

**IN THE NATIONAL CONSUMER TRIBUNAL
SITUATED IN CENTURION**

Case Number: NCT/157995/2020/75(1)(b)

In the matter between:

USHA SINGH

APPLICANT

and

FASQUIP TRADING CC, TRADING AS WOODLANDS DÉCOR

RESPONDENT

Coram:

Mr A Potwana - Presiding Tribunal member

Prof K Moodaliyar - Tribunal member

Adv C Sassman - Tribunal member

Date of hearing: 8 September 2022 (via the Microsoft Teams technological link)

JUDGEMENT AND REASONS

THE PARTIES

1. The Applicant is Ms Usha Singh, an adult female consumer.
2. The Respondent is Fasquip Trading CC, trading as Woodlands Décor, a close corporation that is duly registered in terms of the corporate laws of the Republic of South Africa with its physical address at Unit 8, Sebenza Park, 17 Engwena Street, Sebenza, Johannesburg, Gauteng.

APPLICATION TYPE

3. In this application, the Applicant seeks a full refund of the purchase and installation price of R47685,97 she paid to the Respondent for new blinds to be installed in her home.
4. The Tribunal has jurisdiction in terms of section 75(1)(b) of the Consumer Protection Act 68 of 2008 ("CPA").

BACKGROUND

5. This matter has a long history. On 30 March 2020, the Applicant filed an application for leave to refer a complaint to the Tribunal using the prescribed form for filing documents with the Tribunal: Form TI.r30A. The application is contained in the prescribed form for applying for leave to refer complaints to the Tribunal: Form TI.73(3) & 75(1)(b) & (2) CPA. In “Part D: Order sought from the Tribunal” of Form TI.73(3) & 75(1)(b) & (2) CPA, the Applicant stated that if leave is granted, she will seek a full refund of the purchase price of R47685,97. The Applicant’s supporting affidavit is attached. In her supporting affidavit, the Applicant submitted that in April 2018, she paid the Respondent a total sum of R47 685.97 to install blinds in her home. Installation commenced on 25 April 2018. Defects were noticed on that day and brought to the Respondent’s attention. A meeting was held for the defects to be corrected within seven days. However, the Respondent failed to produce a complete list of all the blinds to be repaired and to repair the faulty blinds. In addition, it failed to deliver blinds, as promised, within seven to ten days from 4 May 2018. Frustrated, the Applicant sent a letter of demand to the Respondent requesting a full refund as the Respondent had breached the contract. The blinds are still incomplete, resulting in poor sleep quality and stress for her family. She wants a full refund so that she can contract with a credible supplier with integrity. The Respondent cannot be trusted to comply with its contractual obligations. The trust relationship between her and the Respondent has broken down irretrievably. The Respondent displayed poor workmanship from the first day of installation. She has no assurance that the repairs would not result in further defects. With incomplete blinds, her newly renovated home does not look aesthetically appealing. The Applicant submitted that section 19(2)(a), (b), and (c) and sections 53 to 57 of the CPA apply to her complaint.
6. On 8 October 2020, the Registrar issued a Notice of Set Down for the hearing of the application for leave to refer to be held on 19 January 2021. On 5 January 2021, the Applicant filed an application to condone the filing of a supplementary affidavit. She submitted that she realised that several documents and further information should have been included in her initial application. On 13 January 2021, the Registrar issued a Notice of Removal of the matter from the hearing roll. The Respondent did not file an answering affidavit opposing the application for condonation. In a ruling issued on 19 May 2021, the Tribunal granted the application for condonation for the filing of a supplementary affidavit.
7. On 29 June 2021, the Registrar issued a Notice of Set Down for the application for leave to refer to be heard on 5 August 2021. On 13 August 2021, the Registrar issued the Tribunal’s judgment granting leave. On 14 September 2021, the Registrar issued a Notice of Set Down for the main matter to be heard on 19 October 2021 and served it on the parties. On the day of the hearing, Advocate Nicholas Tee from the Johannesburg Society of Advocates appeared on behalf of the Respondent and advised the Tribunal panel that the Respondent had attempted to file opposing papers on the Applicant and the Tribunal on numerous occasions. Both the Applicant and the Registrar refused to accept service of the

documents,

which included a condonation application for the late filing of an answering affidavit. On 22 October 2021, the Registrar issued the postponement order. On 19 November 2021, the Respondent delivered its condonation application and answering affidavit. On 7 December 2021, the Applicant filed her answering affidavit opposing the Respondent's condonation application. On 3 January 2022, the Respondent filed its replying affidavit. On 25 February 2022, the Registrar issued the Tribunal's Condonation Ruling refusing the Respondent's application for the late filing of its answering affidavit and making no order as to costs. On 7 March 2022, the Registrar issued a Notice of Set Down for the hearing of the main application to be heard on 19 April 2022. The Respondent filed an appeal against the Tribunal's decision refusing condonation for the late filing of its answering affidavit. On 28 June 2022, the Registrar issued the Appeal Judgment dismissing the appeal. On 27 July 2022, the Registrar issued another Notice of Set Down for the main application to proceed on 8 September 2022 and served it on the parties.

