

Tribunal declares Allied Capital (Pty) Ltd's "*pawn your car and still drive it*" scheme unlawful and orders return of consumers' cars

The National Consumer Tribunal (Tribunal) has handed down judgment yesterday declaring Allied Capital (Pty) Ltd's "*pawn your car and still drive it*" scheme ("scheme") unlawful and prohibited by the National Credit Act 34 of 2005 ("NCA"). This follows an investigation into Allied Capital by the NCR.

Under the scheme, a consumer would approach Allied Capital for a loan and was made to sign a series of documents. Allied Capital would change the title of the consumer's motor vehicle to itself with the consumer remaining in possession of the motor vehicle, paying a rental fee to Allied Capital. Over and above the rental the consumer is charged an administration fee. The scheme was extensively advertised by Allied Capital to the public.

The Tribunal found in favour of the NCR that:

- The transactions concluded by Allied Capital with consumers under its scheme are secured loans under the NCA with consumers' motor vehicles serving as security for the loans, and not purchase and sale agreements;
- Allied Capital advertisement of the scheme contained statements prohibited by the NCA;
- The rental agreement and voluntary surrender documents signed by consumers in the scheme are unlawful supplementary agreements prohibited by the NCA;
- Allied Capital failed to conduct affordability assessments when lending money to consumers under the scheme;
- Allied Capital charged consumers interest and fees in excess of the maximum allowed under the NCA; and
- Allied Capital has not provided consumers with quotations and credit agreements in the form prescribed by the NCA.

The Tribunal made an order:

- Declaring the Allied Capital scheme prohibited by the Act and interdicting the continuation of the scheme;
- Directing Allied Capital to appoint independent auditors, at its own cost, to compile a report on all consumers to identify consumers who have been overcharged interest and fees, and refund such consumers;
- Directing Allied Capital to return to consumers all motor vehicles repossessed, and where these vehicles were sold to credit consumers; and
- Suspending the registration of Allied Capital for a period of 18 months from the date of the order of the Tribunal.

“The transactions concluded by Allied Capital under this scheme are indeed simulated transactions because consumers had no intention to sell their cars to Allied Capital and rent them back. The consumers only wanted to borrow money from Allied Capital using their cars as security for loans” says Jacqueline Peters, Manager: Investigations and Enforcement at the NCR.

“The NCR cautions consumers against using their cars as security for loans or pawning them since they risk losing their cars if they fail to repay the loans as agreed with credit providers”, says Peters.

“The NCR will conduct an investigation on an urgent basis to determine whether Allied Capital is still operating under the same name and would seek execution of the Tribunal’s judgment immediately to prevent more repossession of consumers’ cars”, concluded Peters.

Ends

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