

Does the National Credit Act apply to levies charged in terms of the Sectional Titles Act?

This question was answered in an Appeal Judgment delivered on 11 March 2010 by the KwaZulu-Natal High Court, Pietermaritzburg in the case of *TS Dlamini v Body Corporate of Frenoleen*.

Swain J and Vahed AJ held that levies are not subject to the NCA.

In this case the appellant raised the defence that the charging of interest by the respondent on arrear levies had as a consequence that this was deemed to be an "incidental credit agreement" as defined in Section 1 of the National Credit Act and the respondent was therefore obliged to comply with Sections 129(a) and (b) of the NCA and give the requisite notice to the appellant before issuing summons, which in this case the respondent had failed to do.

The respondent argued that arrear levies did not constitute an incidental credit agreement in terms of the NCA for the following reasons:

- in terms of Section 1 of the NCA, an incidental credit agreement is defined as an agreement:
'in terms of which an account was tendered for goods or services that have been provided to the consumer, or goods or services that are to be provided to a consumer over a period of time...'.
- the NCA defines an 'agreement' as:
'including an arrangement or understanding between or among two or more parties, which purports to establish a relationship in law between those parties'.
- the NCA defines a 'consumer' as, *inter alia*:
'the party to whom goods or services are sold ... the party to whom money is paid, or credit granted ... the party to whom or at whose direction money is advanced or credit granted under any other credit agreement'.
- a credit agreement to which the NCA applies, defines a 'credit provider' as, *inter alia*:

'the party who supplies goods or services under [an] ... incidental credit agreement'.

The court agreed with the respondent's argument for the following reasons:

1. A body corporate does not supply goods or services to its members, nor does it advance money, or credit to its member.
2. Levies charged by a body corporate to its members, do not constitute an incidental agreement because the levies do not constitute an "account tendered for goods or services provided by the body corporate to the consumer".
3. Levies are not payable by members of a body corporate in terms of an agreement, as defined in the NCA, but are payable by virtue of the provisions of the Sectional Titles Act.

The court accordingly found for the respondent on this issue.