

IN THE NATIONAL CONSUMER TRIBUNAL

Case Number: **NCT/118856/2018/75(1)(b)CPA**

In the matter between

VASANTHA SINGH

APPLICANT

and

MOTUS CORPORATION (PTY) LTD, t/a MULTIFRANCHISE PINETOWN

RESPONDENT

Coram:

Dr L Best – Presiding Tribunal Member

Adv J Simpson – Tribunal Member

Mr A Potwana – Tribunal Member

Date of Judgment: 24 May 2019

JUDGMENT AND ORDER

THE PARTIES

1. The Applicant is Vasantha Singh (hereinafter referred to as “the Applicant”), a female consumer resident in Phoenix, KwaZuluNatal. The attorney for the Applicant is Ms Natasha Singh of Vishal Singh and Associates.
2. The Respondent is Motus Corporation (Pty) Ltd, t/a Multifranchise Pinetown, with registered address at 7 Corobrick Street, Meadowdale, Pinetown (hereinafter referred to as “the Respondent”).

THE APPLICATION

3. The Applicant filed an application in terms of s175(b) of the Consumer Protection Act 68 of 2008 ("the CPA") to refer the dispute with the Respondent directly to the National Consumer Tribunal ("the Tribunal"), with leave of the Tribunal. Leave was duly granted by the Tribunal in a hearing held on 24 January 2019.
4. The main matter was set down for hearing on 29 April 2019. Prior to the hearing, the parties submitted a settlement agreement to the Tribunal. One of the terms of the settlement agreement was that "the parties agree that this Agreement be confirmed in a consent order in terms of s138(1)(b) of the NCA" (National Credit Act 34 of 2005 - "the NCA").
5. The Tribunal considered the terms of the settlement agreement, and issued a directive on 6 May for certain aspects of the agreement to be amended.
6. The parties duly amended the settlement agreement and submitted same to the Tribunal.

BACKGROUND FACTS

7. During June 2015 the Applicant purchased a silver VW Polo Vivo 2014 model from the Respondent. The purchase price was R121 990.00.
8. Approximately two weeks later the vehicle displayed "signs of instability" according to the Applicant. An inspection report by "AA Dekra" revealed an extensive list of internal and external damage to the vehicle.
9. The Applicant wished to return the vehicle to the Respondent and receive a refund of the purchase price and other expenses incurred. The Applicant pursued a number of avenues to claim the refund from the Applicant, including: legal engagement with the Respondent by Scorpion Legal Protection; filing a complaint with the Motor Industry Ombud of South Africa (MIOSA); lodging a complaint with the National Consumer Commission (NCC); having summons issued in the Ekurhuleni Magistrate's Court. The Respondent did not respond in all of these instances.
10. The first indication of a response from the Respondent is a signature of the settlement agreement; in which the Respondent agrees to pay an amount of R125 000 in full and final settlement of the Applicant's claim.

CONSIDERATION OF THE SETTLEMENT AGREEMENT

11. Having considered the terms of the settlement agreement, the Tribunal was concerned with certain aspects of the proposed agreement, namely:
 - 11.1 The absence of the names of the signatories to the agreement; and
 - 11.2 The settlement agreement erroneously refers to Section 138 of the National Credit Act 34 of 2005 ("the NCA") as the basis on which the settlement agreement can be made an order of the Tribunal.
12. The parties amended the agreement as per the requirements of the Directive and effected the changes stipulated in 11.1 and 11.2.
13. The Tribunal, having satisfied itself that the dispute between the parties has been resolved, and that the relief sought by the Applicant has been amicably resolved by agreement between the parties, agreed to make the settlement agreement entered into between the parties, an order of the Tribunal.

ORDER

14. Accordingly, the Tribunal makes the following order:
 - 14.1 The signed settlement agreement entered into between the parties, attached hereto as "Annexure A: V Singh v Motus Corporation Pty Ltd Settlement agreement" is hereby made an order of the Tribunal; and
 - 14.2 No order is made as to costs.

DATED 23 May 2019

[signed]

Dr L Best

Presiding Tribunal Member

Adv J Simpson (Tribunal member) and Mr A Potwana (Tribunal member) concurring