

IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION

Case number: **NCT/166137/2020/75(1)**

In the matter between:

RENA SINGH

APPLICANT

And

TED'S HOME STORE CC

RESPONDENT

Coram

Adv J Simpson - Presiding Tribunal Member

Date of consideration (in chambers) - 3 August 2021

Date of Judgment - 3 August 2021

LEAVE TO REFER JUDGMENT AND REASONS

THE PARTIES

1. The Applicant in this matter is R Singh, an adult female residing in Port Shepstone ("the Applicant" or "Ms Singh").
2. The Respondent is Ted's Home Store CC ("the Respondent" or "Ted's"). The business appears to have three separate branches. The branch involved in the matter appears to be located in Queensburgh.

APPLICATION TYPE

3. The matter is concerning an application in terms of Section 75(1)(b) of the Consumer Protection Act, Act 68 of 2008 ("the CPA").
4. Section 75(1)(b) 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

5. 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)."

6. Accordingly, a single member of the Tribunal has jurisdiction to hear this application for leave to refer a complaint to the Tribunal as contemplated under section 75(1)(b).

BACKGROUND

7. In 2017, Ms Singh purchased a lounge set from Ted's for R14 500.00. She was informed that the lounge set was made on genuine leather. Two years later, the cushions sagged, and the set covering peeled and became unsightly. She reported the problem to Ted's, but it refused to repair or replace the set. She was told the warranty was only for one year. Ms Singh attached copies of numerous similar complaints reported against Ted's on the Hellopeter website. She wants the set replaced, repaired or compensation paid.
8. On 11 December 2019, Ms Singh lodged a complaint with the National Consumer Commission (NCC). The NCC issued a Notice of non-referral dated 10 February 2020.
9. On 19 August 2020, Ms Singh filed her application with the Tribunal. She also filed an application to condone the late filing of the application. Condonation for the late filing was granted in a written judgment dated 3 May 2021.
10. The application was sent to Ted's by registered post on 12 August 2020. After condonation for the late filing was granted, a notice of filing was sent to Ted's by registered post on 31 May 2021. The Notice stated that Ted's must file its answering affidavit within 15 business days. Ted's did not file an answering affidavit.

APPLICATION FOR LEAVE

11. In terms of section 141(1) of the NCA, the Applicant may only refer the matter directly to the Tribunal *with leave of the Tribunal*.
12. Previously, the Tribunal held formal hearings on leave to refer, and all the parties would be present. In the matter of *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others* (Case no 314/2020) [2021] ZASCA 91 (25 June 2021) *SAFLII*, the court provided useful guidance to the Tribunal in decisions regarding leave to refer. It held that a formal hearing on leave to refer was unnecessary, there was no test to be applied and the decision to consider leave could not be appealed. The court held –

"[15] As I have explained, the NCA provides for an expeditious, informal and cost-effective complaints procedure. Section 141(1)(b) confers on the Tribunal a wide, largely unfettered discretion to permit a direct referral. The NCA does not require a formal application to be made and it is not necessary for purposes of the present appeal, nor is it desirable, to circumscribe the factors to which the Tribunal should have regard. There is no test to be applied in deciding whether or not to grant a direct referral to it in respect of a complaint. The purpose of the provision is simply for the Tribunal to consider the complaint afresh, with the benefit of any findings by the Regulator, and to decide whether it deserves its attention. Circumstances which may influence its decision may include the prospects of success, the importance of the issue, the public interest to have a decision on the matter, the allocation of resources, the complainant's interest in the relief sought and the fact that the Regulator did not consider that it merited a hearing before the Tribunal. The list is not intended to be exhaustive."

13. As there is no test to be applied, the Tribunal will consider the matter in the general context of the circumstances as submitted by the parties.
14. Ms Singh did not specify the basis of her claim in terms of the CPA. It appears she is either alleging that the product was defective or that Ted's misrepresented to her that the set is made of genuine leather. Sections 55 and 56 of the CPA only apply where goods become defective within six months after purchase. Based on the submissions made, the defects only arose after two years. Therefore, sections 55 and 56 cannot be applied. Further, sections 55 and 56 do not apply to disputes regarding additional warranty periods or policies.
15. Section 41 of the CPA provides for false, misleading or deceptive representations made by a supplier. If Ms Singh can prove that Ted's misrepresented that the set was made of genuine leather, a finding of prohibited conduct can possibly be made. A fine can then be imposed against Ted's.
16. However, it must be noted that Ms Singh has not provided any clear evidence that the set was sold to her as a genuine leather set. The receipt attached to the application is barely legible, and only appears to state "...white leather upper". She would further need to prove that the set is, in fact, not made of genuine leather. She would have to call an expert witness in this regard. In the interests of justice, the Tribunal will grant an opportunity to Ms Singh to prove her claim.

CONCLUSION

17. The Tribunal finds that leave to refer the matter to the Tribunal can be granted.

ORDER

18. Accordingly, the Tribunal makes the following order –

18.1 The Applicant's application for leave to refer the matter directly to the Tribunal is granted; and

18.2 There is no order as to costs.

THUS DONE IN PRETORIA ON THIS 3RD DAY OF AUGUST 2021

[signed]

Adv. J. Simpson
Presiding Tribunal Member

Authorised for issue by The National Consumer Tribunal

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