

SOUTH AFRICA / JUDGMENT

Bothma v Point Blank Trading 11 (Pty) Ltd t/a Car King 3 (NCT/26816/2016/75(1)(b)) [2016] ZANCT 36 (16 September 2016) [2016] ZANCT 36

COURT

National Consumer Tribunal

BEFORE

B Dumisa, D Terblanche, J Simpson

CASE / FILE NUMBER

NCT/26816/2016/75(1)(b)

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE NATIONAL
CONSUMER TRIBUNAL
HELD
IN CENTURION

Case

number: NCT/26816/2016/75(1)(b)

In

the matter between:

DIANA
BOTHMA
APPLICANT
and
POINT BLANK
TRADING 11 (PTY) LTD t/a
CAR
KING 3
RESPONDENT

Coram: Prof. B.
Dumisa –
Presiding member
(Deputy Chairperson of the NCT)
Ms D Terblanche
–
Member
(Chairperson of the NCT)
Adv. J Simpson
–
Member
Date of Hearing
–
31 August 2016

JUDGMENT

AND REASONS

APPLICANT

1. The Applicant in this matter is Ms Diana Bothma, a major female (hereinafter referred to as “the Applicant”). Ms Bothma

was assisted throughout the application process and hearing by Mr Johan Brits, a major male.

RESPONDENT

2. The Respondent is Point Blank Trading 11 (Pty) Ltd trading as Car King 3 (Hereinafter referred to as “the Respondent”). At the hearing the Respondent was represented by its two owners, Mr Benru Marais and Mr Andre Gericke. They are both co-directors of the Respondent.

APPLICATION TYPE

3. This is an application in terms of Section 75(1)(b) of the Consumer Protection Act 68 of 2008 (“the CPA”).
4. In an application of this nature the Tribunal must first consider whether it will grant the Applicant leave to hear the matter. If the leave is granted then the Tribunal will consider the merits of the Application.

APPLICATION FOR LEAVE

5. Section 75(1) of the Act requires that the NCC issues a notice of non-referral in response to a complaint as a pre-requisite for a referral in terms of that section to the Tribunal.
6. The Applicant attached the Notice of non-referral from the NCC to the application.

7. In the matter of Coertze and Burger v Young[1] the Tribunal considered the factors which must be evaluated regarding leave. The Tribunal held that the following two factors should be considered:
 - 8.1 The Applicant's reasonable prospects of success with the referral; and
 - 8.2 Whether the matter is of substantial importance to the Applicant or the Respondent.
8. It is firstly very clear that the matter is of substantial importance to the Applicant. She has gone to a great deal of effort to lodge the complaint with various entities including the NCC and to pursue it further with the Tribunal.
9. The cause of action took place in 2013 which is after the CPA came into operation. In considering the reasonable prospects of success the Tribunal is satisfied that the Applicant has laid a solid foundation for a complaint in terms of the CPA which the Respondents must answer to.
10. The Tribunal therefore grants leave for the matter to be heard.

BACKGROUND

12. It must be noted that the Applicant's pleadings were not indexed or set out in a very clear manner. The Tribunal therefore had to sift through the various documents to try and determine a coherent version of what occurred. The Respondent in this matter is a car dealer selling used vehicles. On 28 February 2013 the Applicant purchased a 2002 model Chrysler Voyager from the Respondent for an amount of R91 900.00 inclusive of costs such as licencing and registration. The purchase price was financed through Motor Vehicle Finance (MFC). Within a few days after the purchase, the Applicant experienced problems with the vehicle. The Applicant and the Respondent then became involved in a protracted and ongoing dispute regarding the problems with the vehicle and who was liable for the repair costs to the vehicle.
13. The Applicant lodged various complaints with numerous institutions regarding the vehicle over the years (in apparent order of occurrence) -

2013

- Motor Finance Corporation (MFC), the banking institution that financed the purchase price of the vehicle.
- SA Consumer Complaints, an organisation offering alternative dispute resolution services.
- Independent Dealers Association (IDA). A recommendation was made by the IDA that the dealer be granted an opportunity to fix the problem with the vehicle. The Respondent indicated to the IDA that he was not willing to accept the recommendation.
- Letter to Mr Stephen Logan, an attorney specialising in consumer law.

- Hello Peter, a complaints website.
- Complaint to the National Consumer Commission.

2014

- Referral of the complaint by the NCC to the Motor Industry Ombudsman (MIOSA). MIOSA did not receive a response from the Respondent to the complaint lodged.

2015

- NCC arranged for a meeting between the Applicant and the Respondent. An agreement was subsequently reached that the Respondent would collect the vehicle from the Applicant and have the problem evaluated. The gearbox repair centre provided a quote of R21 600.00 to repair the gearbox. The Respondent offered to pay half of this cost. The Applicant refused and required that the Respondent pay the full costs of the repair. The matter therefore remained unresolved.
- May 2015 - Letter from NCC stating that it would not be referring the complaint as it does not allege any facts which if true would constitute grounds for a remedy under the CPA.
- Filing of the section 75 application with the Tribunal in June 2015.

