

SOUTH AFRICA / JUDGMENT

# Cancellation of order for special order tools - financial difficulties: Supplier not obliged to accept cancellation (2013114179) [2014] ZACGSO 3 (4 February 2014)

**[2014] ZACGSO 3****COURT**

Consumer Goods and Services Ombud

**BEFORE**

Bonita Hughes

**CASE / FILE NUMBER**

2013114179

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Cancellation of order for special order tools- financial difficulties:

Supplier not obliged to accept cancellation

Complaint ref :

2013114179

Adjudicator :

Bonita Hughes

Date :

04 February 2014

## 1. Summary of your complaint

In September 2011 you paid a deposit of R17 000.00 for a set of tools. In April 2012 you informed the supplier that due to financial constraints you can no longer afford the tools.

You cancelled the deal and requested a refund. The supplier informed you of their no refund clause.

You want the supplier to refund you the deposit of R17 000.00.

## 2. Summary of E's response

The supplier advised that you ordered a set of metal bending tools on 18 September 2011. The price at the time was R85 000.00 and a deposit of 20% was required for the tools to be ordered.

You paid R9 000.00 on 18 September 2011 and the balance of the deposit a month later on 15 October 2011.

The contract states that the outstanding balance will be paid within 4 weeks from the date of signature. Based on this E imported the full set of tools from Australia, paying all the charges upfront.

In 2012 you requested a refund and E advised that they do not have refund policy and that you have to pay the outstanding balance.

The supplier advised that in accordance with the terms of the contract signed they will not concede to your request for a refund.

### 3. Assessment

We have considered all the evidence presented by both you and the supplier and advise as follows:

You would like to cancel your order for a set of metal bending tools and request that the supplier refund your deposit of R17 000.00.

In this regard we would like to refer you to section 17 of the Consumer Protection Act:

A consumer may in spite of any term to the contrary, cancel an advanced order in terms of section 17(2) of the Consumer Protection Act, subject to the imposition of a reasonable charge for cancellation for the order (section 17(3)(b)), UNLESS the goods were a special-order (section 17(1)), i.e. the supplier expressly or implicitly was required or expected to procure, create or alter specifically the goods to satisfy the consumer's requirements (definition section).

In this instance it appears that the tools were a special order and you will therefore not be able to cancel the order in terms of Section 17 of the Consumer protection Act.

According to the supplier they also do not have a refund policy and we can therefore not instruct them to cancel the contract.

You entered into a valid and binding agreement and there is no legal basis upon which we can instruct the supplier to cancel the agreement.

### 4.

## Conclusion

Based on the facts of this case, the information and evidence furnished to this office and on the principles of reasonableness and fairness, there is no reasonable prospect of this office making a recommendation in your favour.

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**ORIGINAL SOURCE**      <https://www.saflii.org/za/cases/ZACGSO/2014/3.html>

**CASE PAGE**              <https://chat.esheria.ai/case-law/south-africa/unknown-plaintiff-v-unknown-defendant-consumer-protection-act-acgso-2014>

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