

TO SEQUESTRATE OR NOT TO SEQUESTRATE IN VIEW OF THE NATIONAL CREDIT ACT 34 OF 2005: A TALE OF TWO JUDGMENTS

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Summary

The purpose of this article is to consider the impact of some of the provisions of the *National Credit Act*¹ (the NCA) on sequestration applications in the form of applications for voluntary surrender, as well as compulsory sequestration. This matter is of particular relevance in view of two recent cases: in *Ex parte Ford*² the court refused to grant a sequestration order following an application for voluntary surrender since the applicant-debtors did not, according to the court, avail themselves adequately of debt relief measures provided for by the NCA where the bulk of the debt consisted of credit agreements regulated by the NCA; and in a more recent judgment, *Investec Bank Ltd v Mutemeri*,³ the respondent-debtors, namely the consumers, opposed an application for compulsory sequestration on the basis that the application for debt restructuring pursuant to debt review in terms of the NCA barred the applicant from proceeding with the application for compulsory sequestration, since they argued that such an application amounted to debt enforcement. This discussion therefore considers the impact of the debt relief remedies and certain special provisions that apply to debt enforcement in terms of the NCA on sequestration procedures provided for in the *Insolvency Act*⁴ in view of the above judgments.

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1 34 of 2005.

2 2009 3 SA 376 (WCC).

3 2010 1 SA 265 (GSJ).

4 24 of 1936.

Keywords

Advantage of creditors; civil suit; compulsory sequestration; *concursum creditorum*; credit agreements; debt counsellor; debt enforcement; debt relief measures; debt restructuring; debt review; discretion of court; National Credit Act; NCA; reckless credit; Section 129 notice; sequestration; sequestration applications; sequestration proceedings; voluntary surrender.