

IN THE NATIONAL CONSUMER TRIBUNAL
HELD AT CENTURION

Case Number: NCT/6013/2012/60(3)&101(P)

In the matter between:

FARM YARD

APPLICANT

And

THE NATIONAL CONSUMER COMMISSION

RESPONDENT

Coram:

Adv F Manamela - Presiding member

Prof T Woker - Member

Mr X May - Member

Hearing Date: 21 January 2014

JUDGMENT AND REASONS

[1] Review of a Compliance Notice – Compliance Notice issued in terms of Section 100(1) of the Consumer Protection Act ("the Act") – Review in terms of Section 101 of the Act.

[2] Retrospective applicability of the Act – Act commenced on 31 March 2011 and does not have retrospective applicability unless specifically provided for in Item 3(2) of the Regulations – Where Item 3(2) specifically stipulates that Section 53 to 58 of the Act shall apply only with respect to goods or services supplied to the consumer in terms of the agreement, on or after the general effective date – Where conduct on which the Compliance Notice is based occurred prior to the general effective date of the Act.

[3] Retrospective applicability of the Act – Where the agreement was concluded on 13 December 2010, before the general effective date of the Act on 31 March 2011 – 27 – Then the Act is not applicable to the matter, as the transaction was concluded prior to the general effective date of the Act – Compliance Notice fails to clear this first hurdle relating to its lawfulness – Not necessary to evaluate any further aspect relating to the Applicant's submissions.

[4] Compliance notice accordingly cancelled.

INTRODUCTION

1. The Applicant is Farm Yard, (hereinafter referred as "the Applicant") a company duly registered in accordance with the laws of the Republic of South Africa.
2. The Respondent is the National Consumer Commission (hereinafter referred as "the Respondent") an organ of state within the public administration established in terms of Section 85 of the Consumer Protection Act, 68 of 2008 ("CPA").
3. At the hearing of this matter, the Applicant was represented by its Manager, Mr. Brian Cummings.
4. The Respondent did not file an answering affidavit and did not attend, nor was it represented, at the hearing.
5. The Applicant brought an application to the National Consumer Tribunal ("Tribunal") to have a compliance notice issued against it by the Respondent, reviewed and cancelled in terms of Section 101(1) of the CPA.
6. The Tribunal has jurisdiction to hear this matter in terms of Section 101(1) of the CPA. This Section provides that a person issued with a Compliance Notice may apply to the Tribunal in the prescribed manner and form for review of such Compliance Notice.
7. This judgment follows the hearing of this matter on 21 January 2014 at the Tribunal in Centurion. The Applicant's representative submitted oral arguments in support of the written application.

BACKGROUND

8. On 13 December 2010 Mr TM Sithole (hereinafter referred to as "the Complainant") bought a Jinma 250 Tractor, two shears, five Tiner Cultivators, 1,2 Rotavators, a 1,1m Disc and other farming equipment for the amount of R 11 491 200-00 from the Applicant.
9. The Complainant subsequently alleged that the equipment which he had purchased was defective and he requested that the Applicant refund him the purchase price.

10. The Applicant denied that the equipment was defective. Instead some of the equipment was not available at the time of sale. The complainant was informed when the equipment became available and he was requested to collect the equipment.
11. The Complainant however declined to collect the equipment which to this date is still with the Applicant and instead requested that he be refunded the purchase price. The Applicant declined to refund the complainant the purchase price because the funds had been provided by Agri Thuthukani Trading Enterprise Primary Co Operative Limited Primary. The Applicant was of the view that the funds should be returned to the funder. The Complainant then complained to the Respondent regarding the equipment which he had purchased.
12. The Respondent set this matter down for conciliation on 21 November 2011 and then subsequently issued a Compliance Notice to the Applicant.

APPLICANT'S SUBMISSIONS

Jurisdiction

13. The Applicant submitted that the CPA commenced on 31 March 2011 and that it does not have retrospective application, unless specifically provided for in item 3(2) thereof. Item 3(2) specifically stipulates that Section 53 to 58 of the CPA shall apply only with respect to any goods or services supplied to the consumer in terms of the agreement, on or after the general effective date.
14. The Applicant submitted that the conduct which forms the subject matter of the compliance notice took place prior to the effective date of the CPA and therefore falls outside of the Respondent's jurisdiction.
15. The Applicant further submitted that the CPA does not apply to the purchase agreement as the agreement was concluded on 13 December 2010, before the general effective date of the CPA on 31 March 2011.
16. The Applicant contended that the complaint giving rise to the Compliance Notice and the Sections of the CPA allegedly contravened by the Applicant are completely unrelated. The complaint lodged by the Complainant can therefore not form the basis of the alleged contravention of the CPA.

17. The Applicant denied failing to make attempts to resolve the matter or failing to co-operate with the Respondent. The application refers to various instances where the Applicant interacted with both the Complainant and the Respondent in an effort to achieve a resolution.
18. The Applicant further denied that it failed to provide the Complainant with a product of good quality, in good working order and free of defects.
19. The Applicant denied that the Complainant is entitled to any relief as envisaged in Section 56 of the Act.
20. The Applicant contended that there were no reasonable grounds to issue a Compliance Notice, and further that there are no grounds to uphold the Compliance Notice.
21. The Applicant submitted that the Respondent did not conclude an investigation in respect of the complaint, as is mandatory by virtue of the provisions of section 72 of the CPA, and could therefore not have issued the Compliance Notice in terms of Section 100. The Applicant further submitted that the completion of an investigation is a jurisdictional prerequisite for the issuance of a Compliance Notice.

RESPONDENT'S SUBMISSIONS

22. The Respondent did not file an answering affidavit and was not present at the hearing.

APPLICABILITY OF THE CPA TO THIS MATTER

23. The general effective date on which the CPA came into operation is 31 March 2011.
24. The sale agreement was concluded between the Complainant and the Applicant on 13 December 2010..
25. The issues raised by the Applicant in this matter relate to circumstances surrounding the conclusion of an agreement for the purchase of farming equipment and this agreement was concluded on 13 December 2010. This was before the general effective date of the CPA.

26. Item 3 of Schedule 2 of the CPA determines the extent of which the CPA applies to "*Pre-existing transactions and agreement*". The CPA does not apply to any transaction concluded, or agreement entered into, before the general effective date; or any goods supplied or services provided to a consumer before the general effective date, being 31 March 2011. Section 53 to 58 of the CPA apply to pre-existing transactions: "*Only with respect to any goods or services supplied to the consumer in terms of the agreement, on or after the general effective date*"

CONCLUSION

27. The Tribunal finds that the CPA is not applicable to this matter, as the transaction was concluded prior to the general effective date of the CPA. Considering that the Compliance Notice therefore fails to clear this first hurdle relating to its lawfulness it not necessary to evaluate any further aspect relating to the Applicant's submissions.
28. For the reasons set out above the Tribunal concludes that the Compliance Notice issued by the Respondent was not issued in accordance with CPA.

ORDER

29. Accordingly, the Tribunal makes the following order:

29.1 The Compliance notice issued by the Respondent is hereby cancelled

Dated on this 14th day of March 2014

[Signed]

Mr X May

Member

Adv F Manamela (Presiding Member) and Prof T Woker (Member) concurring.