

THE INTERACTION BETWEEN THE DEBT RELIEF MEASURES IN THE NATIONAL CREDIT ACT 34 OF 2005 AND ASPECTS OF INSOLVENCY LAW

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Summary

The *National Credit Act* 34 of 2005 (the 'NCA') aims at promoting responsibility in the credit market by encouraging responsible borrowing, avoidance of over-indebtedness and the fulfilment of financial obligations by consumers, and at discouraging reckless credit granting by credit providers and contractual default by consumers. Although a further aim is to address over-indebtedness by debt review, for instance, this mechanism is based on the principle of satisfaction of the consumer's responsible financial obligations in full. In a recent judgment, *Ex parte Ford* 2009 (3) SA 376 (WCC), the court has thus refused to grant a sequestration order following an application for voluntary surrender since the bulk of the debt was credit agreements regulated by the NCA. The fact that the debtor-applicant did not apply for debt review in terms of the NCA of 2005 before applying for voluntary surrender played a significant role in the court's decision not to grant the order. This article thus considers the impact of the debt relief remedies in the NCA on insolvency law. In particular it is an attempt to provide some answers to the question if the *Insolvency Act* 24 of 1936 (hereafter the '*Insolvency Act*') is in conflict with the previously stated principle of the NCA, namely full satisfaction of all responsible financial obligations by an over-indebted consumer. It also considers the concepts of over-indebtedness and reckless credit and their related debt relief remedies when considering applications for voluntary surrender or compulsory sequestration in terms of the *Insolvency Act*.

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