THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 13 April 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Motus Corporation (Pty) Ltd and Another v Wentzel (1272/2019) [2021] ZASCA 40 (13 April 2021)

The Supreme Court of Appeal (SCA) today upheld an appeal brought by Motus Corporation (Pty) Limited t/a Zambezi Multi Franchise (Renault) SA, against Ms Abigail Wentzel (Ms Wentzel), the respondent. No order was made as to costs. The SCA accordingly set side the decision of the Gauteng Division of the High Court, Pretoria (the high court).

The issue for consideration by the SCA was whether Ms Wentzel had made out a case, in terms of ss 56(2) and (3) of the Consumer Protection Act 68 of 2008 (the Act), for the refund of the purchase consideration paid to Renault in respect of a Renault Kwid motor vehicle (the vehicle). The related issues were whether the vehicle had defects; whether such defects were resolved by Renault; and whether there were any further complaints received by Renault from Ms Wentzel, subsequent to the repairs that were undertaken by Renault.

On 16 May 2018, Ms Wentzel brought an application in the high court against Renault, the first appellant, and its parent company, Renault South Africa (Pty) Ltd (Renault SA), the second appellant. She claimed to be entitled to cancel a credit agreement between herself and Renault in respect of the vehicle, and to the refund of the purchase price in the amount of R256 965.84. She tendered the return of the vehicle against the refund of the purchase price. Ms Wentzel had obtained finance for the vehicle from the Motor Finance Corporation (Pty) Ltd t/a M.F.C. (MFC), a division of Nedbank, and the latter had settled her indebtedness to Renault. The MFC provided finance to Ms Wentzel in terms of a credit agreement. The total purchase price payable to MFC under the credit agreement was R261 924.84, payable in monthly instalments. The purchase price of the vehicle charged by and paid to Renault was R176 400.41. The essential basis for Ms Wentzel's claim was that Renault had, in breach of ss 49(1)(*b*), 55(2)(*b*) and (*c*), 56(2)(*a*) an (*b*) and 56(3) of the Act, sold her a brand new vehicle that was woefully defective. Renault denied the alleged breaches of the Act and that Ms Wentzel was entitled to the relief that she sought. Furthermore, Renault argued that Ms Wentzel had failed to exhaust the internal remedies provided for in s 69 of the Act.

The SCA noted that it was not necessary to address the scope of s 69*(d)* of the Act, in particular, the issues regarding whether a consumer ought to exhaust the alternative dispute

resolution mechanisms provided for in the Act, and whether s 69 creates a hierarchy of remedies. This notwithstanding, the SCA stated, *obiter*, that the primary guide in interpreting the section would be s 34 of the Constitution and the guarantee of the right of access to courts. Thus, s 69(*d*) should not lightly be read as excluding the right of consumers to approach the court in order to obtain redress.

Substantively, the SCA held that Ms Wentzel failed to show that the requirements of s 56(3) were satisfied and that she was entitled to a refund of the purchase price in respect of the vehicle. This was on the basis that Ms Wentzel's claim depended on the determination of issues, in respect of which there existed serious disputes of fact, and those factual disputes ought to have been resolved by applying the *Plascon-Evans* Rule. To the extent that there was a dispute regarding the nature of the defects in the vehicle and whether they were resolved by Renault, such dispute ought to have been resolved in favour of Renault. On Renault's version, which was accepted, all repairs were properly carried out.

Furthermore, the SCA found that even if Ms Wentzel had brought herself within the provisions of s 56(3), she was not entitled to a refund of the amount stipulated in the order of the high court, R256 965.84. This was not the amount she had paid to Renault. It was the amount she had agreed to pay to MFC in terms of the agreement with them. Her claim for the refund, if it had been successful, was not against the financier but against the supplier of the vehicle. The SCA found further that, assuming Ms Wentzel had made out a case for the refund, the use of the vehicle during the time it was in her possession was a relevant factor in determining the amount to be refunded, in terms of s 20, and for which Renault would have been entitled to deduct a reasonable amount.

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