IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

20/5/2014
DATE

SIGNATURE

Case Number: A945/2013

20/5/2014

In the matter between:

EUREKA DIY SOLUTIONS (PTY) LTD — Plaintiff/Appellant

and

SODA CLEANING AND EQUIPMENT NORTH WEST t/a DIY DEPOT FOCHVILLE — 1st Defendant/Respondent

STRYDOM, MARIUS SIGFRIED — 2nd Defendant/Respondent

JUDGMENT

POTTERILL J

[1] The appellant is appealing against the court *a quo's* order that the plaintiff's claim is dismissed with costs. In coming to this order the court found that the "arrangement" between the parties was a credit agreement for the purposes of the National Credit Act. Act 34 of 2005 (hereinafter referred to as "the NCA"). The appellant accordingly was bound by section 129 of the NCA and because a section 129(1)(a) notice was not delivered to the respondent the plaintiff's claim was irregular.

[2] At the date of the hearing there were no heads of argument filed on behalf of the first and second respondents and there was no appearance on behalf of the first and second respondents.

[3] On behalf of the appellant it was submitted that the magistrate erred in not considering the totality of section 8 of the NCA. If consideration was given to the whole of section 8 then it was clear that there is a further requirement which would render the agreement as attached to the summons as not being a credit facility as defined in the NCA. It speaks for itself that if the agreement is not a credit facility as defined in section 8 and specifically section 8(3) then the special pleas raised pertaining to the non-compliance with section 129 of the NCA and the non-registration of the appellant as a credit provider falls away.

[4] Section 8(3) of the NCA reads as follows:

> *"An agreement. irrespective of its form but not including an agreement contemplated in subsection (2) or section 4(6)(b). constitutes a credit facility if. in terms of that agreement –*
>
> *(a) a credit provider undertakes –*
>
> *(i) to supply goods or services or to pay an amount or amounts. as determined by the consumer from time to time. to the*

consumer or on behalf of, or at the direction of, the consumer; and

(ii) either to –

(aa) defer the consumer's obligation to pay any part of the cost of goods or services, or to repay to the credit provider any part of an amount contemplated in subparagraph (i); or

(bb) bill the consumer periodically for any part of the cost of goods or services, or any part of an amount contemplated in subparagraph (i); and

(b) any charge, fee or interest is payable to the credit provider in respect of –

(i) any amount deferred as contemplated in paragraph (a)(ii)(aa); or

(ii) any amount billed as contemplated in paragraph (a)(ii)(bb) and not paid within the time provided in the agreement."

[5] The argument of the appellant was that the last part of section 8(3) as quoted above was ignored by the court *a quo*. Plainly put the appellant did not charge interest on the deferred amount and only charged interest as a penalty on non-payment of amounts.

[6] It is accepted that the appellant supplied goods and that the purchase price is fixed at the time the goods are ordered and supplied. The price must be paid within 30 days upon presentation of the invoice. The appellant did not levy any finance charges, administrative costs and/or interest despite the provision therefor in the standard terms and conditions of the appellant as attached to the summons. I agree with the findings of the court in ***JMV Textiles (Pty) Ltd v De Chalain Spareinvest***

14 CC and Others **2010 (6) SA 173 (KZD)** and specifically at paragraphs [15] and [16]:

> "*[15] ... In my view s 8(3) is directed at the provision by credit providers of charge cards and credit cards and similar arrangements, and not at conventional sales on credit..."*

> *[16] Viewed from a broader perspective, that conclusion is consistent with the thrust and purpose of the NCA. In a broad sense it is concerned with the activities of those whose business it is to provide credit to the public and who seek to profit from that business by way of fees, charges and interest .."*

[7] I am accordingly satisfied that the agreement before the court is neither an incidental credit agreement nor a credit facility. To reiterate, in the case of a credit facility described in section 8(3) part and parcel of the arrangement between the consumer and the credit provider is that the consumer may take advantage of the offer of credit and the credit provider profits from this agreement in enforcing charges, usually by way of interest, for this advantage of credit. *In casu* there are no charges or interest on the amounts to be paid within 30 days. There is an entitlement to charge interest on default if the contractual terms were silent on that point by virtue of the provisions of the prescribed Rate of Interest Act, Act 55 of 1975.

[8] The magistrate thus erred in finding that the standard terms and conditions as attached to the particulars of claim qualifies as a credit facility in terms of the NCA. It is thus not necessary to address any of the other special pleas as they all relate to the NCA.

[9] I accordingly make the following order:

1. The appeal is upheld with costs;
2. The order of the magistrate is set aside;
3. The special plea is dismissed with costs on an attorney and client scale; and
4. The matter is referred back to the magistrate's office for adjudication on the merits.

S. POTTERILL

JUDGE OF THE HIGH COURT

I agree

A.C.M. PIETERSE

ACTING JUDGE OF THE HIGH COURT

CASE NO: A945/2013

HEARD ON: 20 May 2014

FOR THE PLAINTIFF/APPELLANT: ADV. L. STEYN

INSTRUCTED BY: Pierre Krynauw Attorneys

FOR THE 1st and 2nd DEFENDANTS/RESPONDENT: NO APPEARANCE

INSTRUCTED BY: Havenga & Viljoen Attorneys

DATE OF JUDGMENT: 20 May 2014