

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

Case number: **NCT/150169/2020/75(1)(b)**

In the matter between:

ORION ACCOUNTING (PTY) LTD

APPLICANT

And

CAR CITY HOLDINGS (PTY) LTD

1ST RESPONDENT

And

AUTO EXTREME HORIZON VIEW CC
trading as CAR CITY HORIZON VIEW

2ND RESPONDENT

Coram

Adv. J Simpson - Presiding Tribunal member

Date of Hearing - 22 September 2020

Date of Judgment - 25 September 2020

RULING AND REASONS ON LEAVE TO REFER

THE PARTIES

1. The Applicant in this matter is Orion Accounting (Pty) Ltd, situated in Roodepoort (the "Applicant" or "Orion Accounting"). The Applicant is represented by Brian Townsend, its sole shareholder. At the hearing, Mr Townsend appeared in person representing the Applicant. The hearing was conducted via Zoom audio and video transmission.

2. The Applicant attached financial statements for Orion Accounting issued on 29 November 2019. The statements reflect that Brian Cambell Townsend (“Mr Townsend”) is the sole director for Orion Accounting. The statements further reflect that the Applicant’s income and assets did not exceed R212 000.00. Therefore, the Applicant can be regarded as a consumer for the purposes of section 6 of the Consumer Protection Act, Act 68 of 2008, (“the CPA”)¹. The financial statement further serves as adequate proof that Mr Townsend is authorised to sign the application and represent the Applicant in accordance with Rule 4(3) of the NCT Rules².
3. The 1st Respondent is Car City Holdings (Pty) Ltd (“1st Respondent” or “Car City Holdings”). The 1st Respondent is located in Paulshof in Johannesburg.
4. The 2nd Respondent is Auto Extreme Horizon City CC trading as Car Service City – Horizon View. The 2nd Respondent is located in Horizon in Roodepoort.
5. It appears Car Service City – Horizon View is a franchise of Car City Holdings.
6. The 1st and 2nd Respondents did not file answering affidavits opposing the application. The matter was set down for hearing on a default basis. At the hearing, an attorney, Mr G Georgiou, appeared on behalf of the 1st Respondent. Mr J Cronje, the sole member of the 2nd Respondent, appeared on behalf of the 2nd Respondent. Other employees of the 1st Respondent also attended the hearing.
7. Mr Georgiou and Mr Cronje informed the Tribunal that they had both filed applications with the Tribunal to condone the late filing of answering affidavits. However, for unknown reasons, the applications were not accepted by the Registrar. They both confirmed that they would not be applying for a postponement of the hearing. They further confirmed that they would only pursue the applications for condonation if the Tribunal granted leave to refer.

¹ The juristic person’s asset value or annual turnover may not exceed R2 000 000.00

² GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (*Government Gazette* No. 30225) as amended by

Notice	<i>Government Gazette</i>	Date
GN 428	34405	29 June 2011
GNR.203	38557	13 March 2015

8. The hearing proceeded on a default basis. The representatives and other interested parties were permitted to continue observing the hearing.

APPLICATION TYPE

9. This is an application in terms of Section 75(1)(b) of the CPA.
10. 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 the leave of the Tribunal.”

JURISDICTION

11. 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)”

12. Accordingly, the Tribunal has jurisdiction to hear this application for leave to refer a complaint to the Tribunal as contemplated under section 75(1)(b).
13. A single member of the Tribunal may hear the application in accordance with section 75(5)(b) of the CPA.

HEARING IN DEFAULT

14. The complete application was filed with the Tribunal on 15 January 2020. It was personally served on both Respondents on 14 January 2020. The Registrar issued a Notice of filing to the parties on 16 January 2020. A Notice of set down was issued to all the parties on 31 August 2020.

15. In terms of Rule 13 of the Rules of the Tribunal³, the Respondents had to respond to the application within 15 business days by serving an answering affidavit on the Applicant. However, the Respondents failed to do so.
16. The Applicant did not file an application for a default order in terms of Rule 25(2).
17. The Registrar correctly set the matter down for hearing on a default basis due to the pleadings being closed.
18. 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.”
19. Therefore, in the absence of any answering affidavit filed by the Respondents, the Applicant’s application and all the allegations contained therein are deemed to be admitted.
20. The Tribunal is satisfied that the application was adequately served on the Respondents. Therefore, the matter proceeded on a default basis.

