

SOUTH AFRICA / JUDGMENT

## Ralph v Auto C Motorworx CC (NCT/109285/2018/75(1)(b)) [2019] ZANCT 8 (8 February 2019) [2019] ZANCT 8

COURT

National Consumer Tribunal

BEFORE

A Potwana, D Terblanche, M Peenze

CASE / FILE NUMBER

NCT/109285/2018/75(1)(b)

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#### Policy

#### IN

THE NATIONAL CONSUMER TRIBUNAL

#### HELD

IN CENTURION

#### Case

number: NCT/109285/2018/75(1)(b)

#### In

the matter between:

THOMAS  
RALPH  
APPLICANT  
and  
AUTO C MOTORWORX  
CC RESPONDENT

Coram: Mr  
A Potwana - Presiding Tribunal Member  
Ms  
D Terblanche - Tribunal Member  
Dr  
M Peenze - Tribunal Member  
Date  
of Hearing - 8 February 2019

## JUDGMENT

### AND REASONS

#### APPLICANT

1. The Applicant is Thomas Ralph; an adult male person who resides at [...] P Avenue, Weltevreden Park, Extension 24, Roodepoort. At the hearing; Mr Ralph represented himself.

#### RESPONDENT

2. The Respondent is Auto C Motorworx CC; a close corporation that is duly incorporated and registered according to the laws of the Republic of South Africa. The Respondent carries on business at Shop 8, Weltevreden Shopping Centre, Rinyani Avenue, Allens Nek, Roodepoort.

#### TYPE OF APPLICATION

3. In this application; the Applicant alleges that the Respondent damaged his car. He wants his car repaired by a Retail Motor Industry (RMI) approved repairer at the Respondent's expense.
4. The Applicant was granted leave to refer the matter to the Tribunal.

## BACKGROUND

5. On or about 16 August 2016; the Applicant noticed a small drip of transmission fluid on his garage floor. He took his car to the

Respondent. On 18 August 2016; the Respondent diagnosed the drip as a small leak from around the gearbox filler plug, a small leak from the power steering bottle, and an oil leak from the Tappet cover. The Respondent quoted R2500.00 to repair the identified leaks. The Applicant agreed.

6. On 23 August 2016; the Applicant received a call from the Respondent; and was informed that the leaks were fixed. But; another seal was leaking and the total cost of repairs would be R4000. 00. He agreed and gave the go ahead. The Applicant alleged that whilst the car was in the Respondent's care; it was driven to Soweto without his permission and spent the night there on the 24th until the 25th day of August 2016. On 29 August 2016; the Respondent told him that all the leaks were fixed; the gearbox was fine; and he could collect the car. The

Applicant collected the car and paid R4000.00.

7. On 5 September 2016; the Applicant once again noticed transmission oil on his garage floor. He called the Respondent and arranged for it to pick up the car which it did. The Respondent told him that it would have to “drop” the gearbox to look for the problem. On 07/09/2016; the Respondent told him that the leak was from the seal they had just fitted. The Applicant was told that either the seal had to be repaired or a new gearbox fitted. He demanded the R4000.00 he had paid; but was told that the Respondent’s owner was prepared to go 50/50 on the projected extra cost of R6500.00. He declined the offer. Instead; he demanded that the car be put back together; and that he be refunded the sum of R4000.00 he had paid.
8. On 09 September 2016; the Applicant called the Respondent and asked if he could collect his car and the R4000.00. He was told that the Respondent had sent the car’s gearbox to Gearbox Place. This was done without the Applicant’s consent. On 11 September 2016; the Respondent informed the Applicant that it received the gearbox back and was putting it back into the Applicant’s car. On 12 September 2016; the Respondent informed him that the gearbox was not changing gears properly and had sent it back to Gearbox Place. The Applicant was later informed that the people at Gearbox Place said the clutch needed replacing. Once again; the Applicant demanded that his car be put back together and his money refunded.
9. On 13 September 2016; the Applicant called the Respondent. He was informed that the gearbox was received back from Gearbox Place and was being put back into the car.
10. On 14 September 2016; the Applicant called the Respondent. He was informed that the gearbox was back in the car and everything was fine. He demanded that the car be delivered to his house. An employee of the Respondent; Randall; informed the Applicant that there was money outstanding; and that he had to come and speak to the owner. He went to the Respondent’s premises and met with Randall and the owner; Imran. Imran demanded R7000. 00 and showed the Applicant a box of damaged parts that he said were from the Applicant’s gearbox. The Applicant refused to pay and demanded his car. After threatening to open a case of theft at the Honeydew Police Station; he was given the car’s keys and left with the car.
11. On 10 October 2016; he noticed that the gearbox was again leaking oil. He phoned the Respondent but was told that the Respondent was not interested as he owed the Respondent money. He arranged for his car to be transported on a flatbed truck to his home.
12. He filed a complaint with the National Consumer Commission (“The Commission”). The Commission issued a notice of non-referral on the basis that the complaint did not allege any facts; if true; would constitute grounds for a remedy under the Consumer Protection Act 68 of 2008 (“the CPA”). He sought leave to refer the matter to the Tribunal. Leave was granted.

