



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: 24 June 2026

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 Profit Hub (Pty) Ltd v Zuwon Consultants (Pty) Ltd and Another (445/2025) [2026] ZASCA 88 (24 June 2026)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it upheld the appellant's appeal with no order as to costs.

In this matter, the SCA considered whether two agreements described as 'discounting agreements' were in fact credit agreements regulated by the National Credit Act 34 of 2005 (the Act), and whether the appellant, The Profit Hub (TPH), was entitled to judgment in the amount of R785 292.91, together with interest, against Zuwon Consultants (Zuwon) and its surety, Mr Ndawonde.

TPH had advanced funds to Zuwon under two agreements, which it styled discounting agreements. TPH advanced monies to Zuwon, who ceded its right, title and interest in specific invoices to TPH. When an invoice was paid, the amount advanced, plus a factoring fee and penalty fee (if applicable), was repaid to TPH, whilst Zuwon retained the balance of the money, if any. Mr Ndawonde signed suretyship agreements binding himself as surety and co-principal debtor, with Zuwon, for all sums of money owed to TPH under the agreements.

Zuwon defaulted on its obligations in terms of these agreements. Zuwon and Mr Ndawonde concluded an acknowledgment of debt and security agreement in terms of which they acknowledged their indebtedness to TPH under the agreements, and agreed to pay TPH by way of instalments. But payment was still not forthcoming. TPH consequently approached the high court for judgment in the amount of R785 292.91, together with interest. Although the application was unopposed, the high court raised the question whether the agreements complied with the Act. It ultimately held that the agreements were lending transactions falling within

section 8(3)(a) of the Act and dismissed the application because TPH had not alleged compliance with the Act.

Writing for the majority, Unterhalter JA identified three issues: First, whether the agreements, properly interpreted, fall within the remit of the Act as credit agreements. Second, even if the agreements are credit agreements, is the application of the Act nevertheless excluded? And third, if the Act applied, whether the high court should have granted a different remedy rather than dismissing the application.

This Court began by examining the distinction between a discounting transaction and a loan. Referring *De Villiers v Roux* 1916 CPD 295, Unterhalter JA explained that a discounting agreement involves the sale of a debt or receivable to a discounter who becomes the owner of the debt and may exercise the rights or, in turn, further discount the debt. The discounter also assumes the risk associated with its recovery. In contrast, a loan requires the borrower to repay the amount advanced, usually with interest, and any cession of debts serves merely as security for repayment. In a discounting agreement, the discounter pays an amount to acquire the debt from the original creditor. The original creditor is not required to repay this amount: the price paid is the consideration for the acquisition of the debt by the discounter. This Court drew a further distinction between a discounting agreement and a loan by examining the role of security in each transaction.

Although the agreements used the language of invoice discounting and purported to effect an out-and-out cession of invoices to TPH, the Court held that their substance revealed a different relationship. Zuwon was obliged to repay the entire advanced amount together with a factoring fee and other charges, regardless of whether its debtors paid the underlying invoices. TPH also enjoyed security for the due and punctual performance of Zuwon's obligations to TPH, including the suretyships executed by Mr Ndawonde. Furthermore, once TPH had recovered the amounts due to it, any remaining proceeds of the invoices reverted to Zuwon. These features demonstrated that the invoices functioned merely as security and that the cession of debts was simply an additional form of security for the repayment of the amounts owed to TPH. Ultimately the Court held that, taken together, the provisions of the agreements indicated that the true relationship between TPH and Zuwon was that of a lender and a borrower for the loan of money. Accordingly, the Court found that the high court had correctly concluded that the agreements were loans rather than discounting transactions.

The majority then considered whether these loans constituted a 'credit facility' under section 8(3)(a) of the Act. It held that they did not. The reason is that to constitute a credit facility, an agreement must be one, in terms of which, the credit provider undertakes 'to pay an amount or amounts, *as determined by the consumer from time to time*'. Under the agreements, however, Zuwon borrowed fixed amounts that were determined when the agreements were concluded and in turn, Zuwon was required to repay a specific amount. There was no ongoing credit facility granted to Zuwon and no autonomy to decide from time to time how to make use of this facility. The majority consequently found that the agreements did not qualify as a credit facility. In sum, the majority held although the high court correctly found that the agreements constituted loans, its conclusion that these loans 'fall squarely within the definition of a credit facility in s 8(3)(a)' was an error for reasons given.

The Court nevertheless considered that, even if the agreements were credit agreements, the Act would still not apply because of the statutory exclusions relating to juristic persons and large agreements. Under sections 4(1)(a) and 4(1)(b) of the Act, the Act does not apply either where a juristic person exceeds the statutory turnover threshold or where the agreement qualifies as a 'large agreement'. This Court noted that the principal debts under the agreements exceeded the prescribed threshold for large agreements as determined by the Minister in terms of section 7(1)(b). The agreements were thus large agreements and the application of the Act was excluded.

Norman AJA delivered a separate concurring judgment in which she agreed with the outcome of the appeal, the characterisation of the agreements as loans and the ultimate order. However, she disagreed with the majority on one point: whether the agreements constituted a credit facility under section 8(3)(a) of the Act. In her view, the agreements did amount to credit facilities because TPH advanced money to Zuwon as was determined by Zuwon, and deferred Zuwon's obligation to repay it. She emphasised that the agreements provided repayment periods after which additional fees and penalty charges became payable, features she considered analogous to store cards and credit cards. She therefore concluded that the agreements fell within the definition of a credit facility and were credit agreements regulated by the Act. The majority did not agree with this reasoning because, in order to constitute a credit facility, the agreement must be one, in terms of which the credit provider undertakes to pay an amount or amounts, as determined by the consumer from time to time. However, under the terms of the agreements, Zuwon does not determine 'from time to time' the amounts to be advanced to it. The advanced amount is determined by the parties to the agreements, upon concluding the agreements. Zuwon was not accorded any unilateral right to determine how much of the advanced amount to draw upon, if any, and when to do so.

Despite this disagreement, Norman AJA ultimately concurred in the result because the agreements were large agreements involving a juristic person, meaning that the Act was excluded by operation of sections 4(1)(a) and 4(1)(b). Thus, even on her interpretation that the agreements were credit facilities, the application of the Act was excluded, and TPH was entitled to judgment.

Having found that the Act posed no obstacle to the judgment sought by TPH in its application, the Court held that TPH had established its claim. Zuwon was indebted to TPH and Mr Ndawonde was jointly and severally liable for this indebtedness as surety and co-principal debtor. The appeal was therefore upheld, the high court's order was set aside, and judgment was granted in favour of TPH for R785 292.91 together with interest at 8% per month and the first and second respondents, jointly and severally, the one paying the other to be absolved, were ordered to pay the costs on an attorney-client scale. No order as to the costs of the appeal was made because the appeal resulted from the high court's own enquiry into the applicability of the Act rather than any opposition by the respondents.

-----oOo-----