THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 8 April 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

The Loan Company (Pty) Ltd v The National Credit Regulator and Another (1104/2023) [2025] ZASCA 40 (8 April 2025)

Today, the Supreme Court of Appeal (SCA) dismissed with costs an appeal against the judgment of the Gauteng Division of the High Court, Pretoria (the high court). That judgment followed an investigation by the first respondent, the National Credit Regulator (NCR), into the business activities of the appellant, the Loan Company (Pty) Ltd (the Loan Company). The proceedings were initiated by the NCR in the National Consumer Tribunal (the tribunal), which made various orders against the Loan Company including a declaration that the Loan Company had contravened several sections of the National Credit Act 34 of 2005 (the Act) and imposed an administrative penalty. An appeal against those orders by the Loan Company to the high court, in terms of s 148(2)*(b)* of the Act, was unsuccessful and as such the Loan Company approached the SCA with leave to appeal of the high court on limited grounds.

The Loan Company is a 'pawn' broking business that provides small short-term loans to consumers and in return retains possession of their movable property as security. If the loan or credit is not repaid on time it sells the 'pawned' movable and retains all the proceeds of the sale. After the NCR investigation into the business activities of the Loan Company, the NCR referred the matter to the tribunal alleging that the Loan Company engaged in prohibited conduct. Those included concluding credit agreements and extending credit to consumers without being registered in terms of the Act; advertising the availability of credit while not registered as a credit provider in terms of the Act; and over charging interest and levying other fees.

The NCR also sought the imposition of an administrative penalty on the Loan Company, as well as other interdictory and further relief against it. They relied on an investigation report which was attached to the founding papers in their application. The Investigation report had

about fifteen other attachments, which essentially documented fifteen instances where the Loan Company, either entered into credit agreements (according to the NCR) before being registered as a credit provider in terms of the Act or contravened the Act (the sample transactions). Additionally, the NCR sought an order for the Loan Company to refund amounts above the loaned capital, return vehicles held as security, or pay the difference if sold. The tribunal found in favour of the NCR and made several orders. Some dealt with contraventions of the Act by the Loan Company (contravention orders) and others were remedial in nature (remedial orders).

First, the tribunal declared that the Loan Company had repeatedly contravened several sections of the Act. It declared that the sample transactions were all unlawful and void. It ordered the loan company to return to those consumers their assets, or the value thereof, and any amounts they paid towards their loans, less the loaned amount. It also imposed an administrative fine of R250 000.00 on the Loan Company for its repeated contravention of the Act, which was payable within 30 days of its order.

The Loan Company appealed to the high court which dismissed that appeal with costs and limited its leave to appeal to the SCA to three of the contravention orders and three of the remedial orders made by the tribunal and confirmed by the high court.

In the SCA, on whether the Loan Company entered into credit agreements before registration, it was found that s 42 did not apply to the Loan Company and its reliance on s 42(3)*(a)* was misplaced. To this, the SCA ruled that the high court did not err in finding that the tribunal correctly declared that the Loan Company contravened s 40(1) read with s 40(3) of the Act. On the issue of whether the Loan Company advertised the availability of credit, the SCA considered concession by the Loan Company that it advertised on its website but highlighted that the Loan Company belatedly sought support in s 42(3)*(a)* which did not apply to it. The Loan Company argued that s 76(3) must be purposefully interpreted in the context of the Act in its totality, including s 42(3)*(a)* and that on such interpretation its advertisements were lawful. The SCA stated that it was a farfetched and untenable argument. On this, it found that the high court did not err in its conclusion regarding the tribunal's order.

On the issue of whether the Loan Company charged interest in excess of the prescribed rates, the Loan Company argued that there was no evidence that it did not calculate interest as contemplated in regulation 40(1) or that it added and compounded interest daily as the tribunal found. The SCA found that the tribunal's finding was correct and that there was no merit on this ground of appeal.

Considering the first remedial order which declared the credit agreements null and void, the SCA was met with an argument from the Loan Company that the tribunal did not have the power to declare the sample agreements unlawful and void. They added that only a court of law had such power and that in terms of s 40(4) of the Act the tribunal was not empowered to do so. To this, the SCA found that the tribunal did not act outside the scope of its powers when it declared the sample agreements unlawful and null and void. It was merely declaring the position as it was in terms of the Act.

On the second remedial order that the consumers be refunded, the SCA found that order was not only appropriate but was the only order that was justifiable in respect of those instances. It rejected an interpretation by the Loan Company of the definition of 'pawn transaction' in the Act. And held that the definition did not mean that a pawnbroker was entitled upon the sale of a pawned asset to retain all the proceeds of the sale, irrespective of the amount outstanding on the loan or the value of the asset. The Loan Company also argued against the third remedial

order and expressed that the fine imposed on it per s 151(2) of the Act dictates that that the financial position of the credit provider be considered when the tribunal considers imposing a fine. That in its instance the tribunal erred in imposing a fine because it did not consider the Loan Company's financial position since no such evidence was put before it. It argued further that because the findings of the tribunal on the merits were wrong, the imposition of the penalty was not proper, and that the penalty was imposed purely to punish the Loan Company and not to encourage it to refrain from future contravention. It (the Loan Company) added that the tribunal made the Loan Company a scapegoat when imposing the fine.

The SCA underscored that the Loan Company had not shown that the tribunal did not consider the factors that it was obliged to consider in terms of s 151(3) when it imposed the fine, or that it took into account factors that it was not supposed to have taken into account. Moreover, that the Loan Company had ample time to disclose its financial position in its own interest and more significantly that, it has not shown that the penalty imposed on it exceeded the limits prescribed in s 151(1). On that issue the SCA found that the high court did not err in its finding. The SCA held that the time periods for compliance with the Tribunal's orders are to commence upon the handing down of the SCA's order.

As a result, the SCA dismissed the appeal with costs.

--------oOo--------