

SOUTH AFRICA / JUDGMENT

Moreo v Coetzer t/a Berea Motors (NW12/2023) [2024] ZACONAF 10 (11 April 2024) [2024] ZACONAF 10

COURT

Consumer Affairs Court

BEFORE

KJP Kgomongwe

CASE / FILE NUMBER

NW12/2023

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PROCEEDINGS

BEFORE THE

CONSUMER AFFAIRS COURT FOR THE

NORTH

WEST PROVINCE, HELD

AT KLERKSDORP

CASE

NO:

NW12/

2023

In

the matter between: -

MS

THOKOZILE

MOREO

PLAINTIFF

And

MR

GERRIT

COETZER

T

/

A
BEREA
MOTORS
DEFENDANT

JUDGEMENT

ON SPECIAL PLEA

Delivered on 11/04/2024

CORUM: KJP KGOMONGWE

For Plaintiff

- Consumer Protector - Mr SE. Letsogo

For Defendant - Mr. A Van Aswegen INTRODUCTION

[1.] PARTIES

1.1 The Plaintiff in this matter is Thokozile Moreo an adult female person residing at Jouberton, Klerksdorp, North West.

1.2 The Defendant is cited as Mr Gerrit Coetzer T/A Berea Motors conducting its ,business at Anderson Street, Klerksdorp under trade name Berea Motors.

[2.] BACKGROUND AND

FACTS

2.1 A notice to institute proceedings was served on the manager, Berea Motors, Anderson Street, Klerksdorp on 25th July 2023, summoning the Defendant to appear before the Consumer Affairs court on 13th September 2023, attached to the notice was the Tax invoice no; 14394 marked annexure B issued by Berea Motors together with founding affidavit of Ms Thokozile Moreo stating the basis of her claim. The defendant also filed their plea and in summary;

[3.] PLAINTIFF'S CASE

3.1 She purchased A Rav4 Motor Vehicle from the Defendants on 03rd February 2023 and was assisted by Mr Joe De Kok. She paid the full purchase price of R96 000,00 on 04th February 2023 she then realized that the motor vehicle had difficulty in engaging gear No. 3 and 4 and there was a noise coming from the wheels and she informed Mr De Kok and was advised that the brake pads had just been replaced and the problem with the noise will disappear with time.

3.2 On 23rd June 2023 whilst driving the vehicle could not engage gears and she informed Mr De kok who informed her that they cannot help her as she is now the owner of the motor vehicle. On 26th March 2023 she went to the dealership to lodge a complaint, but they refused to assist her where she then informed the dealership that she is cancelling the contract and demanded refund. The Defendant refused to accept the car back and refused to refund her the monies paid.

3.3 Plaintiff then lodged a complaint with the consumer Affairs office.

Defendant filed their plea on 24th August 2023.

[4.] DEFENDANT'S CASE

In summary response to the Plaintiff's particulars of claim;

- 1) The defendant noted that the Plaintiff is Thokozile Morea, and they denied that the defendant is Gerrit Coetzer T/A Berea Motors and stated that "Coewet CC trades as Berea Motors as per CIPC Company search annexed to their plea.
- 2) The Defendant admitted to the cause of action occurring within the court's jurisdiction, however denied in conducting themselves in a prohibited conduct and further denied that the consumer court is the empowered to hear this matter by virtue of proceedings instituted as contemplated in terms of Section 9 Consumer Affairs (meaningful business practice) Act 4 of 1996 as amended.
- 3) Defendant noted the plaintiff's claim for refund on an amount of R96 000,00 as purchased price for the Rav4 Motor Vehicle.
- 4) Defendant denied that Plaintiff took delivery of the motor vehicle on 03rd February 2023 and claimed that Plaintiff took delivery on 02nd February 2023.
- 5) Defendant further denied the defects on the motor vehicle and put Plaintiff to proof thereof.
- 6) Defendant specifically pleaded that in any event the Plaintiff confirmed that she bought an early model vehicle extensively used and that the component and parts due to wear and their age could fail.
- 7) Further that Plaintiff declined and waived her right to the comprehensive used car warranty insurance.
- 8) Further that the Plaintiff only complained of defects after driving 8 656km with the vehicle and that the defects were only brought to their attention of Mr Coetzer after the vehicle was extensively used.

[5.] Defendant in support of their plea filed and answering affidavit by Gerhardus Johannes Benjamin Coetzer in reply to the founding affidavit of the Plaintiff and in summary the following can be noted:

1. He denies selling the vehicle to plaintiff and states that the vehicle was sold by Coewet CC t/a Berea Motors a close corporation.
2. The vehicle was not sold on 03rd February 2023 but on 02nd February 2023.
3. The vehicle was sold as a cash transaction for R96 000,00 after a discount of R10 500.00.
4. He denied that the Plaintiff approached Mr De Kok on 04th February 2023 which fact is supported by the fact that the Plaintiff drove with the motor vehicle for 8656 km.
5. Defendant stated that Plaintiff did approach Berea Motors who informed her that they will be able to assist her with repairs to the gearbox on condition that she contributes to the costs thereof.
6. Defendant further pleaded that the Plaintiff's claim for cancellation is vexatious and to be dismissed.

