

Cancellation of order

Cancellation of order for special order plastic bags: *res judicata*

Complaint ref : **20144251007**
Adjudicator : **N Melville**
Date : **21 May 2014**

1. Summary of complaint

The complainant apparently a CC, which business placed an order for plastic bags to the value of R30 774,09 and paid a 50% deposit of R15 372.04 with the supplier on 5 August 2011.

It would seem that the bags, which according to the supplier are special order goods, were manufactured but the balance owing was not paid by the CC/ business because it ran out of funds. The complainant informed the supplier and requested a refund. The supplier's lawyer informed the complainant that the money would only be refunded once the supplier sold the all the plastic bags. The complainant/ business demands the return of the deposit paid.

2. Summary of outcome

In view of the fact that the supplier obtained an unopposed judgment against the consumer for the balance of the amount owing, the matter is *res judicata*. This means that once a legal issue has been decided upon in a court, the same matter cannot be brought before another court or legal forum except by way of appeal or judicial review.

3. Supplier's response

A firm of attorneys responded on behalf of the supplier, providing an invoice that evidenced the terms of the agreement with the business. It also provided copies of correspondence with the business, from which it appears that the business originally requested the postponement of the delivery of the bags as one of its vehicles had been hijacked, resulting in a loss of R 100 000. According to the supplier, the Business sought to cancel the agreement and requested the refund of the deposit at the beginning of 2012, by which time the goods had already been produced.

The tone of the correspondence from the complainant became increasingly hostile and threatening towards the supplier from February 2012 onwards.

The supplier indicated that in October 2012 it obtained an unopposed judgment against the supplier for the balance of the amount owing. The business sought to pursue the matter per various complaint bodies.

The supplier denies liability on the grounds that:

- the business breached its contractual obligations;
- The complainant has no *locus standi*; (legal right to bring the claim);
- The goods were special order goods for the purposes of section 17(1) of the Consumer Protection Act (CPA);
- The complaint is vexatious and an abuse of process.

In its correspondence to the Department of Development, Environment, Conservation & Tourism, North West Province Government, the supplier claimed the business fell outside the jurisdiction of the CPA, but it did not repeat that claim to us.

4. Legal considerations

In our law a legal claim may be defeated by a plea of *res judicata*. This means that once a legal issue has been decided upon in a court, the same matter cannot be brought before another court or legal forum except by way of appeal or judicial review.

Section 1 of CPA defines “special-order goods” as “goods that a supplier expressly or implicitly was required or expected to procure, create or alter specifically to satisfy the consumer’s requirements”.

5. Assessment

We have considered all the evidence presented by the parties and advise as follows:

Based on the facts of this case, the information and evidence furnished to this office, we are of the view that on the basis of the legal principle of *res judicata*, this office is not able to deal further with the matter.

The appropriate forum for the business to have approached was the court which granted the default judgment in the supplier’s favour. If it has any complaints about that court’s decision, it should seek legal advice as to how to proceed.

In view of this decision, it is not necessary to deal with the other matters raised by the supplier.