BACKGROUND

21. In summary, Mrs Townsend, Mr Townsend’s mother, is the registered owner of a 1997 model Nissan Sentra motor vehicle. She donated the vehicle to her son, Mr Townsend, in 2015. Orion Accounting pays all the costs for maintaining the vehicle. On 15 October 2018, Mr Townsend took the vehicle to the 2nd Respondent for repairs. The water in the coolant reservoir bottle had been bubbling slightly the night before. Mr Townsend submits that the vehicle was still in a good running condition at that stage. A representative at the 2nd Respondent told him they would check the vehicle and inform him the same day of any problems with it.
22. The next morning Mr Townsend discovered that the cylinder head of the vehicle had already been removed and that it would cost R17 000.00 to repair. Mr Townsend submits that he never authorised any repairs to the vehicle. He only received a written quote on 24 October 2018. After ongoing discussions with the 2nd Respondent, he was

³ GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (Government Gazette No. 30225). As amended.

forced to agree to pay R10 068.00 for necessary repairs to the vehicle. On 8 November 2018, he paid the amount and collected the vehicle. After driving a few hundred meters, the vehicle broke down. He took the vehicle to another repairer and was informed that the vehicle was not repaired properly. MIOSA informed him that he should not fix the vehicle until the claim was finalised. The vehicle has been standing in his garage ever since as it is not in a running condition. The vehicle has now been standing so long that it is now uneconomical to repair. Mr Townsend submits that the Respondents contravened the CPA in numerous respects. He is essentially alleging that the 2nd Respondent provided him with defective services. He wants the amount he paid to the 2nd Respondent refunded and the replacement value of his vehicle.

23. On 19 November 2018, Mr Croft lodged a complaint with the Motor Industry Ombudsman of South Africa (MIOSA). On 20 February 2019, MIOSA issued a letter stating that the 1st Respondent failed to respond to the complaint lodged.
24. Mr Croft then lodged a complaint with the National Consumer Commission (NCC) on 22 February 2019. The NCC issued a Notice of non-referral dated 13 December 2019. The letter accompanying the Notice essentially stated that the CPA does not provide for an award of damages.

THE HEARING

25. At the hearing, the Applicant made oral submissions. He confirmed his claim was essentially based on his car no longer running after collecting it from the 2nd Respondent.

APPLICATION FOR LEAVE

26. In terms of section 75(1)(b) of the CPA, the Applicant may only refer the matter directly to the Tribunal *with leave of the Tribunal*.
27. In determining whether the Applicant should be granted leave to refer the matter directly to the Tribunal, the Tribunal must consider the requirements for the granting of “leave”.
28. In *Westinghouse Brake and Equipment (Pty) Ltd v Bilger Engineering (Pty) Ltd*⁴ it was held that-

⁴ 1986 (2) SA 555 (A). Also see *Coertze and Burger v Young* NCT/7142/2012/75(1)(b)&(2)

“In applications for leave to appeal properly brought before the appropriate court in terms of the old sec 20, read with sec 21 as it then was, the only relevant criteria were whether the applicant had reasonable prospects of success on appeal and whether or not the case was of substantial importance to the applicant or to both him and the respondent.”

29. The Tribunal will use the same test as applied in the High Court for applications for “leave” and will consider:

29.1 The Applicant’s reasonable prospects of success with the referral; and

29.2 Whether the matter is of substantial importance to the Applicant, the Respondent or both.

30. It is clear that the matter is of substantial importance to the Applicant. The Applicant has gone to great lengths to pursue his complaint, and the value of the claim is not insignificant.

31. The circumstances surrounding the claim against the 2nd Respondent appear to fall within the general ambit of the CPA. Section 15(2) requires a supplier to provide an estimate of costs before any service is provided. If no estimate was provided or the work was not authorised, then the consumer must be refunded. Section 54 of the CPA requires a supplier to render a reasonable standard of service. Although the CPA does not provide for an award of damages, a consumer can apply for a certificate under Section 115(2) of the CPA.

32. The Applicant’s claim against the 1st Respondent is less clear. It appears the Applicant is essentially alleging that the 1st Respondent was uncooperative and did not assist him in any meaningful way. If proven, the 1st Respondent’s failure to assist would certainly deserve moral outrage. However, it does not specifically give rise to a claim in terms of the CPA. The Applicant has not laid any clear basis to show that the 1st Respondent was involved in the repair of the vehicle in any way. The claim does not involve any franchise agreement that could give rise to a claim. Based on the evidence presented at this stage, there is no reasonable prospect of the Applicant proving a claim against the 1st Respondent in terms of the CPA.

CONCLUSION

33. The Tribunal finds that the matter is of substantial importance to the Applicant. The general circumstances under which the Applicant had the vehicle repaired falls within the ambit of the CPA.
34. The Applicant has a reasonable prospect of proving his allegations against the 2nd Respondent.
35. The Applicant has not shown any reasonable prospect of proving his claims against the 1st Respondent.

ORDER

36. Accordingly, the Tribunal makes the following order –
- 36.1 The Applicant's application for leave to refer is granted in respect of the 2nd Respondent only; and
- 36.2 There is no order as to costs.

THUS DONE IN CENTURION ON THIS 25TH DAY OF SEPTEMBER 2020

[signed]

Adv. J. Simpson

Presiding Tribunal Member

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

Ground Floor, Building B

Lakefield Office Park

272 West Avenue, Centurion, 0157

www.thenct.org.za