14. After the application was filed with the Tribunal, no response was received from the Respondent. The matter was set down for hearing in default on 27 October 2015. On the day of the hearing the Respondent appeared in person and requested a postponement of the matter to enable him to file an answering affidavit and apply for condonation. The postponement was granted and after the condonation was subsequently considered and granted, the matter was again set down for hearing on 31 August 2016. Both parties appeared at the hearing and argued their respective cases.

APPLICANT'S

SUBMISSIONS

15. The matter has a complex and convoluted history. For the sake of clarity only the most relevant aspects regarding the Applicant's case will be reflected here.
16. Although Ms Bothma is the contractual purchaser and owner of the vehicle, Mr Brits conducted the purchase of the vehicle and all subsequent interactions with the Respondent. A few days after purchasing the vehicle, on 2 March 2013, Mr Brits noticed that the vehicle's Malfunction Warning Light had come on. After contacting the Respondent he was informed that they had been aware of the warning light and had cancelled it before the purchase. This implied that there was a problem with the vehicle but the light was merely reset without any form of inspection or test being done. The Respondent offered to reset the light again but did not offer to repair or test the vehicle.

17. Approximately 32 days later the vehicle's gearbox malfunctioned. The gears would not engage properly. This was 1500 kilometres after the purchase. The Respondent was only prepared to tow the vehicle in and have it checked if Mr Brits paid an amount of R1000.00 for the towing costs.
18. The dispute between the parties then ensued with Mr Brits lodging the various complaints with the various institutions mentioned above.
19. Although the vehicle was highly unreliable, during this period, Mr Brits still used the vehicle to a limited extent. In his view it was highly detrimental to the engine to have the vehicle stand for long periods without being used. He therefore used it to travel an average of 5 kilometres per day until it finally broke down entirely at some stage during June 2014. Subsequent to the meeting arranged by NCC, the vehicle was then towed in and assessed by All-O-Matic Transmissions. Due to the parties being unable to settle the dispute as to the costs of repair, it was towed back to Mr Brits with the gearbox disassembled, where it remains to this day. Ms Bothma is still paying the monthly instalments on the vehicle loan agreement.
20. Based on the application form filed with the Tribunal, the Applicant wants the vehicle to be returned to the dealer and all the instalments paid on the loan must be refunded. This appears to imply that the Applicant want a full refund of the purchase price paid for the vehicle and a refund of all the instalments paid on the loan.

RESPONDENT'S

SUBMISSIONS

21. Again, only the most relevant aspects of the Respondent's numerous submissions will be reflected.
22. When the vehicle was purchased the Respondent recommended to Mr Brits that he takes out a separate warranty on the vehicle. Mr Brits declined, stating that he had been in the motor industry for a very long time and could obtain a less expensive warranty.
23. Mr Brits informed the Respondent of the warning light that came on. He had taken it to Chrysler who informed him that it was an "O2 sensor heater failure". The Respondent requested Mr Brits to take the vehicle to an RMI approved dealer to be fixed. Mr Brits did not honour any of the appointments made to take the vehicle in. During March 2013 Mr Brits then informed him of the gearbox failure. The Respondent again requested Mr Brits to take the vehicle to an RMI approved service centre which Mr Brits refused. Mr Brits wanted the vehicle repaired by a Chrysler dealer.
24. At all times the Respondent did respond to the various complaints lodged by Mr Brits, including with MIOSA. The Respondent always offered to have the vehicle repaired by an RMI approved workshop. This was not accepted by Mr Brits.

25. The Respondent had to pay for the towing and storage costs levied by All-O-Matic, which came to R3 150.00.
26. The vehicle was used excessively as 3762 kilometres were driven within a short period of time. This period of time is not defined by the Respondent but appears to be from February 2013 until June 2014 when the gearbox broke down entirely.

ASSESSMENT OF THE EVIDENCE

27. There are a number of issues placed in dispute between the parties but those aspects which are most relevant to the case in question appear to be uncontested.
28. The vehicle was purchased by the Applicant with the intention of making reasonable use of it. The Respondent confirmed in his affidavit that the vehicle was in a good condition. There is no evidence of the Respondent advising the Applicant of any specific or particular aspects of the vehicle that should be noted prior to purchase.
29. The vehicle exhibited problems soon after it was purchased. These included an engine warning light coming on and the gearbox malfunctioning. The Applicant was unable to use the vehicle to the reasonable extent that was envisaged when it was purchased. These problems occurred within six months after the purchase.
30. Mr Brit's continued use of the vehicle to a limited extent may have contributed to the eventual failure of the gearbox but does not materially change the fact that the gearbox did exhibit problems at an early stage after the purchase.
31. Whether the vehicle was driven a total of 1500 kilometres or 3700 kilometres after the purchase does not affect the time period within which the purchase took place and when the fault occurred. The distance of 3700 kilometres over a period of over a year is in any event not unreasonable in the Tribunal's view.
32. The fact that the Applicant did not take out a warranty may be regarded as somewhat risky considering the age of the vehicle but the Applicant was under no legal duty to do so.

