



SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 25 June 2021
STATUS Immediate

Lewis Stores (Pty) Ltd v Summit Financial Partners & Others (Case no 314/20) [2021] ZASCA 91 (25 June 2021)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

The Supreme Court of Appeal (the SCA) today dismissed an appeal by Lewis Stores (Pty) Ltd (Lewis) against a judgment of the Gauteng Division of the High Court, Pretoria (the high court).

Summit Financial Partners (Pty) Ltd (Summit), a registered alternative dispute resolution agent and debt counsellor, had lodged a complaint against Lewis with the National Credit Regulator (the Regulator) in terms of section 136 of the National Credit Act (the NCA) in which it alleged that Lewis had repeatedly engaged in a prohibited practice under the NCA, in breach of s 102 thereof by raising compulsory and unreasonable delivery charges.

The Regulator had investigated the complaint and issued a certificate of non-referral in terms of s 140(1)(a) of the NCA. Summit, thereafter, sought leave to refer the complaint directly to the National Consumer Tribunal (the Tribunal) in terms of s 141(1)(b) of the NCA. The Tribunal had granted leave and Lewis appealed the ruling, without success, to the high court in terms of s 148(2) of the NCA. The appeal to the SCA was with leave of the high court.

The SCA was called upon to determine firstly, whether a decision of the Tribunal to permit a direct referral to it in terms of s 141(1)(b) of the NCA was appealable, and secondly, what test the Tribunal should have applied in assessing the application for direct referral.

The SCA considered the interpretation of the NCA and the complaints procedure provided therein. It found that the Tribunal had a wide, largely unfettered discretion to decide whether to permit a direct referral where the Regulator has issued a notice of non-referral. The SCA considered that the NCA did not require a formal application to be lodged with the Tribunal nor a public hearing to be held. The NCA did not require any test to be satisfied in arriving at a decision.

On a proper interpretation of the NCA, it held, the decision by the Tribunal in respect of a direct referral was not appealable. The SCA accordingly dismissed the appeal.