

SOUTH AFRICA / JUDGMENT

Dramat v Scoin Trading (Pty) Ltd (NCT/87734/2017/75(1)(b)) [2018] ZANCT 54 (14 May 2018) [2018] ZANCT 54

COURT

National Consumer Tribunal

BEFORE

B. Dumisa

CASE / FILE NUMBER

NCT/87734/2017/75(1)(b)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

IN CENTURION

Case

number: NCT/87734/2017/75(1)(b)

In

the matter between:

FARIEDA
DRAMAT APPLICANT
and
SCOIN
TRADING (PTY)
LTD RESPONDENT

Coram:

Prof.
B. Dumisa – Presiding member (Single Member)
Date
of Hearing – 14 MAY 2018

JUDGMENT**AND REASONS****APPLICANT**

1. The Applicant in this matter is FARIEDA DRAMAT, a major female (hereinafter referred to as “the Applicant”). She represented herself at the hearing.

RESPONDENT

2. The Respondent is SCOIN TRADING (PTY) LTD, a specialist coin shop, situated on the 4th Floor, Atrium on 5th, East Tower, Sandton City, in the Gauteng Province (Hereinafter referred to as “the Respondent”). At the hearing the Respondent was represented by Mr Gary Seagal.

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. This is an opposed application, where the Tribunal must consider whether there are reasonable grounds to grant the Applicant leave to directly refer the matter to the Tribunal 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:

7.1 The Applicant’s reasonable prospects of success with the referral; and

7.2 Whether the matter is of substantial importance to the Applicant or the Respondent.

8. It was firstly very clear that the matter was of substantial importance to the Applicant. She had gone to a great deal of effort to lodge this complaint with the National Consumer Commission (NCC), which issued her a Notice of Non-Referral on 17 August 2017; and she had now approached the Tribunal for an application for leave to refer the matter directly to the Tribunal for a hearing.

BACKGROUND

9. 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, or emails, to try and determine a coherent version of what occurred. For coherence, the Tribunal had to consider this matter from a number of angles, namely, from the submissions by the Applicant, from the perspective of the Respondent, including the Respondent's opposing affirmation, and from the perspective of the National Consumer Commission (NCC).

APPLICANT'S

SUBMISSIONS

10. The most relevant aspects regarding the Applicant's case were to be considered as follows:

10.1 On the 26th of September 2012, the Applicant purchased from the Respondent a South African Nobel Laureates set of coins;

10.2 These coins were at the time valued at R41 000;

10.3 The Applicant made assertions that, at the time of purchase, she was guaranteed her money back after three years;

10.3.1 The coins remained in the custody of the Respondent, for which a separate "Request for Storage of Coins into Safe Custody" contract was signed by both parties;

10.3.2 On the 23rd of May 2016 she emailed the Respondent to say she wanted to sell her coins;

10.3.3 On the 24th of May 2016 one Deon van Zyl, from the Respondent's entity, allegedly responded that he was going to assist the Applicant;

10.3.4 The Respondent allegedly never kept their promise to assist the Applicant;

10.3.5 The Respondent later replied to her where they alerted her to their DISCLAIMER at the bottom of their email where it reads "The company or any representative does not guarantee by any means or manner that it will buy back any coin or medallions;"

10.3.6 The Applicant alleged that nowhere on her invoice did that disclaimer, or something to that effect, appear. (Indeed, the Tax Invoice provided by the Applicant did not contain any disclaimers);

10.3.7 Her submissions were that had she known that there was such a disclaimer, she would never have purchased that set of coins;

10.3.8 She alleged that the Respondents had refused to sell her coins (presumably at rates above the R41 000 she bought them for); and

10.3.9 All in all, the Applicant alleged that she was a victim of false advertising or false marketing by the Respondent.

11. She wanted the deal cancelled, and to be refunded in full the cash she paid for these coins.

RESPONDENT'S

SUBMISSIONS

12. The Respondent responded, through their legal representatives, as follows:

12.1 The Respondent is in the business of selling Krugerrands, medallions, and rare coins to the general public, down to "an entry level to the man on the street to that, which was, for years and by many considered to be a "a rich man's market;"

12.2 The Respondent emphasized that one must distinguish between Krugerrands, rare coins and medallions and how the value for each is obtained;

12.3 The value of the Krugerrand, whether it be gold, silver, or platinum, is determined by the precious metals market on any given day, and naturally, depends on the size of the Krugerrand. Therefore, if the gold price dips, the value of the Krugerrand held in the client's possession will also drop. If the gold market rises, then so too will the value of the coin;

12.4 Rare coins and medallions differ remarkably when determining the value of that coin / medallion. In order to determine their value, one has to look at:

12.4.1 The precious mineral that the coin is made out of, e.g. gold, platinum, silver, bronze or copper;

12.4.2 The rarity of the coin;

12.4.3 The demand in the market for that particular coin at any particular given point in time, which is the most important factor;

12.4.4 Therefore, a coin can be made out of gold, it can be the only coin still in existence, and yet, if there is no demand for that particular coin in the market at any given point in time, the coin practically holds no value, because you cannot find a buyer for it;

12.4.5 The Respondent's submissions on this particular issue of the value of coins ended thus "The factors listed in terms of the above when dealing with rare coins and medallions, are all beyond the Respondent's control, and therefore, it is inconceivable that the Respondent would guarantee to buy back any of the rare coins and medallions, and indeed, even Krugerrands from any of its clients, otherwise the Respondent would have been bankrupt years ago;

12.5 Based on the above, the Respondent vigorously denied that any of its employees, more especially Mr Deon Van Zyl, would ever guarantee to buy back any rare coins and medallions;

12.6 The Respondent confirmed that they do supply their clients with a trade exchange facility, where if the Respondent is not interested in buying the coin or medallion, it tries and assists their client by ascertaining if any of their other clients are interested in purchasing that particular coin or medallion. If the Respondent can find a buyer, then the Respondent helps to facilitate such sale. If the Respondent cannot find a buyer, the client is able to find a buyer on their own, with no

obligation to the Respondent, whatsoever. In fact, the client does not have to make use of the Respondent's exchange facility at all if they so choose; and

12.7 The Respondent held that they advise their clients that are interested in rare coins and medallions that these purchases are long term investments, and that they will only see growth on those purchases in approximately 7-10 years, depending on market trends at any given point in time.

