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**IN THE NATIONAL CONSUMER TRIBUNAL  
HELD IN CENTURION**

Case Number: **NCT/107447/2018f75(1)(b)**

In the matter between

**GAVINTHREN GOVENDER**

FIRST APPLICANT

**LEAH JOAN GOVENDER**

SECOND APPLICANT

and

**GERHARD VERMEULEN**

Trading as **ADVANCE POOL AND SPA**

FIRST RESPONDENT

**ADVANCE POOLS CC**

SECOND RESPONDENT

**ADVANCE POOLS GAUTENG**

Trading as **ADVANCE POOLS**

THIRD RESPONDENT

**AMELDA VERMEULEN**

FOURTH RESPONDENT

*Coram:*

Ms M Nkomo - Presiding Tribunal Member

Prof T Woker - Tribunal Member

Ms H Devraj - Tribunal Member

Date of hearing - 15 April 2019

Date of judgment - 17 May 2019

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## JUDGMENT AND REASONS

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### THE PARTIES

1. The first and second Applicants are Gavinthren and Leah Joan Govender, consumers who are married in community of property and reside in Paulshof, Johannesburg, Gauteng province {hereinafter referred to as "the Applicants"}. At the hearing, the Applicants represented themselves.
2. The first Respondent is Gerhard Vermeulen trading as Advance Pools and Spa, a provider and installer of pools (hereinafter referred to as "Vermeulen"). Vermeulen made a written offer to pay the Applicants the Small Claims Court judgement<sup>1</sup>.
3. The second Respondent is Advance Pools cc, a Close Corporation that is duly registered in terms of the Close Corporations Act, (No. 69 of 1984) of the Republic of South Africa, under registration number 2006/115264/23. The business address of the second Respondent is Electron Road Saxenburg Park, Kuilsrivier, Western Cape province.
4. The third Respondent is Advance Pools Gauteng trading as Advance Pools; and it issued a pro forma quotation / agreement<sup>2</sup> for the purchase and installation of a fibreglass swimming pool shell to the Applicants.
5. The fourth Respondent is Amelda Vermeulen. The Applicants deposited the payments for the fibreglass swimming pool shell into the fourth Respondent's bank account<sup>3</sup>.
6. The business address of the first, third and fourth Respondents is 9 Volt Street, Kya Sand, Randburg, Gauteng province.
7. The first to fourth Respondents are hereinafter all collectively referred to as "the Respondents".

### TYPE OF APPLICATION

8. The application brought before the Tribunal is in terms of section 75(1) (b) of the Consumer Protection Act, Act 68 of 2008 (hereinafter referred to as "the CPA").

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<sup>1</sup> Page 122 of the bundle of documents

<sup>2</sup> Pages 48 and 49 of the bundle of documents

9. Section 75(1) of the CPA states the following:

*"If the Commission issues a notice of non-referral in response to a complaint, other than on the grounds contemplated in section 116, the complainant concerned may refer the matter directly to -*

*(a) ....*

*(b) the Tribunal, with leave of the Tribunal."*

## **JURISDICTION**

10. Section 75(5) of the CPA states that:

*"The Chairperson of the Tribunal may assign any of the following matters arising in terms of this Act to be heard by a single member of the Tribunal, in accordance with section 31(1)(a) of the National Credit Act;*

*(a) ...*

*(b) an application for leave as contemplated in subsection (1) (b)"*

11. The application for leave to refer the matter directly to the Tribunal was heard by a single member of the Tribunal, in accordance with section 75(5)(b) of the CPA; and leave was duly granted.

12. This judgement follows a hearing of the matter on the main merits.

## **BACKGROUND<sup>4</sup> TO THE REFERRAL**

13. The Applicant's complaints arise out of a contract they concluded with the Respondents during August 2016, in terms of which the Respondents would provide and install a fibreglass swimming pool at the Applicant's premises. The Respondents were also contracted to provide *inter alia* coping, two securing layers of paving around the pool and a retaining wall. The quotation for the pool and installation thereof was R66 900 (sixty six thousand nine hundred rand). The Applicants paid the Respondents a total of R58 415 (fifty eight thousand four hundred and fifteen rand) between August and December 2016,

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<sup>3</sup> Pages 95 and 96 of the bundle of documents

<sup>4</sup> It is noted that much of this background has already been set out in the Tribunal judgements relating to the applications for condonation and for leave to refer, but for the sake of completeness the information is repeated here.

and the final payment of RB 485 (eight thousand four hundred and eighty five rand) was payable on practical completion of the pool. Although the Respondents commenced work on the project in August 2016; the completion of the pool did not occur; leading to the final payment still not being paid.

