THE APPELLATE DIVISION HAS SPOKEN – SEQUESTRATION PROCEEDINGS DO NOT QUALIFY AS PROCEEDINGS TO ENFORCE A CREDIT AGREEMENT UNDER THE *NATIONAL CREDIT ACT* 34 OF 2005: *NAIDOO v ABSA BANK* 2010 4 SA 597 (SCA)

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SUMMARY

This case note aims to analyse the decision of the Supreme Court of Appeal in *Naidoo v ABSA Bank* 2010 4 SA 597 (SCA) and to spark some debate as to whether being under debt review in terms of the *National Credit Act* (NCA) should bar sequestration proceedings in the form of an application for the compulsory sequestration of a consumer's estate. This decision held that a credit provider does not need to comply with the procedure provided for in section 129(1) of the NCA before instituting sequestration proceedings against a debtor, as such proceedings are not proceedings to enforce a credit agreement. The main issues discussed in this article are whether the court was correct in its interpretation of the relevant provisions of the NCA and whether this decision that allows a creditor to sequestrate a debtor who is attempting to meet his/her obligations under debt review, without informing him/her, is consistent with the principle urging consumers to satisfy all of their financial obligations under the NCA.

It is submitted by the author that the court was correct in its interpretation of the relevant provisions of the NCA, but may have overlooked how this decision may impact the principle of satisfaction by the consumer of all of his/her financial obligations. It is suggested by the author that amendments be made to force the creditor to give a section 129 notice to the debtor before seeking sequestration of his/her estate. The author also suggests that once debt restructuring has been

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granted, credit providers should not be allowed to proceed with sequestration proceedings against the debtor.

KEYWORDS

Credit agreement; credit provider, consumer, *National Credit Act*, sequestration