

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

CASE NUMBER: NCT /94116/2017/141(1)(b)

IN THE MATTER BETWEEN:

Selby Peter Prinsloo

APPLICANT

and

South African Home Loans (Pty) Ltd

RESPONDENT

Date of Hearing: 7 February 2019

Date of Judgment: 14 February 2019

Panel:

Presiding Tribunal member: Ms. D Terblanche

Tribunal member: Dr. M Peenze

Tribunal member: Mrs. H Devraj

JUDGMENT AND REASONS

THE PARTIES

1. The Applicant is Mr. Selby Peter Prinsloo, and adult male (hereinafter referred to as "Prinsloo" or the "Applicant").
2. The Respondent is South African Home Loans (Pty) Ltd (hereinafter referred to as "SAHL" or the "Respondent").

THE APPLICATION

3. The Applicant brings this application before the National Consumer Tribunal (hereinafter referred to as the "Tribunal") in terms of section 141(1)(b) of the National Credit Act, Act 34 of 2005 (hereinafter referred to as the "NCA").
4. Section 141(1)(b) of the NCA provides as follows –

"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) ... ; or
 - (b) *the Tribunal, with the leave of the Tribunal."*
5. The Applicant lodged a complaint against the Respondent with the National Credit Regulator (hereinafter referred to as the "NCR" or the "Regulator") on 17 January 2017. The Regulator issued a notice of non-referral, in response to the complaint, on 5 October 2017.
6. The Applicant then launched an application with the Tribunal for leave to refer his complaint directly to the Tribunal in terms of section 141(1)(b) of the NCA on 30 October 2017.
7. The Tribunal granted the Applicant leave to refer his matter directly to the Tribunal on 30 August 2018.

BACKGROUND

8. The Applicant signed as surety and co-principal debtor with his ex-wife, Mrs U A Prinsloo, for Mrs. Dilley, in respect of a bond registered in favour of the Respondent on 8 June 2007 in the amount of R 176 000,00 (one hundred and seventy six thousand rand).
9. The Applicant alleges that he has been solely responsible for the bond on the property and also the sole contributor in servicing the bond, ever since its inception.

10. It is common cause that the Respondent instituted legal action on more than one occasion whenever the bond account fell into arrears.
11. Upon one such occasion, the High Court granted judgment in favour of the Respondent against the Applicant, his ex-wife and Mrs. Dilley in the sum of R 279 729. 11 (Two hundred and seventy nine thousand, seven hundred and twenty nine rand and eleven cents) and interest at the rate of 9,60% per annum compounded monthly in arrear from 01st June 2016 to date of payment; and costs of suit on attorney and own client scale, on 25 November 2016.¹
12. The Applicant's complaint is that the original loan was for R 176 000. 00 (one hundred and seventy six thousand rand); that he paid the Respondent R 357 500. 00 (Three hundred and fifty seven thousand, five hundred rand) towards this amount; yet the Respondent still claimed an excessive settlement amount of R 250 000. 00 (Two hundred and fifty thousand rand) during 2016 and then sued for and obtained the judgment and interest (see above). Based on this, the Applicant believes he has been overcharged.
13. The Respondent subsequently abandoned the judgments it obtained against both the Applicant and his ex-wife, Mrs. A U Prinsloo. As a result of this, the Respondent avers that there is no tie-in ("*lis*") between the Applicant and the Respondent, establishing Applicant's standing to sue the Respondent.

THE HEARING

14. The matter was set down for hearing and heard on 7 February 2019, at the Tribunal's premises.
15. The matter before the Tribunal at this hearing is for the Tribunal to determine, –
 - 15.1. Whether the Respondent contravened the NCA in allegedly overcharging the Applicant with fees, costs and charges; and
 - 15.2. Whether the Applicant is entitled to the relief he seeks namely a refund of the amounts allegedly overcharged and damages.

¹ Page 211 of the record

16. Prinsloo was present at the hearing and represented himself.
17. Velile Tinto & Associates Incorporated instructed Adv. Oosthuizen, who represented the Respondent at the hearing.
18. The Respondent raised two (2) points *in limine* at the hearing. They are that –
 - 18.1. The High Court already issued a judgment on the matters the Applicant placed before the Tribunal, and that the Tribunal accordingly does not have jurisdiction to adjudicate on them; and
 - 18.2. The Applicant has no standing to bring the current application before the Tribunal as the Applicant is not a party to the loan agreement entered into between the Respondent and Mrs Dilley.
19. The Tribunal decided to first determine the validity of the points *in limine* and, only if it finds that there is no merit in them, to proceed to a determination of the merits and the relief sought.