13. The Applicant alleges that the Respondent damaged his car and wants his car repaired by an RMI approved supplier at the Respondent's

expense. At the hearing; the Applicant conceded that he did not know the damages that the Respondent caused to his car.

14. The Respondent did not file any opposing papers and the matter proceeded on a default basis.

## FACTS

15. At the hearing; the Applicant submitted that his car is a 1989 model; and the mileage was approximately 210 000km when he took it to the Respondent. On the Respondent's invoice dated 29 August 2016; the mileage is recorded as 211432km.

16. In the Applicant's affidavit dated 23 February 2018; the Applicant averred that:

*"The respondent Auto C Motorworx changed the amount I was to be charged for repairs to my gearbox 3 times. The original quote was for R2500.00 which was then changed to R4000. 00. This was then verbally changed to add a further R7000.00 for work they claim they authorised without my written consent to some undefined party." (sic in toto).*

17. In the complaint filed with the Commission; the Applicant stated that:

*"My complaint is that they quoted me R2500.00 to fix a small gearbox leak." (sic in toto).*

## ISSUES

### TO BE DECIDED

18. The Tribunal is required to decide whether there is any basis in fact and in law to order that the Applicant's car be repaired at the Respondent's expense.

### THE LAW

19. Section 54 of the CPA states-

*"(1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to-*

- (a) ...
- (b) the performance of the services in a manner and quality that persons are generally entitled to expect;
- (c) ...

- (d) the return of property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.”
- (2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either-
  - (a) remedy any defect in the quality of the services performed or goods supplied; or
  - (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.”
- 20. Section 57(1) of the CPA states-

*“A service provider warrants every new or reconditioned part installed during any repair or maintenance work, and the labour required to install it for a period of three months after the date of installation or such longer period as the supplier may specify in*

*writing.”*

## ANALYSIS

### OF THE EVIDENCE

- 21. Although the Applicant alleged that; whilst in the Respondent’s care; his car was driven to Soweto without his permission; the balance of probabilities does not support the Applicant’s assertion that; the Respondent caused damage to the Applicant’s car. Also; the Applicant did not present any evidence that the Respondent caused any damage to his car.
- 22. As stated in paragraph 7 above; oil started leaking within days after the Applicant paid the sum of R4000.00 and collected the car from the Respondent. The Respondent admitted that the leak was from the seal it had just fitted. After the gearbox was “dropped”; oil started leaking again within one month after the Applicant took his car from the Respondent. The Respondent then refused to remedy the defect in the quality of the services performed.
- 23. The repeated oil leaks indicate that the Respondent did not repair the Applicant’s car in a manner and quality that persons are generally entitled to expect.

## CONCLUSION

- 24. The Respondent repeatedly failed and later refused to repair the Applicant’s car in a manner and quality that persons are

generally entitled to expect. This shows a clear contravention of Section 54(1)(b) and (2)(a) of the CPA.

25. The Respondent's repeated failure to repair the Applicant's car is complete and inexcusable. In terms of Section 54(2)(b) of the CPA; the Applicant is entitled to a full refund of the sum of R4000.00 that he paid for the repairs.
26. For the sake of completeness; it should be stated that; the Applicant was entitled to demand the release of his car without paying the sum of R7000.00 that the Respondent demanded. This conclusion is based on the fact that; the Respondent did not provide the Applicant with an estimate of the cost of repairing the gearbox before it took to Gearbox Place; and the Applicant did not authorise the work. Section 15(2) of the CPA states-

*"A service provider to whom this section applies, must not charge a consumer for the supply of any goods or services contemplated in subsection (1), unless-*

- (a) the supplier or service provider has given the consumer an estimate that satisfies the prescribed requirements, and the consumer has subsequently authorized the work; or
- (b) the consumer, in writing, or by another recorded manner or form, has-
  - (i) declined the offer of an estimate, and authorized the work; or
  - (ii) pre-authorised any charges up to a specific maximum, and the amount charged does not exceed that maximum."

#### ORDER

27. The Tribunal makes the following order:-

27.1. the Respondent must refund the Applicant the full sum of R4000.00 within thirty (30) days of the issuing of this order ; and

27.2. there is no order made as to costs.

Thus; done and signed at Centurion on 11 February 2019.

Mr A Potwana

Presiding Tribunal Member

Ms D Terblanche (Tribunal Member) and Dr M Peenze (Tribunal Member) concurring.

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