[6.] PROCEEDINGS BEFORE COURT

1. On 20th October 2023 the matter appeared before court and a pretrial meeting was held for purposes of narrowing proceedings and determining issues in dispute and to be determined by the court.
2. In the pretrial the dispute regarding the citation of the responded was not raised by the defendant's legal representative appearing then Ms Mostert and the main issue to be determined according to the defendant was that plaintiff purchased a second hand motor vehicle which was extensively used further that plaintiff refused to purchase an extended warranty insurance. The Defendant denies breach of the contract and any obligation to refund the Plaintiff and or conduct of any prohibited conduct .
3. The matter was declared trial ready and remanded for trial for 12/02/2024. On the set date the matter could not proceed and was postponed per agreement between the parties to 12th March 2024.
4. On 12th March 2024 the matter appeared before court and the Defendant argued and raised a special plea denying the citation of the Defendant on the Plaintiff's particulars of claim in that the Defendant was cited as "Gerrit Coetzer an adult male conducting business at Anderson Street, Klerksdorp under trade name Berea Motors.

The Defendant argued and denied the citation of the Defendant in its plea as incorrect and specifically pleaded that Coewet CC Trades as Berea Motors thus objecting to the inclusion of Gerrit Coetzer and Berea Motors as Defendants to the Plaintiff's particulars of claim.

- [7] The Plaintiff on the other hand argued and maintained that the Defendant Gerrit Coetzer t/a Berea Motors was property cited as the supplier who is deemed to have transacted with the Consumer/Plaintiff.

[8.] DISPUTE FOR

DETERMINATION

At this stage the court is not invited to determine the merits or the demerits of either's party claim relating to the sale or defective

performance herein. The court is called upon to decide on the special plea urged on the citation of Gerrit coetzer as a party to these proceedings.

Both parties submitted their written heads of arguments fully substantiating their arguments to which the court is indebted to both

parties submissions including authorities and relevant legislation applicable

APPLICABLE LAW

[9.] PURPOSE AND INTERPRETATION OF THE ACT

"The Consumer Protection Act 68/2008 hereafter referred to as the Act" was created because of the existing consumer protection measures which were outdated and fragmented. The act now provides for an extensive framework for consumer protection and aims to develop, enhance, and protect the rights of the consumers and to eliminate unethical suppliers and improper business practices.

1. Preamble to the Act is one of the aims of the consumer policy framework which is aims to provide a consistent, predictable, and effective regulatory framework that factors consumer confidence in the market.
2. The Act has a field of application. The Act applies to every transaction occurring between the supply of goods or services unless the transaction is exempted by the application of the Act.
3. The first important definition is of a transaction and according to Section 1 of the Act.

A "transaction" - means:

- (a) in respect of a person acting in the ordinary course of business-
- (i) an agreement between or among that person and one or more other persons for the supply or potential supply of any goods or services in exchange for consideration; or
- (ii) the supply by that person of any goods to or at the direction of a consumer for consideration; or
- (iii) the performance by, or at the direction of, that person of any services for or at the direction of a consumer for consideration.

[10.] The Defendant in their heads of arguments correctly point and quote the case of Wells v South African Alumerite Company 1927 AD 69 at 127 where the court held the following:

"If there is one thing which mean more than the other public policy requires, it is that men of full age and competent understanding

liberty of contracting and that their contracts, when entered into freely and voluntarily, shall be held sacred and enforced by the courts of justice".

[11.] The Defendant in their submissions further correctly point out what was held in essence *Hading Cc v Infiniti insurance Ltd/Mediterrear Shipping Company (Pty) Ltd* (case No. 2022/4024 2023ZAGPGJHC delivered on 09/6/2023 where the court held that:

"Where there is an error in the citation of the Defendant and the correct Defendant entered on appearance to defend, or intervened there would be no prejudice if the amendment is affected by way of an amendment".

[12.] Section 44 of the Act provides for the consumers right to assume suppliers is entitled to sell goods:

- (1) Subject to subsection (2), every consumer has a right to assume, and it is an implied provision of every transaction or agreement, that-
 - (a) in the case of a supply of goods, the supplier has the legal right, or the authority of the legal owner, to supply those goods.
 - (b) in the case of an agreement to supply goods, the supplier will have a legal right, or the authority of the legal owner, to- (i) sell the goods at the time the title to those goods is to pass to the consumer; or (ii) lease the goods at the time the lessee is to take possession of the leased goods.

[13.] In terms of Section 51 (i)(a) (ii) a supplier must not make a transaction or agreement subject to any term or condition if,

- (a) its general purpose or effect is to-
 - (i) defeat the purpose and policy of this Act.
 - (ii) mislead or deceive the consumer; or
 - (ii) subject the consumer to fraudulent conduct.