SUBMISSIONS BY THE PARTIES ON THE POINTS IN LIMINE

20. The Respondent submitted that the Tribunal has no jurisdiction in this matter as –
 - 20.1. The High Court had already pronounced on the amounts of interests and capital payable, when it issued its judgment on 25 November 2016;
 - 20.2. The High Court based its order on evidence placed before it by the Respondent on the outstanding capital, interests and costs. The Applicant is disputing that evidence the High Court accepted and upon which it based its judgment and order; and
 - 20.3. The Applicant's claim for a refund and damages are directly linked to the order handed down by the High Court and cannot be dealt with by the Tribunal. For the Tribunal to find

in the Applicant's favour, it will have to make a finding that the High Court erred in its judgment and order.

21. With regard to its contention that the Applicant does not have standing before the Tribunal to bring this application, the Respondent submitted that -

21.1. Only Mrs. Dilley has standing in respect of the credit agreement It entered into a credit agreement with Mrs. Dilley in 2007, and not with Prinsloo and his ex-wife. Mr Prinsloo and his ex-wife were sureties and co-principal debtors, not borrowers.

21.2. Albeit Prinsloo and his ex-wife were sued as sureties and co-principal debtors and judgments were obtained against them, those judgments were abandoned, thus leaving no link between the Applicant, his ex-wife and the Respondent.

21.3. The only person the Respondent has a connection with is Mrs. Dilley, the borrower and no one else in respect of the credit agreement entered into in 2007 for the property.

21.4. The Applicant, in an email dated 8 January 2016, distanced himself from the account and any legal action against Mrs. Dilley and her family.

21.5. Mrs. Dilley is not before the Tribunal. Even if Prinsloo has a power of attorney to act on her behalf, he cannot institute the action in his own name, as he has done in this instance.

22. The Applicant submitted that in respect of the High Court judgments, -

22.1. The judgments for the Respondent were totally unfair; and

22.2. It is correct that the judgments had been abandoned against him and his ex-wife, afterwards when they found they did not serve the summonses on them.

23. With regard to his standing to bring the application before the Tribunal; the Applicant submitted that -

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- 23.1. To say he has no interest that gives him standing to bring an application before the Tribunal, is not correct, as the house is his primary residence and he lived in it all his life;
- 23.2. The bond was granted on the strength of his income, and he has been solely responsible for servicing the bond throughout;
- 23.3. He has full power of attorney from Mrs. Dilley to deal with the matter; and
- 23.4. The abandonment of the judgments does not mean he has no right and interest in the credit agreement that allows him to bring action in his own name.

EVALUATION

24. There was some dispute between the parties at the hearing regarding the servicing of the summonses in the High Court matter. The Tribunal will not make any finding in respect thereof, as issues of service and delivery of process documents in the High Court, are best left to the High Court.
25. Turning to the jurisdiction of the Tribunal: It is trite law that the Tribunal is a creature of statute. It is further trite that creatures of statute can only act as mandated in its founding laws. The Tribunal has been established in terms of section 26(1)(d)² of the NCA and has to act within its confines.
26. Section 130 of the NCA deals with the interface of the Tribunal with other courts. This section provides, in relevant parts, that –
- “(1) Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default ...”*
- (3) Despite any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that—*

² Section 26(1) provides that – “ There is hereby established a body to be known as the National Consumer Tribunal, which—... (d) must exercise its functions in accordance with this Act or any other applicable legislation.”

(a) in the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with;

(b) there is no matter arising under that credit agreement, and pending before the Tribunal, that could result in an order affecting the issues to be determined by the court and ...” (Emphasis added)

27. It appears from the record placed before the Tribunal, that there was no matter pending before the Tribunal when the Respondent commenced proceedings in the high court, nor in fact when judgment was granted on 28 November 2016. The proceedings in the high court clearly predates the application to the Tribunal on 30 October 2017.
28. What the Applicant is in effect asking the Tribunal to do, is to interrogate the evidence the High Court considered and accepted in its decision to award the judgments and costs against Mrs. Dilley, himself and his ex-wife.
29. The above would amount to the Tribunal reviewing or acting as an appeal body for High Court decisions. It is not for this Tribunal, nor is it within the Tribunal's powers, to review orders of the High Court.
30. The Tribunal accordingly finds that it does not have jurisdiction to entertain the application by Prinsloo as it had been finalised in the High Court.
31. In the light of the above finding the Tribunal will not deal with the parties' submissions regarding the Applicant's standing or lack thereof.

ORDER

32. The Tribunal accordingly makes the following order –
 - 32.1. The application is dismissed; and
 - 32.2. No order is made for costs against any party.

Dated at Centurion on this 12th day of February 2019

SIGNED

Ms. D Terblanche
Presiding Tribunal Member

Authorised for issue by National Consumer Tribunal

Case Number: NCT/94116/2017/141(1)(b)

Date: 20 February 2019

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Mrs. Devraj, Tribunal member and Dr. M Peenze, Tribunal member, concurring.