14. The Applicants submit that immediately after the pool was put into the ground but prior to installation; a number of issues became apparent. These included the formation of cracks; the lifting of the coping around the pool; and the continuous issues with the pump. The Respondents appointed different subcontractors to install the pool each time the Applicants raised concerns. One of the newly appointed subcontractors determined that the pool was not correctly installed due to poor workmanship. The Respondent drained the water out of the shell and removed the pool shell, notwithstanding the clause 10.1 of the Agreement<sup>5</sup>.
15. The shell of the pool was reinstalled in December 2016, whilst the coping and the paving around the pool were reinstalled between January and February 2017. Immediately after the reinstallation of the coping and paving, certain defects were apparent.
16. The Applicants complained that the pool installation and the workmanship were defective and of poor quality. The defect and poor quality which the Applicants complained about are amongst others:
  - 16.1 Internal and external cracks in the pool;
  - 16.2 Lifting of the coping causing cracks in the surrounding paving;
  - 16.3 Sagging of the retaining wall;
  - 16.4 Problems with the pool pump; and
  - 16.5 Excess sand and stone in the pool that could not be removed with conventional cleaning methods and have not been removed.
17. The Applicants obtained various reports, opinions regarding the defective

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<sup>5</sup> Page 49, clause 10 1 of the agreement provides that "The Customer herewith agrees / undertakes to ensure that the pool shells supplied and installed, not be emptied, and failing to adhere will render the manufacturers warrantee invalid'.

installation and poor workmanship and quotations for the repairs thereof.<sup>6</sup> These confirmed their view that the Respondents had contravened various provisions of the CPA. The main recommendation by the expert is that the pool must be replaced by a new pool.

18. Initially the Applicants instituted a claim for damages against the first Respondent (Vermeulen) in the Small Claims Court. This Small Claims Court claim involved two separate claims; namely; claim 1 for the physical damage caused to the existing patio paving adjacent to the pool installation; and claim 2 which related to completing the construction of the pool.<sup>7</sup>
19. Prior to the hearing at the Small Claims Court; the Applicants informed the Small Claims Court and the Respondent (Vermeulen) that they were withdrawing claim 2 because it had come to their attention that the work which the Respondent (Vermeulen) had done was in fact defective (and not just incomplete) and the claim for damages would be beyond the jurisdiction of the Small Claims Court. The Small Claims Court awarded the Applicants' claim for damages.
20. During July 2017, the Applicants lodged a complaint with the Consumer Goods and Services Ombud (hereinafter referred to as "the CGSO"). In its ruling of 9 November 2017, the CGSO concluded as follows:

*"While we take note that there could be a valid claim that arose of a new cause of action after the decision by the Small Claims Court, it is the opinion of this office that same could be better dealt with in a Court of by another regulatory body better qualified and equipped to assist".*

21. The Applicants did not agree with the ruling of the GCSO and accordingly filed a complaint with the National Consumer Commission (hereinafter referred to as "the NCC") in November 2017. The NCC non- referred the Applicants' complaint on the basis that their complaints have been resolved by the Small Claims Court.

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<sup>6</sup> The Expert report at pages 80-88 of the documents before the Tribunal recommendations state that the pool has to be taken out and rebuilt following proper procedures.

<sup>7</sup> t the time of instituting the claims in the Small Claims Court, the Applicants were only concerned that the Respondent had not yet completed the pool and the 2<sup>nd</sup> claim therefore related to getting him to

22. The Applicants approached the National Consumer Tribunal (hereinafter referred to as "the Tribunal"), applying first for condonation for the late filing of their application for leave to refer their complaint directly to the Tribunal. The Tribunal granted condonation on 2 August 2018. The Applicants then applied for leave to refer for leave from the Tribunal for the complaint to be referred directly to the Tribunal. On 10 October 2018, the single member of the Tribunal granted the application for leave.
23. The matter was set down on 17 January 2019, on a default basis. At the hearing, there was an appearance by the Respondents' representative, who requested a postponement. The Applicant opposed the request for a postponement. The Tribunal considered the issues raised by both parties and granted postponement. The Tribunal further ordered the following *inter alia*:
  - 23.1 the Applicants to amend their papers to cite the four Respondents identified during the hearing and
  - 23.2 the Respondents to file their condonation application for the late filing of the answering affidavit as well as the answering affidavit within 15 business days of receiving the application.
24. The Applicants complied with the Tribunal order of 21 January 2019. However, the Respondents failed to do so.
25. The Registrar of the Tribunal set the matter down for hearing after the pleadings had closed.

