concerned may refer the matter directly to—*

- (a) the consumer court of the province within which the complainant resides, or in which the respondent has its principal place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or*
- (b) the Tribunal, with the leave of the Tribunal.*

5. In an application of this nature the Tribunal must therefore first consider whether it will grant the Applicant leave to hear the matter. If the leave is granted then the Tribunal will consider the main merits of the Application in a separate hearing.

BACKGROUND

6. Ms. Basson did not provide much information regarding the detailed facts of the matter but the Respondent's answering affidavit assisted in this regard.
7. Ms. Basson appears to have used a facility on the Standard Bank website during September 2013 requesting Standard Bank to contact her regarding the opening of a new account. A representative from Standard Bank then contacted her telephonically on 17 September 2013 and proceeded to offer her a personal overdraft account facility and a credit card account. After obtaining information from her, Standard Bank granted her an overdraft account facility of R26 200.00 and a credit card account facility of R50 000.00. The documents were signed the same day at the Nelspruit branch of Standard Bank.

8. At some stage during 2014 and 2015 Ms. Basson used both credit facilities, overdraft and credit card, and encountered difficulties in repaying the monthly instalments due on the loans. This resulted in Standard Bank initiating legal steps to claim the amounts owing.
9. Ms. Basson lodged a written complaint with the National Credit Regulator (NCR) against Standard Bank on 29 October 2015. She alleged that Standard Bank had not done a proper credit assessment when granting her the credit facilities. The NCR responded in writing on 19 February 2016, by means of a Notice of Non-referral, essentially stating that Standard Bank (at the time) was entitled to utilize its own affordability assessment mechanism and Standard Bank was unable to provide them with the required documents. They were therefore unable to determine whether Standard Bank had complied with the NCA.
10. Ms. Basson filed the application before the Tribunal on 28 November 2016. In the application before the Tribunal Ms. Basson is asking for *“A decision as to whether the agreements are considered reckless and order in terms of the Act”*.
11. The Tribunal Registrar issued a Notice of incomplete filing on the matter. After the relevant documents were provided, a Notice of Complete filing was issued on 20 January 2017. The matter was set down for hearing on 10 April 2017 on a default basis. On the date of the hearing the Respondent appeared and requested a postponement of the matter to enable them to file their answering affidavit and apply for condonation for the late filing. The matter was postponed and the Respondent filed its answering affidavit and condonation application. The application for condonation was opposed by Ms. Basson. Condonation was granted on 16 May 2017 by written judgment. After pleadings closed, the matter was set down for hearing on 18 July 2017.

APPLICATION FOR LEAVE

12. In the matter of *Coertze and Burger v Young*¹ the Tribunal considered the factors which must be evaluated regarding leave. The Tribunal held that the following two factors should be considered:

¹ NCT/7142/2012/75(1)(b)&(2).

12.1 The Applicant's reasonable prospects of success with the referral; and

12.2 Whether the matter is of substantial importance to the Applicant or the Respondent.

13. It is firstly very clear that the matter is of substantial importance to both parties. Ms. Basson has gone to a great deal of effort to lodge the complaint with the NCR and then to pursue it further with the Tribunal. Similarly, Standard Bank has a vested interest in defending the allegation of reckless lending.

14. The prospects of success however require more extensive consideration.

Prospects of success on the merits

15. Sections 79 to 82 of the NCA deal with issues such as overindebtedness, reckless credit and the assessment mechanisms and procedures that must be applied by a credit provider. For the purposes of this judgment it is not necessary to reflect all the sections in detail. In summary, at the time that Ms. Basson was granted the credit, Standard Bank had to take reasonable steps to assess the proposed consumer's general understanding and appreciation of the risks and costs of the proposed credit, the rights and obligations of the consumer under a credit agreement, the debt re-payment history of the consumer under credit agreements and the consumer's existing financial means, prospects and obligations. Standard Bank could determine for itself the evaluative mechanisms or models and procedures to be used in meeting its assessment obligations under this section, provided that any such mechanism, model or procedure results in a fair and objective assessment.

16. In this regard Standard Bank submitted a transcript of the telephonic conversation between the bank's representative and Ms. Basson when this assessment was done. Again, for the purposes of this judgment, it is not necessary to set out the conversation in detail. Ms. Basson appears to work as a business accountant for MTSC Financial. In summary, Ms. Basson already had a business account with Standard Bank. Standard Bank used 40% of the credited amounts in the business account, for a period of 6 months, to determine her personal income. This calculation found that her personal income was approximately R33 771.26 per month. Ms. Basson told the Standard Bank representative that she did not have many monthly expenses and they amounted to approximately R14 000.00 per month. The bank's check on her credit bureaux records found

expenses of R7844.00 per month. The monthly repayments on the loans would be R2800.00 per month if used to their limit. Ms. Basson confirmed the income and expenses throughout the telephone conversation. If the expenses were added together Ms. Basson appeared to have at least R11 900.00 per month available for the repayment on the loans.

17. In her Replying affidavit Ms. Basson did not offer any clear or substantial responses to the bank's assertions. She essentially stated that Standard Bank did not do a proper assessment and there was some confusion as to whether or not she owned the property she lived in. During the hearing Ms. Basson stated that Standard Bank incorrectly considered the income into her account over the relevant period as it related to a busy period for her in her practice and was not generally reflective of her income. Of note is that Ms. Basson did not bring this alleged fact to the attention of the consultant during the lengthy telephone conversation.

CONCLUSION

18. Based on the evidence before the Tribunal, Standard Bank did do an assessment of Ms. Basson's income and expenditure before granting her the credit facilities. This resulted in a clear conclusion that she could afford the monthly repayments on the loans in question. Ms. Basson confirmed the income and her expenses.
19. There is no basis for a finding that there is a reasonable prospect of Ms. Basson being able to show that Standard Bank engaged in reckless lending.
20. It needs to be noted that the loan application took place before the new NCA affordability assessment regulations came into operation on 13 September 2015².

² GNR.489 of 31 May 2006: Regulations made in terms. of the National Credit Act, 2005 as amended by Notice *Government Gazette* Date GNR.1209 29442 30 November 2006 GNR.604 30713 29 May 2008 GNR.202 38557 13 March 2015 w.e.f. 13 September 2015*

ORDER

21. Accordingly, the Tribunal makes the following order –

- 21.1 The Applicant's application for leave to refer the matter directly to the Tribunal is refused;
and
- 21.2 There is no order as to costs.

DATED ON THIS 28th DAY OF JULY 2017

[signed]

Adv J Simpson

Presiding Member

Ms. D Terblanche (member) and Ms. H Devraj (member) concurring.