HEARING

8. On the day of the hearing, the Applicant represented herself, and the matter proceeded on a default basis. At the outset, Ms Singh recounted the events that took place. She reiterated that the defects were noticed on the same day of delivery and installation, 25 April 2018. On 4 May 2018, the parties met and discussed the necessary repairs. On 13 May 2018, additional defects were noticed. The blinds were supposed to block out the sunlight, but they did not, and the design was inadequate. On 17 May 2018, she cancelled the agreement. The panel asked Ms Singh various questions to ascertain the extent to which the design and the installation of the blinds were inadequate or defective. She explained that the manufacturing, design, and installation were defective. Only the blinds installed in her daughter's bedroom were correctly installed, but those in the bathroom of her daughter's bedroom were not properly installed. Since the blinds in her daughter's bedroom are supposed to match those that are in the bathroom of her daughter's bedroom, she would rather have the blinds removed so that she can install new blinds. Concerning the blinds in the lounge area, valances were missing. The installation in the dining room was incomplete. Furthermore, the blinds were not "Block-Outs" as initially agreed with the Respondent. Since the blinds were installed in an open-plan area, she will have to replace all the blinds.
9. In addition to the refund sought, the Applicant argued that, in view of the Respondent's conduct, an administrative fine must be imposed on the Respondent.

THE LAW

10. In section 53(1)(a) of the CPA a defect means-

“(i) *any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less*

acceptable than persons generally would be reasonably entitled to expect in the circumstances; or

(ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances.”

11. Section 54 of the CPA states-

“(1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to-

- (a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;*
- (b) the performance of the services in a manner and quality that persons are generally entitled to expect;*
- (c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and*
- (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services, having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.*

(2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either-

- (a) remedy any defect in the quality of the services performed or goods supplied; or*
- (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.”*

12. Section 55(2) of the CPA states-

“Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that-

- (a) are reasonably suitable for the purposes for which they are generally intended;*
- (b) are of good quality, in good working order and free of any defects;*
- (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and*
- (d) comply with any applicable standards set under the Standards Act, 1993 (Act*

No. 29 of 1993), or any other public regulation.”

13. Section 56(2) of the CPA states-

“Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier’s risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either-

- (a) repair or replace the failed, unsafe or defective goods; or*
- (b) refund to the consumer the price paid by the consumer, for the goods.”*

14. Rule 13(5) of the Tribunal Rules¹ states-

“Any fact or allegation in the application or referral not specifically denied or admitted in an answering affidavit, will be deemed to have been admitted.”

CONSIDERATION OF THE MERITS

15. The Applicant submitted that the defects were noticed on the day of installation. Although the parties had agreed on “Block-Out” blinds, all the delivered and installed blinds do not block the sunlight. Except for the blinds that the Respondent installed in her daughter’s bedroom, all the blinds were either defective or improperly installed. However, since these blinds were supposed to match those in the bathroom of her daughter’s bedroom, which were not correctly installed and needed to be repaired, she has to change both the blinds in her daughter’s bathroom and bedroom. Moreover, since most of the blinds were installed in the open area of her house, she has to replace all of them.

16. The defects alleged by the Applicant fall within the definition of “defect” as contemplated under section 53 of the CPA. There were material imperfections in the design and the installation of the blinds. Most notably, the blinds did not block out the sunlight, valances were missing, and the blinds were not correctly installed. Further, the blinds were not installed in a manner and quality that persons are entitled to expect as envisaged under section 54 of the CPA. The blinds were not free of defects as envisaged under section 55 of the CPA. In terms of section 56 of the CPA, the Respondent is obliged to refund the Applicant the purchase price she paid for the blinds.

¹ 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).

CONCLUSION

17. We are satisfied that the Applicant has proved, on a balance of probabilities, that the Respondent must refund the entire amount she paid for the purchase and installation of the blinds. We are not satisfied that the Applicant has made out a proper case for us to impose an administrative fine on the Respondent as stated by the Applicant in her papers and argued during the hearing.

ORDER

18. Accordingly, for the reasons set out above, the Tribunal makes the following order:
- 18.1. the Respondent must refund the Applicant the sum of R47 685.97 within 30 business days of the date of issue of this order; and
- 18.2. no order is made as to costs.

Thus, done and signed on 19 September 2022.

[signed]

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Mr A Potwana
Presiding Tribunal Member

With Prof K Moodaliyar and Adv C Sassman concurring.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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