## **THE HEARING**

26. Following the postponement granted by the Tribunal on 21 January 2019, a hearing was scheduled for 15 April 2019, the current proceedings.

## **The Applicants**

27. At the hearing of this matter on 15 April 2019, the Applicants provided a detailed sequence of events leading to the current proceedings. The facts will not be repeated as they have been set out above. under the heading

"Background to the Referral".

28. The Applicants also made submissions on the issue of *res judicata* and highlighted how the CGSO and the NCC had failed to understand that the Applicants have two unrelated and separate causes of action against the Respondents. The first cause of action dealing with the physical damage caused by the Respondents to the Applicants' patio paving adjacent to the swimming pool, was settled at the Small Claims Court. That claim is not before the Tribunal.
29. The second cause of action is the fitting of a defective pool and the defective workmanship which resulted in the defective pool, paving and retaining wall. This is the matter before the Tribunal, and the Small Claims Court would not have jurisdiction as the amount being claimed exceed that Court's threshold.
30. The Applicants also confirmed to the Tribunal that the following sections of the CPA are relevant to their current application:
  - 30.1 Section 54 (1) (a) which provides for the right of a consumer to demand quality service;
  - 30.2 Section 55 which guarantees the consumer's rights to safe, good quality goods;
  - 30.3 Section 56 (2) which provides that within six months of delivery of any goods to the consumer, the consumer has the right to return the goods to a supplier, if the goods fail to satisfy the requirements of section 55. In addition the goods would need to be repaired or replaced, or alternatively refunded if they are not replaced or repaired;
  - 30.4 Section 68(1) (2) which provides for the protection of consumer rights;
  - 30.5 Section 22 (2) (b) which covers the right to disclosure and information;
  - 30.6 Section 40 (1) (b) (c) (d) dealing with unconscionable conduct; and
  - 30.7 Section 41 (1) (a) (b) on false, misleading or deceptive representation.
31. The Applicants requested the Tribunal for the following relief:
  - 31.1 A full refund relevant for the defective goods together with interest at the prevailing rate;
  - 31.2 The removal of the defective goods at the cost of the Respondent;

- 31.3 The restoration of the Applicants' property to the state in which it existed prior to the defective product being installed;
- 31.4 Costs incurred for the wasted water together with the cost of the expert' report; and
- 31.5 Any other relief which this Tribunal may find to be just and equitable in the circumstances

### **The Respondents**

- 32. There are no written submissions of the Respondents to consider.

### **Issues to be decided**

- 33. The Tribunal is required to decide whether, in terms of the provisions of the CPA, the Applicants are entitled to the following:
  - 33.1 To be refunded the amount of R65 417 (sixty five thousand four hundred and seventeen rand) being in respect of R58 415 (fifty eight thousand four hundred and fifteen rand) the Applicants paid for the delivery and installation of the fibreglass pool; the amount of R2 000 (two thousand rand) for the expert report; and the amount of R5 002 (five thousand and two rand) for the water wasted by the Respondents during the installation and reinstallation of the swimming pool; together with interest at the prevailing rate;
  - 33.2 The removal of the defective goods at the cost of the Respondents;
  - 33.3 The restoration of the Applicants' property to the state in which it existed prior to the installation of the defective product; and
  - 33.4 Any other relief which the Tribunal may find to be just and equitable in the circumstances.

### **Consideration of the evidence on a default basis**

- 34. The matter was set down for hearing on 15 April 2019, on a default basis. However, at the hearing, Adv J Lerm of the Pretoria Bar, instructed by Steenkamp van Niekerk Attorneys, placed himself on record as the legal representative of the Respondents.
- 35. The Tribunal requested the parties to indicate whether they would want to



consider a possible settlement before the hearing commences. Both parties confirmed that they would be willing to discuss a possible settlement. The Parties engaged in settlement negotiations, but could not come to any agreement.

