NATIONAL CONSUMER COMMISSION

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NATIONAL CONSUMER COMMISSION v AUTO INVESTMENTS WONDERBOOM (PTY) LTD & ANOTHER

CASE NO: NCT-423413-2025-73(2)(b)

1. SUMMARY OF THE JUDGEMENT

The Tribunal declared the First Respondent's conduct to constitute prohibited conduct. The Commission investigated a complaint lodged by Consumer concerning the purchase of a 2018 Audi RS5 from Auto Investments Wonderboom (Pty) Ltd (the First Respondent) on 30 April 2024 for **R683,765.00**. The transaction was financed through MFC, a division of Nedbank Limited (the Second Respondent). The complainant took delivery of the vehicle on 3 May 2024.

On the day of delivery, the complainant experienced mechanical problems with the vehicle. Within five days, the engine warning light illuminated. He subsequently took the vehicle to Audi Centre Trichardt for inspection and diagnostic testing. On 14 May 2024, Audi Centre issued a repair estimate amounting to **R229,555.41,** identifying various components requiring attention, including the catalytic converter, brake discs and pads, and shock absorbers.

[2]

The complainant notified the First Respondent of the defects and initially sought to have the vehicle repaired. However, the First Respondent subsequently required him to return the vehicle to its premises at his own risk and expense, despite the defects identified and the potential safety implications. On 20 May 2024, the First Respondent, through its attorneys, repudiated liability and refused to undertake the necessary repairs.

The complainant thereafter approached MIOSA, which recommended that the First Respondent repair the vehicle. Following MIOSA's intervention, the First Respondent eventually collected the vehicle on 12 August 2024. However, the vehicle broke down while being driven towards the First Respondent's premises. The complainant maintained his election to cancel the transaction and obtain a refund, which the First Respondent had refused to provide.

Following its investigation, the Commission referred the matter to the National Consumer Tribunal in terms of section 73(2)(b) of the CPA, alleging that the First Respondent had contravened sections 55(2)(a)–(c), read with section 56(2)(b) of the CPA. The Commission sought a declaration of prohibited conduct, a refund of the purchase price and an administrative fine.

The Tribunal upheld the Commission's case and found that the First Respondent had contravened section 55(2)(a)–(c), by supplying a vehicle that was not reasonably suitable for its intended purpose, was not of good quality and in good working order, and was not usable and durable for a reasonable period; and section 56(2)(b), by failing to provide the complainant with the statutory remedy following his election to return the defective vehicle and obtain a refund.

The Tribunal found that the defects, particularly the cracked brake disc and the safety-related issues identified during the inspection, constituted material defects within the meaning of section 53(1)(a)(ii) of the CPA. It further found that the defects manifested shortly after delivery and were reasonably attributable to the condition of the vehicle at the time of sale.

Importantly, the Tribunal rejected the First Respondent's attempt to avoid liability on the basis that the vehicle was second-hand and had accumulated additional kilometres after delivery. It confirmed that the CPA applies equally to new and second-hand goods, although the age and mileage of a vehicle remain relevant considerations when assessing the reasonable expectations of consumers.

The Tribunal also found that the First Respondent had failed to comply with its obligations under section 56(2). Having been notified of the defects, the First Respondent could not simply repudiate liability, insist that the complainant return the vehicle at his own expense, and leave the consumer without an effective remedy.

The Tribunal consequently declared the First Respondent's conduct to constitute prohibited conduct and ordered it to refund the purchase price of R683,765.00, apportioned according to the source of payment. The First Respondent was further ordered to pay an administrative fine of R250,000.00. No findings were made against the Second Respondent, MFC, a division of Nedbank Limited.

2. IMPACT OF THIS CASE

This judgment is a significant enforcement outcome for the NCC and reinforces the statutory protection afforded to consumers who purchase defective motor vehicles, including second-hand vehicles.

The judgment sends a clear message to motor vehicle dealerships that the sale of a used vehicle does not exempt them from their obligations under the CPA. Suppliers remain responsible for ensuring that vehicles supplied to consumers meet the standards prescribed by section 55.

It further confirms that a supplier cannot simply repudiate liability, shift the financial burden of returning defective goods onto the consumer, or leave a consumer without redress after defects have been established.

The Tribunal's order requiring the First Respondent to refund the full purchase price, together with an administrative fine of R250,000.00, demonstrates that failure to honour statutory consumer rights carries serious financial consequences.

3. THE CPA APPLIES EQUALLY TO NEW AND SECOND-HAND VEHICLES

The Tribunal reaffirmed that the CPA applies to the supply of both new and second-hand goods.

In considering the First Respondent's argument that the vehicle was a used vehicle with approximately 125,000 kilometres on the odometer, the Tribunal relied on Vousvoukis v Queen Ace CC t/a Ace Motors. It confirmed that the fact that a vehicle

is second-hand does not exclude it from the protection afforded by sections 55 and 56 of the CPA.

Although the age, mileage and general condition of a used vehicle are relevant when determining what a consumer may reasonably expect, these factors do not give suppliers an automatic exemption from liability for material defects.