[14.] This notion is supported by the provisions of Section 79 of the Act which provides as follows:

- (1) A person must not carry on business, advertise, promote, offer to supply, or supply any goods or services, or enter into a transaction or agreement with a consumer under any name except-
 - (a) the person's full name as-

- (i) recorded in an identity document or any other recognized identification document, in the case of an individual; or (ii) registered in terms of a public regulation, in the case of a juristic person; or
- (b) a business name registered to, and for the use of, that person in terms of section 80, or any other public regulation

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[15.] EVALUATION OF MERITS OF THE SPECIAL PLEA

The common thread and undisputed on the papers filed and arguments is that Ms Moreo/Plaintiff was at Berea Motors in Anderson Street,

Klerksdorp to purchase a Rav4 motor vehicle and paid an amount of R96 000,00 and was issued with a tax invoice to that effect. The court can safely accept a consumer transaction has been concluded.

A complaint was lodged with the office of the Consumer Affairs/Lawful Business Practices Act and correspondence and summonses were issued on the matter and served on Berea motors wherein Mr Gerrit Coetzer was cited as a party to the proceedings, thus the objection by the Defendants that Mr Gerrit Coetzer should not have been cited and instead Coewet Cc Trading as Berea Motors should have been cited as the Defendant.

The following is evident and revealed in the papers filed:

- It is not in dispute that the Plaintiff is Ms thokozile Moreo.
- Ms Moreo was in February 2024 at Anderson Street at Klerksdorp at a business place marked and advertised as Berea motors.
- She at the premises purchased a Rav4 Motor Vehicle and was issued with invoice No: 14394 from Berea Motors after payment of R96 000,00.
- Summonses and notices were issued against Gerrit Coetzer T/A Berea Motors for the parties to appear before court.
- Defendants filed their plea under the same case and citation of Gerrit Coetzer T/ A Berea Motors.
- Defendant annexed to their plea a CIPC search indicating that Coewet Cc is registered as a close corporation which reflects Gerhardus Johannes Benjamin Coetzee as the active member of the close corporation with its registered address as Viney Street 19, Potchefstroom, Northwest.

- Defendant in their plea supported by the opposing affidavit of Gerhardus Johannes Benjamin Coetzee stated that the contents of the affidavit deposed falls within his personal knowledge and responds to the allegations and averments and claims made by the Plaintiff against Gerrit Coetzee T/ A Berea Motors relating to the consumer transaction that took place between the parties.

When proceedings were instituted and papers served per and trailing emails which were addressed by the office of investigation of business practices addressed to the manager of Berea Motors Anderson Street, Klerksdorp also per letter dated 26 JUNE 2023 on BEREAMOTORS on letterhead per GJB COETZER, CEO, BEREAMOTORS. Further thereto are emails dated 23rd July 2023 at 11h24am addressed to g[...]@bereamotors.co.za and there is also an email dated 29th June 2023 responding to the complaint from Gerrit Coetzer per email g[...]@bereamotors.co.za

[16.]

CONCLUSION

On evaluation of papers filed and submissions made it cannot be disputed that there is a contract entered into by the plaintiff with an entity presented to the consumer as Berea Motors advertised and conducting its business on premises at 98 Anderson street Klerksdorp represented by agents of the entity amongst them Gerrit coetzer.

It is evident that on the CIPC documents of the entity Gerhadus Johannes Benjimin Coetzer is a member of the close corporation COEWET

CC. defendants have pleaded and accepted that Coewet cc is trading as Berea motors. Mr Gerhadus Johannes Benjimin Coetzer has also attested through an affidavit and clearly elucidate and bears knowledge of the transaction that took place between the plaintiff and defendants cite on proceedings before court.

In this matter the consumer correctly presumed that she was contracting with Berea Motors. This is supported by invoices issued and confirmed per letter on Berea motors letterhead dated 26 lune 2023 issued on behalf of the defendant. Coewet CC particulars do not appear on the advertised premises at the business address of the Defendant's premises or adverts. Coewet cc is a registered close corporation has its registered address as Vineystreet 19, Potchefstroom Northwest.

[17.] ORDER

Having regard to the above and all submissions made, filed and perused the following order is made:

1. The special Plea is dismissed.
2. The court shall if necessary furnish further reasons and/or alternative orders at the conclusion of the main trial and to furnish full reasons therein.

3. No order to cost is made.

DATED AT KLERKSDORP ON THIS THE 11TH OF APRIL 2024.

KJP KGOMONGWE

CHAIRPERSON

AND TO: THE CLERK OF THE COURT NORTH WEST CONSUMER AFFAIRS COURT MMABATHO
AND TO: CONSUMER PROTECTOR ECONOMIC DEVELOPMENT, ENVIROMENT, CONSERVATION
AND TOURISM NORTH WEST PROVINCIAL GOVERNMENT REF: SE LETSOGO MMABATHO AND
TO: THERON, JORDAAN & SMIT INC DEFENDANTS ATTORNEY 81 BUFFELSDOORN ROAD
WILKOPPIES KLERKSDORP REF: JA VAN ASWEGEN/CS MOSTERT/57518

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