36. In the absence of a negotiated settlement agreement between the parties, the Respondents' legal representative requested a further postponement and submitted that the Respondents are willing to settle the matter. However, the difficulty was with the once-off payment which the Applicants were adamant on. The Respondents would not be able to afford that due to limited budget constraints.
37. The Applicants clarified that they require a once-off payment based on what they had experienced at the Small Claims Court where the Respondent struggled to effect payment in the amount of R15 000 (fifteen thousand rand), which is lower than the current claim. In addition, it was not clear why only one Respondent (namely Vermeulen) is being referred to, as there is more than one Respondent cited on this matter. According to the Applicants, the Respondent was also not willing to make any commitment to the settlement figure.
38. Having considered the arguments for and against a postponement, the Tribunal decided against postponing the matter. The Tribunal took into account the fact that the Tribunal panel as well as the Respondents' legal representative had prepared for the hearing, which in any event had been set down on a default basis. An adjournment even if it will be short, would not be in the interests of justice. However, the Tribunal also indicated that should the parties come to a settlement agreement before the Tribunal hand down its judgement, then the Applicants could withdraw the application, and the Tribunal would need not issue a judgement. On the other hand, if the parties are not able to reach a settlement agreement, the Tribunal would be able to issue its judgement after hearing the matter on the date of the hearing. In the light of the above, the Tribunal then carefully considered if the matter could proceed on a default basis.
39. The Applicants did not file an application for a default order in terms of Rule 25(2). However, the Registrar set the matter down for hearing on a default

basis due to the pleadings being closed.

40. Rule 13(5) provides as follows:

*"Any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit, will be deemed to have been admitted".*

41. Therefore in the absence of any answering affidavit filed by the Respondents, the Applicants' application and all of the allegations contained therein are deemed to be admitted.

42. The Tribunal is satisfied that the requirements for the hearing to be held on a default basis have been fulfilled.

### **The Law Applicable to the Application**

43. A consumer's right to fair value, good quality and safety is set out in Part H of the CPA. Section 53(1) of the CPA sets out the following -

*In this Part, when used with respect to any goods, component of any goods, or services-*

(a) **"defect"** means-

(i) *any material imperfection in the manufacture of the goods or components or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or*

(ii) *any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;*

(b) **"failure"** means *the inability of the goods to perform in the intended manner or to the intended effect;*

(c) ...

(d) ...

44. Section 55 of the CPA sets out the consumer's rights to goods which are reasonably suitable for the purpose intended and are free of any defects. Section 55(2) of the CPA states -

- (1) *This section does not apply to goods bought at an auction as contemplated in section 45.*
- (2) *Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that-*
  - (a) *are reasonably suitable for the purposes for which they are generally intended;*
  - (b) *are of good quality, in good working order and free of any defects;*
  - (c) *will be useable and durable for a reasonable period of time. having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and*
  - (d) *comply with any applicable standards set under the Standards Act, 1993 (Act No 29 of 1993), or any other public regulation.*

45. According to the Applicants, the Applicants and Respondents entered into an agreement for the supply and installation of a fibreglass swimming pool, and related services. The Applicants partly paid for the services, with the Parties agreeing that the balance outstanding would be paid on completion of the installation of the swimming pool. The goods supplied by the Respondents exhibited defects which rendered swimming pool less acceptable than a reasonable person would expect under the circumstances.

46. Section 56 of the CPA makes provision for a six month time period within which defective goods can be repaired, replaced or returned for a refund. Section 56 states -

- (1) *In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to*

*the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.*

*(2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55. and the supplier must, at the direction of the consumer, either-*

- (a) repair or replace the failed, unsafe or defective goods; or*
- (b) refund to the consumer the price paid by the consumer, for the goods.*

*(3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must-*

- (a) replace the goods; or*
- (b) refund to the consumer the price paid by the consumer for the goods.*

*(4) The implied warranty imposed by subsection (1). and the right to return goods set out in subsection (2), are each in addition to-*

- (a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and*
- (b) any express warranty or condition stipulated by the producer or importer. distributor or retailer, as the case may be.*