The Tribunal further emphasised that a general acknowledgement that a vehicle is sold as second-hand, a test drive or the vehicle's mileage does not amount to acceptance of specific defects that were not disclosed to the consumer.

This finding is particularly important in the motor vehicle industry, where suppliers cannot rely on the second-hand nature of vehicles as a blanket defence against complaints concerning undisclosed defects.

4. SUPPLIERS CANNOT ESCAPE LIABILITY FOR UNDISCLOSED MATERIAL DEFECTS

The Tribunal considered whether the defects identified in the vehicle amounted to defects as defined in section 53(1)(a) of the CPA.

In applying the principles established in Motus Corporation (Pty) Ltd v Wentzel and Auto Extreme CC v Lourens, the Tribunal reiterated that not every fault or imperfection constitutes a defect under the CPA. The defect must render the goods less acceptable than consumers would reasonably be entitled to expect, or less useful, practicable or safe for their intended purpose.

The Tribunal found that the safety-related defects, particularly the cracked brake disc, when considered together with the reported instability of the vehicle and the inspection findings, established a material defect.

It further found that the defects manifested shortly after delivery, with the engine warning light illuminating within five days. The complainant had reported the problems within approximately eleven days of delivery.

The Tribunal found that the defects were present, albeit latent, when the sale was concluded. It consequently held that the First Respondent had supplied a vehicle that did not meet the standards prescribed by section 55(2)(a)–(c).

The judgment reinforces the obligation on motor vehicle suppliers to disclose material defects before concluding a transaction. Suppliers cannot rely on the fact that a vehicle has been driven or that it is relatively old to avoid liability for defects that materially compromise its quality, safety or intended use.

5. THE SUPPLIER BEARS THE RISK AND EXPENSE OF RETURNING DEFECTIVE GOODS

The Tribunal took particular note of the First Respondent's conduct after being notified of the defects.

Although the complainant initially elected to have the vehicle repaired, the First Respondent repudiated liability through its attorneys on 20 May 2024 and refused to undertake the necessary repairs.

The Tribunal held that a supplier that repudiates its obligations and fails to implement the consumer's initial election for repairs cannot indefinitely insist that the consumer remain bound by that election.

The complainant had afforded the First Respondent an opportunity to collect and repair the vehicle. The First Respondent's failure to provide the elected remedy entitled the complainant to pursue a refund.

The Tribunal consequently found that the First Respondent had contravened section 56(2)(b) by failing to provide the statutory remedy to which the complainant was entitled.

This finding reinforces the principle that suppliers must meaningfully honour the remedies afforded to consumers under the CPA. A supplier cannot simply reject a legitimate complaint and leave the consumer to bear the consequences of its failure to comply with the law.

6. REFUNDS IN FINANCED VEHICLE TRANSACTIONS MUST GIVE EFFECT TO THE CONSUMER'S RIGHTS

The judgment also addresses the treatment of refunds where a vehicle has been purchased through an instalment sale agreement.

The First Respondent argued, among other things, that the transaction involved the Second Respondent as the financier and that the Tribunal should not interfere with the credit agreement.

The Tribunal found that the complainant had a direct contractual relationship with the First Respondent, which had supplied the vehicle. The Master Sale and

Representation Agreement between the two Respondents could not be used to deprive the complainant of his statutory rights, particularly because the complainant was not a party to that agreement.

The Tribunal further clarified that although the CPA does not apply to credit agreements regulated under the National Credit Act, this does not remove the protection afforded by the CPA to goods supplied under such arrangements.

Importantly, the Tribunal distinguished between refunding the purchase price paid to the supplier and ordering the financier to refund instalments paid under the credit agreement. It held that it did not have the authority to restructure or interfere with the credit agreement or order the Second Respondent to refund instalments.

Instead, the Tribunal ordered the First Respondent to refund the purchase price according to the source of payment. This approach was intended to give practical effect to the complainant's statutory right to a refund without unjustly enriching any party or interfering with the terms of the credit agreement.

The judgment therefore provides important guidance on how the statutory refund remedy under section 56(2)(b) should be implemented in financed vehicle transactions.

7. THE JUDGMENT REINFORCES THE NCC'S ENFORCEMENT MANDATE

This judgment demonstrates the NCC's commitment to protecting consumers against suppliers who fail to comply with the statutory standards prescribed by the CPA.

[9]

The Commission successfully referred the matter to the Tribunal and secured a finding that the First Respondent had contravened sections 55(2)(a)–(c), read with section 56(2)(b).

The outcome is particularly significant because the Tribunal did not merely declare the conduct prohibited. It ordered the First Respondent to refund the full purchase price of R683,765.00 and imposed an administrative fine of R250,000.00.

The judgment serves as a warning to motor vehicle dealerships that the statutory rights of consumers cannot be disregarded or defeated through unreasonable contractual demands, refusals to honour legitimate complaints or attempts to shift the responsibility for defective goods onto consumers.

The NCC will continue to take enforcement action against suppliers who disregard the CPA and undermine consumers' rights to safe, reliable and quality goods.