13. All in all, the Respondent's submissions were that:

13.1 They did not mislead the Applicant when she purchased these coins; and

13.2 The mere fact that the Applicant could not produce anything in writing that supported her contentions that she was given any buy back guarantees by the Respondent was proof enough that no such guarantees were ever given.

CONSIDERATIONS OF THIS MATTER BY THE NATIONAL CONSUMER COMMISSION

14. The NCC assessed the Applicant's complaint and came to the following conclusions:

14.1 The Applicant purchased the South African Nobel Laureates set as an investment;

14.2 Investments are not covered under the Consumer Protection Act; hence the matter falls outside of the jurisdiction of the National Consumer Commission; and

15. It is on those basis the Applicant approached the Tribunal for a referral in terms of Section 75(1)(b) of the CPA.

THE PROVISIONS OF THE CPA

16. Section 20 Consumer's right to return goods

(1) "This section is in addition to and not in substitution for-

(a) the right to return unsafe or defective goods, contemplated in section 56; or

(b) any other right in law between a supplier and consumer to return goods and receive a refund.

(2) Subject to subsections (3) to (6), the consumer may return goods to the supplier, and receive a full refund of any consideration paid for those goods, if the supplier has delivered-

(d) goods intended to satisfy a particular purpose communicated to the supplier as contemplated in section 55 (3), and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular

purpose."

17. Section 55(3) Consumer's rights to safe, good quality goods

“In addition to the right set out in subsection (2) (a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier-

- (a) ordinarily offers to supply such goods; or
- (b) acts in a manner consistent with being knowledgeable about the use of those goods, the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.”

18. Section 56 Implied warranty of quality

- (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 standard 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.”

APPROPRIATE RELIEF

- 19. The Applicant had prayed for her money to be paid back in full.
- 20. Going through the various provisions of the Act, the Consumer Protection Act, that could possibly apply in this case, there is absolutely none that seems to come closer to the type of product that the Applicant bought, as it appears that the Applicant was not necessarily buying the physical set of coins but was buying an “Investment”. The conclusion that the Applicant was buying an investment, instead of the physical set of coins, is based on the following conclusions from both parties’

submissions:

20.1 In her affidavit, on lodging her papers with the National Consumer Tribunal, the Applicant made it clear that she never bought the set of coins for the purposes of keeping them;

20.2 She made submissions that the Respondent had promised to sell these coins on her behalf in three years’ time; and

20.3 It was presumably on those bases that the Applicant left those coins in the Respondent's custody for three years.

21. It is clear from the Respondent's letter to the Applicant, dated Wednesday 8 June 2016, that the Respondent does make certain pronouncements that can reasonably be regarded as the Respondent's undertaking to market the coins on behalf of the Applicant:

21.1 The Respondent wrote "The South African Gold Coin Exchange does offer an industry-leading trade exchange platform which enables our clients to trade their coins and medallions. We have managed to successfully sell many coins / medallions over the years through this platform, and we will continue to do so;"

21.2 BUT, they immediately came with the following disclaimers "However, if the economy / market is slow or there is not enough demand for that specific product in the marketplace, then the exchange between the buyer and seller is unable to take place. They went on to draw an analogy to this "It can be compared to a painting or any other painting – if there are buyers who are prepared to pay the price for that item, then it will be sold easily. The opposite can also hold true;.

21.3 They continued to write "At the time you purchased your collection from us, demand for gold and gold coins was high and the market was driven by a short supply on Mandela branded products. During this time we have traded thousands of Rand's worth of coins by matching buyers and sellers. Since then we have seen a significant shift in global markets and investors and collectors moved away from gold and turned to opportunities in the stock markets. This resulted in a slowdown of the gold market;"

21.4 The Respondents concluded "We highly recommend to customers that they purchase our product for the purpose of wealth preservation and not speculation. In addition, they should hold on to their coins / medallions for a long period; " and

21.5 To protect themselves, the Respondent was quick to end their letter by directing the Applicant to view their terms on their website –

<http://www.scoinshop.com/en/customer-service-and-contacts/service/trade-exchange/>

22. Going through Sections 20, 55, and 56, it is much clear that the type of product that the Applicant and the Respondent were transacting on was not necessarily the physical

coins, worth R41 000, that the Applicant paid for. It is clear from the submissions of both parties that the Applicant paid for these coins as a form of investment. It was common knowledge between the two parties that the Applicant came to the Respondent for these speculative reasons, despite the Respondent's pronouncements to the contrary. This is where the problem is; the Consumer Protection Act does not cover investment purchases; hence, the Tribunal has no jurisdiction to deal with this matter.

23. The National Consumer Commission concluded that, in the same way as we have just observed as well, that this matter is therefore not covered under the Consumer Protection Act.
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