THE PROVISIONS OF THE CPA

33. Part H of the CPA sets out a consumer's right to fair value, good quality and safety. Section 53 of the CPA sets out the following -
 53. (1) In this Part, when used with respect to any goods, component of any goods, or services—
 - (a) "defect" means—
 - (i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or

(ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;

(b) “failure” means the inability of the goods to perform in the intended manner or to the intended effect;

Section 55 of the CPA sets out the consumer’s rights to goods which are reasonably suitable for the purpose intended and are free of any defects –

Consumer’s rights to safe, good quality goods

55.

- (1) This section does not apply to goods bought at an auction, as contemplated in section 45.
- (2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—
 - (a) are reasonably suitable for the purposes for which they are generally intended;
 - (b) are of good quality, in good working order and free of any defects;
 - (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
 - (d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.
34. The provisions of Section 56 of the CPA provide for a six month time period within which the goods can be repaired, replaced or returned for a refund.

Implied warranty of quality

56.

- (1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered

contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.

- (2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier’s risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—

- (a) repair or replace the failed, unsafe or defective goods; or
- (b) refund to the consumer the price paid by the consumer, for the goods.
- (3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must—
 - (a) replace the goods; or
 - (b) refund to the consumer the price paid by the consumer for the goods.
- (4) The implied warranty imposed by subsection (1), and the right to return goods set out in subsection (2), are each in addition to—
 - (a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and
 - (b) any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.
- 25. When applying the above sections to the evidence presented it becomes clear that the Applicant had a right to expect that the vehicle was of good quality, in good working order and free of any defects.
- 26. The sections of the CPA in question do not make any distinction between new or used goods. Even when purchasing used goods the consumer has the rights set out in section 55.
- 27. The vehicle purchased by the Applicant exhibited defects which rendered it less acceptable than a reasonable person would expect under the circumstances. These defects or failures occurred within six months after the purchase.
- 28. The Applicant therefore had a right to require that the Respondent repairs or replaces the vehicle, or refunds the price paid by the consumer for the vehicle.

APPROPRIATE RELIEF

- 29. The Applicant asked the Tribunal to order the Respondent to refund the purchase price paid for the vehicle and to refund the instalments paid on the vehicle loan.
- 30. This request however only appears to have arisen when the application was lodged with the Tribunal. There is no indication of this having been raised by the Applicant previously. Throughout the history of the dispute the Applicant appears to have insisted that the vehicle be repaired. It is only the liability for the entire cost of the repair which was in dispute. While the Tribunal acknowledges that the Applicant continually pursued the matter from inception, it cannot ignore the extensive period of time that has elapsed and the events, such as the continued use of the vehicle, which have occurred since the purchase took place.

31. In the Tribunal's view a repair of the vehicle to a reasonable standard would therefore be the most appropriate relief under the circumstances.
32. The Applicant appears to have insisted at some stage that the vehicle be repaired by a Chrysler dealer. The CPA does not prescribe any specific form of repair or service provider in this regard. Reasonableness is however the general standard applied throughout the Act. The specific circumstances of each matter would therefore have to be considered.
33. While the Tribunal understands the Applicant's request in this regard it must be considered that this is not a new or nearly new vehicle. The Applicant as a consumer is entitled to the vehicle being repaired to a reasonable standard. There is no evidence that a specialist service centre would not be able to repair the vehicle to an acceptable standard considering the age of the vehicle.

CONCLUSION

34. The Tribunal finds that the Respondent supplied a vehicle to the Applicant which was defective. The vehicle must be repaired to a reasonable standard as defined by section 55 of the CPA.

ORDER

1. Accordingly, the Tribunal makes the following order:

1.1 The Applicant's application for leave to refer the matter directly to the Tribunal is granted.

1.2 The Respondent is to collect and transport the vehicle to All-O-Matic or a similarly approved and recognised specialist service provider for repairs to the gearbox. The Respondent is to carry the costs of transporting and repairing the vehicle to a reasonable standard within 30 days of the date of this judgment.

1.3 There is no order as to costs.

DATED ON THIS 16th DAY OF SEPTEMBER 2016

[signed]

Adv J Simpson

Member

Ms D Terblanche (member) and Prof. B Dumisa (Presiding member) concurring.

[1] NCT/7142/2012/75(1)(b)&(2).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZANCT/2016/36.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/bothma-v-point-unknown-topic-anct-2016>

Prepared on 11 October 2026 · Esheria