FOR ATTENTION:  MRS J FUBBS, STANDING  COMMITTEE ON FINANCE

Dear Honourable Committee Members

I would once again like to commend the committee, and everyone else involved, for all the hard work which has gone into drafting the Bill. It is obvious that many hours of research and discussions have been involved. As a member of the public, I also express my admiration  for your commitment, as well as extend my thanks for all your efforts to improve the lives of the SA public.

My comments are as follows:

I quote from the draft bill page 2 PREAMBLE:

" Whereas the purpose the of the National  Credit Act, 2005, (Act no 34  of 2005), is to promote and advance the social and economic welfare of  South Africans ;  to  promote a fair,  transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market industry, and to PROTECT consumers; "

The draft  bill takes into account  the plight  of over indebted South African citizens, particularly the poor  and marginalized. This is so very necessary because this issue has previously been neglected.

However my concern is that unless stricter measures are implemented  by organs of the state, the financial institutions will continue with their abusive practices.

I would like to see the powers of the National Credit Regulator improved drastically, as well as an increase in their staff complement as it seems that they are very under-resourced.  There appears to be an inability to take action by the NCR, against the  blatant abuse by financial institutions, which includes the flagrant disregard of the NCA, and making misuse of the debt review process to sequestrate innocent victims. As stated in the preamble of this draft bill, the NCA should ***protect***the consumer, but in my case it was used to destroy me and my life.

I have every reason to say this as the NCR have been dealing with my matter, submitted by Parliament  itself,  since 29th May  2017, and I am still waiting for results.  I even went up to JHB to meet with them, where it was confirmed that they are very stretched regarding sufficient staff. I took it upon myself to provide case law, and proof of the gross violation of my rights, as well as my right to fair and just administrative justice being denied. I stress the following : These are transgressions which I have highlighted :

1)Correct procedures regarding 129 of the NCA totally disregarded. Proof supplied to NCR.

2) Summons sent  to  incorrect Domicilium. Proof supplied to NCR.

3)Summary Judgment taken during the 60 day period when I had protection under the NCA by going under Debt  Review. Proof supplied to NCR. Section 88 (3) of the NCA.

4)Procedures not followed as required by Section 130(3)(a)of the NCA. This was mentioned in my opposing documents but ignored by the court. Is this court capture ? Why is this allowed ? Proof supplied to NCR.

5) There is caselaw  (Refer SCA Judgment Case No : 716/12, judgment delivered 30 September 2013 ) where the Judges ruled that the Financial Institutions must prove that the 129 letter went to the ***correct post office.***  I had proof attached in my opposing papers, confirming that my 129 letter went to the ***wrong*** post office.  Once again this was ignored by the court. Proof supplied to the NCR.

6)There is also caselaw supporting the ruling that Debt Review must not be regarded as an act of insolvency. However, in my case, it was ruled that it was. Proof supplied to the NCR. I refer to the following for clarification:

**Superior  Courts   Act, 2013** (Act NO. 10 of 2013) Chapter 5: Orders of Constitutional invalidity, appeals and settlement  of conflicting decisions. 20. Settement of conflicting decisions in civil cases:

""Whenever a decision on  a question of law is given by a court of  a Division which is in conflict with  a decision on the same question of law  given by a  court of any other Division, the  Minister may submit such conflicting decisions to the Chief Justice, who must cause the matter to be argued before the Constitutional Court or the SCA, as  the case may be, in order to determine the said question of law for guidance."

Given that the IA of 1936  was  amended by the insertion of section 8(A) to state that Debt Review must not be regarded as an act of Insolvency, there can be little doubt as to the outcome.

Why is the NCR not doing this regarding my matter ?

I  would also like to see more emphasis placed on our Constitution, instead of it being ignored. There seems little merit in having one of the best Constitutions in the world, when some of the legal fraternity pay lip service to it.  I was told by an Advocate that it is not worth the paper it is written on, when I mentioned that my Constitutional rights had been violated.

Many people have scant knowledge of the Constitution, and this leads to them being abused, because they do not know their rights.  A good example of this is the higher interest rates charged by FNB for people of colour. This is not only discriminatory, but has no place in our democratic society. Although there have been attemps to ventilate this deplorable issue in the courts, the matter keeps being postponed. Is this another example of court capture ?

I am aware that this has no real relevance to  the  current draft  bill. However, I am using this, as well as my own matter, as good examples as to how  well meaning legislation implemented to  assist the consumer, is circumvented in order to work against them. I wish to stress the importance of measures being put into place to ensure that the well meaning legislation is not abused.

I am grateful to have the opportunity to comment on this important draft  Bill and I extend my grateful thanks.

Kind regards

Yvonne Oberholtster