

Duped and desperate loan seekers bring class action against online scammers

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Stellenbosch University Law Clinic has been given judicial go-head to launch a class action against Lifestyle Direct Group International and its affiliated websites, in an attempt to claw back money it took from thousands of desperate loan seekers.



Illustration: Lisa Nelson

- The High Court has ruled that the Stellenbosch University Law Clinic can lead a class action against Lifestyle Direct Group International.
- The law clinic says thousands of desperate people were scammed through websites into believing they were applying for much-needed cash loans but ended up with debit orders.
- The individual claims are small amounts and the judge said class action litigation gave ordinary working people who cannot afford exorbitant litigation costs access to justice.

In a judgment handed down in the Western Cape High Court on Wednesday, Judge Patrick Gamble also gave authority for the class action to be on an “opt out” basis, meaning that those who were allegedly duped will automatically become part of the litigation, unless they specify otherwise.

In its application, the law clinic contended that the respondents were not registered credit providers but they nevertheless lured unsuspecting consumers with promises of loans and loan-finding services. And although they were not registered legal practitioners, they purported to charge consumers for legal advice.

The law clinic contended that this was nothing more than an “unlawful scam”; that the respondents were “wily confidence tricksters” who exploited the informality of the internet and the financial difficulties of poor consumers “to perpetrate an array of frauds against innocent and vulnerable people on a daily basis”.

Judge Gamble, in his judgment, said the law clinic said consumers were duped into believing they were applying for much-needed cash loans, while in fact they received no money and ended up paying a monthly instalment for “legal services”, which they never sought nor received.

“They seek to bring an end to this sorry state of affairs through the mechanism of a class action, and in the interim, through an interdict,” he said.

In considering the development of class action law in South Africa, Judge Gamble said there were already guidelines and several matters had already been considered by courts, including the “most celebrated” [silicosis case](#), in which mine workers affected by lung disease sought to recover compensation for occupational injuries.

“At the heart of class action litigation lies access to justice for ordinary working people who cannot otherwise afford the exorbitant costs of litigation,” he said.

The judge said the clinic’s senior attorney Stephanus van der Merwe had said there were “literally thousands” of complaints from irate consumers.

The 12 websites all prominently bore the word “loan” and employed the same “modus operandi” to mislead customers into unwittingly signing subscription agreements with an initial fee of anything from R399 to R429 a month, and then R99 for 12 months.

When providing their bank account details, those aggrieved said they thought they were applying for loans, not debit orders and when they tried to cancel, they were “stonewalled”.

Judge Gamble said most of the respondents comprised a web of small companies, each with physical offices located across greater Cape Town. They were all associated with the first respondent, the “Lifestyle Direct Group”.

Another respondent was Capital Lifestyle Solutions, which traded as “Lifestyle Legal” and functioned as a in-house debt collection agency for the Lifestyle Group, which was used to “harrass” consumers.

The faces behind the entities were Damian Malander and Nandie Piach.

The judge said all the companies were registered on the same day, 20 May 2015, and were hosted on the same server.

The law clinic wanted to pursue four causes of action aimed at having the agreements set aside and people getting back their money.

Lawyers for the companies had accepted that the law clinic had made out a *prima facie* case, based on the pleadings, and that the law clinic was a suitable party to act as the “class representative”.

The only contentious issue were the questions of “commonality and appropriateness”.

Judge Gamble said a class action did not require every member to have an identical cause of action or seek identical relief, and in this matter “the scheme appears to neatly fit into the commonality criteria”.

“If a class action is denied, similar, if not identical evidence will have to be led in separate courts by each of the thousands of members of the class. Given the relatively limited quantum involved individually, these cases would likely be spread across numerous regional and magisterial districts throughout the country … It would be an inefficient and unnecessary waste of resources for both parties,” Judge Gamble said.

He said even if there were some matters in which the concept of commonality were considered to be “stretched”, these could be dealt with through directions of the trial judge and the proposed judicial manager – a special master – appointed to oversee the class action.

Regarding the issue of appropriateness, Judge Gamble said this was confirmed by the fact that the class was large with relatively small claims, some so small that they might be conceivably recovered in the Small Claims Court, with the risk of multiple findings at variance with each other.

“Such an outcome is clearly not in the interests of justice,” he said.

Judge Gamble sanctioned the appointment of a “special master” to attend to the “nuts and bolts” of the class action, including the verification of claims and disbursement of payments, but said it would be up to the trial court to determine the precise duties of its functions.

Interim interdict

Turning to the law clinic’s application for an interim interdict, shutting down the businesses, he said Malander had put up an affidavit stating that they had been “exited from the National Payment System” and the websites had been decommissioned and the companies had not traded since April 2020.

Malander said there had been no demand for payments from any customers and he had “no appetite to revive the business”.

Judge Gamble said the law clinic had “smartly put together” a quick reply, noting that it had accessed the Lifestyle Direct Group “that very morning”, while the matter was being argued before him.

A search of the Companies and Intellectual Property Commission records showed that several of the companies were still listed as “being in business”.

The Judge said, however, he would take Malander at his word, recording his undertaking as part of the court order which he would “breach at his peril”.

In terms of the order, the consumers who shall form part of the class action, comprise: “All persons who have had any moneys debited from their bank accounts and / or who have been harassed and / or threatened in connection with any demand for or collection of payment by the respondents at any time from 1 May 2015 to date on the basis of them having concluded purported agreements with the respondents by submitting an application on one of the listed websites”.

The respondents were directed to furnish the law clinic with details of its customers.

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