47. In *Joroy 4440 CC trading s Ubuntu Procurement v Potgieter NO and Another*<sup>8</sup> it was held that consumers are obliged to follow the procedures set out in section 69 of the CPA before approaching the civil courts for relief. Therefore, the Applicants must exhaust the remedies under the CPA before approaching

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<sup>8</sup> 2016 (3) SA 465 (FB)

the civil courts. In this matter, the Applicants complied with the requirements as stipulated in section 69 of the CPA by approaching the CGSO, the NCC and the Tribunal. This approach enables the Applicants to obtain A Certificate of Prohibited Conduct against the Respondents should the Tribunal makes a finding of prohibited conduct against the Respondents.

## **CONSIDERATION OF THE MERITS**

48. It is trite law in contracts that there should be performance by both parties of their respective obligations. The Applicant therefore paid for a brand new fibreglass swimming pool and installation thereof, but the Respondents did not provide the expected level of service as agreed between the parties.
49. Based on the defective product supplied, and the accompanying poor workmanship provided by the Respondents, the Applicants opted to cancel the agreement and demanded a refund of the monies paid to the Respondents.
50. A key question to answer is whether the Applicants' cancellation of the arrangements was justified. In *Strachan v Prinsloo*<sup>9</sup>, the court held that:
  - 50.1 To determine if the cancellation was justified, the test to apply was whether the plaintiff had failed to perform a vital term, express or implied, of the agreement;
  - 50.2 An important factor in deciding whether such term was vital was the question whether the defendant would have entered into the agreement in the absence of such term;
  - 50.3 The plaintiff had in fact failed to perform a vital term; and
  - 50.4 The defendant was therefore justified in terminating the agreement.
51. It is the Tribunal's view that the Respondents failed to perform a vital term of the agreement, namely, to provide and install, *inter alia*, a new fibreglass swimming pool. The Applicants did not expect anything less than a brand new pool, and for the amount of money quoted by the Respondents, also a high

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<sup>9</sup> Strachan v Prinsloo 1925 TPD

quality workmanship. The Applicants would not have entered into the agreement in the absence of this requirement, and since the Respondents failed to perform this material term, the Applicants were justified in terminating the contract. The material violation of duty by the Respondent justifies the Applicant's action in terminating the agreement.

52. Despite the reinstallation of the pool to cure the defects identified by the Applicants, the Respondents were still not able to provide a good quality swimming pool. Faced with the continuous failure by the Respondents to provide the expected standard of the procured goods and services, the Applicants were not unreasonable in appointing experts to assess the extent of the defects. The assessment report from the expert indicated serious defects which could only be cured by replacement of the swimming pool with a new one.
53. It appears from the submission of the Applicants, that when Vermeulen was notified about the defects, the latter wanted the Applicants to make part payments before the Respondents would attend to the defects. The Applicants duly made some of the payments but the Respondents subcontracted the installation of the swimming pool.
54. The Applicant notified the Respondents of their dissatisfaction with the product, the poor workmanship, and their decision to cancel the contract.
55. The defective products adversely affected the Applicants in the use of the swimming pool. The Applicants expected to receive a product that could be used immediately after being installed. The Applicants consistently claimed specific performance from the Respondents as an attempt to compel the Respondents to rectify the defective products, in other words, to provide the Applicants with the product which the Respondents undertook to supply to the Applicants. After the Respondents failed to remedy the defects, the Applicants have elected to cancel the contract and claim a refund of the monies paid. This decision would effectively put the Applicants in the same position they would have been had the Respondents not provided the defective products.
56. Based on the submissions by the Applicants, and the assessment performed by the expert, it is apparent that the assessment shows that the swimming pool did not meet the terms of the agreement between the Applicants and the Respondents. The averments made by the Applicants suggest that a prima

facie case of mal-performance on the part of the Respondents.

57. Therefore, the Tribunal's conclusion is that the product installed cannot be easily repaired, and the Applicants are justified to demand a refund. From a law of contract perspective, the Respondents are in breach of the agreement, entitling the Applicants to cancel it. These material defects rendered the swimming pool less acceptable and not in conformity with the requirements of the CPA. The defects also became apparent within six months of purchase.
58. When applying the provisions of the CPA to the facts accepted by the Tribunal, it is clear that that the swimming pool supplied by the Respondents was defective. The expert report and the opinions and quotations from other service providers confirm that the swimming pool was defective within the meaning of section 53(1) (a) of the CPA. The defects were all apparent immediately after the installation, and accordingly the Applicants have recourse under section 56 of the CPA.

### **Appropriate relief**

59. The Applicant asked the Tribunal to order the Respondents to refund the payments for the installation of the defective swimming pool supplied by the Respondents. The report from the expert and opinions of other service providers conclude that the swimming pool cannot be restored to an acceptable standard.
60. The Tribunal finds that a refund of the price paid for the swimming pool is warranted. Replacing the swimming pool is not a plausible option given that the Respondents consistently subcontracted the work, resulting in poor workmanship.
61. The Applicants further asked the Tribunal to order the Respondents to refund the interest at the prevailing rate. The Applicants did not provide any legal arguments to support this prayer.
62. In addition, the Applicants prays for the Tribunal to order the Respondents to refund the Applicants the costs incurred to appoint the expert opinion, and for the wasted water used during the installation and re- installation of the swimming pool. The Tribunal is a creature of statute and its powers are limited to those provided in the statutes that govern it. At this point in time, the

Tribunal is governed by the CPA, the NCA, and the Tribunal rules, which all do not provide for the awarding of damages. The Tribunal therefore cannot extend its powers to award damages or costs incurred by the Applicants outside the power which is given to it by the statute. The Tribunal would be acting contrary to the rule of law should it award costs that it is not empowered to do so .

## **CONCLUSION**

63. On the conspectus of submissions and evidence provided by the Applicants, the Tribunal finds, on a balance of probabilities, that the Respondents did engage in prohibited conduct, and accordingly in breach of the CPA, in supplying and installing a defective swimming pool at the Applicants' premises. The Respondents are liable for the defective goods and services offered to the Applicants as the standard of the goods did not meet the standards required by Sections 55 and 56 of the CPA; and the services rendered did not comply with the provisions of Section 54 of the CPA.
64. The Applicants are entitled to a refund of the monies paid for the installation and re-installation of the swimming pool.

## **ORDER**

65. Accordingly, the Tribunal makes the following order:
  - 65.1 The Respondents have engaged in prohibited conduct;
  - 65.2 The first to fourth Respondents are found to be liable, jointly and severally the one paying the others to be absolved for the defective goods provided by the Respondents to the Applicants;
  - 65.3 The first to fourth Respondents are jointly and severally; the one paying the other to be absolved; ordered to refund the Applicants for the defective goods in the amount of R58 415 (fifty eight thousand four hundred and fifteen rand) by not later than 30 June 2019;
  - 65.4 The first to fourth Respondents are jointly and severally ordered to remove the defective goods from the Applicants' premises at the cost of the Respondents by not later than 15 June 2019;
  - 65.5 The first to fourth Respondents are jointly and severally ordered to restore by



not later than 30 June 2019, the Applicants' property to the state in which it existed prior to the defective product being installed by the Respondents;

65.6 If the first to the fourth Respondents fail to comply with the orders in paragraphs 65.2; 65.3; 65.4; and 65.5; above; then the first to the fourth Respondents are jointly and severally; the one paying the other to be absolved ordered; to pay an administration fine of R150 000 (one hundred and fifty thousand rand) into the National Revenue Fund referred to in Section 214 of the Constitution of the Republic of South Africa, 1996; by not later than 31 July 2019. The Banking Details of the National Revenue Fund are as follows:

Bank Name : The Standard Bank of South Africa  
Account Holder : Department of Trade and Industry  
Branch Name : Sunnyside  
Branch Code : 05100  
Account Number : [...]  
Reference : NCT/107447/2018/75(1) and Name of Person or Business making payment

65.7 The payment of an administrative fine of R150 000 (one hundred and fifty thousand rand) will be suspended for 5 years from the date of this judgement, provided that the first to fourth Respondents comply with the orders stated in paragraphs 65.2; 65.3; 65.4; and 65.5 above; and

65.8 No order is made as to costs.

DATED IN CENTURION ON THIS 17<sup>th</sup> DAY OF MAY 2019

[duly signed]

**Ms M Nkomo**

Presiding Member

Prof T Waker (Tribunal Member) and Ms H Devraj (Tribunal Member) concurring