



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 2022/036051

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates **NO**

In the matter between:

RONALD HEINRICH MULLER

APPLICANT

And

CARTRACK (PTY) LTD

RESPONDENT

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JUDGMENT

TROMP AJ

Introduction

1. The applicant seeks payment of R300 000 under a "*Limited Recovery Warranty*" contained in a vehicle-tracking service agreement concluded with the respondent on 31 October 2018 and later amended and extended, on 24 November 2020, to include a second vehicle.

2. Each vehicle was subsequently stolen and was not recovered. The respondent rejected both warranty claims on the basis that the applicant had not complied with the contractual requirement to test the tracking units on a quarterly basis.
3. The dispute raises two principal questions.
 - 3.1 The first is whether the testing requirement, read with the clause providing that the warranty is invalid if the client breaches any term of the service agreement, is subject to s 49 of the Consumer Protection Act 68 of 2008 ("the CPA"), and, if so, whether the statutory notice requirements were met.
 - 3.2 Should the applicants first argument fail, the second question is whether, irrespective of the CPA point, the agreement is properly interpreted as permitting the respondent to reject the claims notwithstanding the respondent's own system-generated or courtesy notifications concerning the units.

Background

4. The contract and terms thereof as well as the factual background history is substantially common cause. The parties concluded the tracking agreement in 2018 in respect of a Toyota Hilux. A Toyota Prado was added in November 2020. In terms of the warranty, the respondent undertook to in the event of a loss without recovery, to pay the book value of the relevant vehicle, limited to R150 000 inclusive of VAT. The applicant claims the maximum amount in respect of each vehicle.
5. It is not disputed that should the applicant's claim be successful the total amount of R 300 000 will be payable by the respondent to the applicant with regards to the two vehicles.

6. The Hilux was stolen on 16 February 2021 and the Prado on 19 March 2022. Neither was recovered. The applicant submitted claims under the warranty and the respondent rejected them because, it said, the applicant had failed to comply with clause 10.1.3.3 of the agreement and test the units quarterly.
7. Clause 10.1.3.3 provides that it is the responsibility of the client to
“Test the Unit on a quarterly basis to ensure that it is operational and, if notified by Cartrack that the Unit is faulty, to take the Vehicle to an Installation Centre for repair within 3 (three) working days of establishing the fault”.
8. Clause 10.4 is headed “Exclusions” and provides that the warranty shall be invalid if, *inter alia*, the client is in breach of any term or condition of the service agreement.
9. The applicant contends that these provisions, read together, limit the respondent’s liability under the warranty and therefore attract section 49(1)(a) of the CPA. The applicant contends that the provisions were contained in densely printed standard terms and were not conspicuously drawn to his attention as required by s 49(3) to (5) of the CPA.
10. The applicant seeks relief under section 52(4) to sever these clauses from the agreement due to non-compliance with section 49(3) to (5) or declaring that these terms have no force and effect with regards to the applicant’s transaction.
11. The applicant also relies on the respondent’s alleged courtesy testing and SMS notifications received from the respondent and contends that the units were operational immediately before the thefts.
12. The respondent contends that section 49 is directed to exemption or disclaimer clauses and not to a contractual obligation defining the circumstances in which a limited warranty is available. It submits that clause 10.1.3.3 simply imposes

an obligation on the applicant and clause 10.4.1 records the consequence of breach. The Respondent further contends that the applicant knew of the warranty terms and that, in any event, the quarterly testing obligation is clear and was not complied with.

13. There is an important evidential qualification. The applicant's papers characterise a number of facts as incapable of genuine dispute, including the receipt of regular SMS notifications and the proposition that the units were functioning properly at the time of theft.
14. The respondent's papers dispute the sufficiency of that evidence and in particular, dispute that non-recovery itself establishes that a unit was not operational.

The applicable legal framework

15. The CPA applies to transactions for the supply of goods or services in the ordinary course of a supplier's business, subject to the exclusions in the Act. On the available evidence, the applicant is a natural person and the respondent supplied tracking services in the ordinary course of its business. The respondent also accepts the general applicability of the CPA. The issue is therefore the application of particular provisions, rather than the CPA's application in principle.
16. Section 49(1)(a) applies to any notice or provision of a consumer agreement that purports to "*limit in any way the risk or liability of the supplier or any other person*". Such a provision must satisfy s 49(3) to (5): it must be in plain language; its fact, nature and effect must be drawn to the consumer's attention in a conspicuous manner and form likely to attract an ordinarily alert consumer;

this must occur before the relevant transaction or consideration; and the consumer must have an adequate opportunity to receive and comprehend it.

17. Section 52(4) empowers a court, where a term failed to satisfy an applicable requirement of section 49, to make an appropriate order, including severing the provision or declaring it to have no force or effect in respect of the transaction. The discretion as to remedy must be exercised judicially and with regard to the agreement as a whole.
18. The Supreme Court of Appeal has now authoritatively restated these requirements in *Tourvest Holdings (Pty) Ltd v Murti* (806/2024) [2026] ZASCA. The Court held that a provision limiting a supplier's liability must satisfy the statutory requirements of plain language, conspicuous notice and adequate opportunity for comprehension.
19. The significance of the Tourvest judgment for present purposes is that section 49 imposes statutory requirements additional to the common-law rules governing incorporation of contractual terms; mere contractual incorporation is not, without more, the statutory test.
20. Section 48 is complementary. It prohibits a supplier from entering into or administering a consumer transaction on terms that are unfair, unreasonable or unjust. Section 48(2)(d) expressly connects that enquiry to terms contemplated in section 49 where the term is unfair or its fact, nature and effect were not properly drawn to the consumer's attention. A court considering relief under section 48 must have regard to the factors in s 52(2).
21. The ordinary principles of contractual interpretation remain relevant. In *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18, the Supreme Court of Appeal explained that text, context and purpose

are considered together. *Capitec Bank Holdings Ltd v Coral Lagoon Investments* 194 (Pty) Ltd 2022 (1) SA 100 (SCA) emphasises that context cannot be used to produce a meaning unfounded from the contractual text. *Contra proferentem* remains a residual aid where genuine ambiguity persists; it does not permit a court to rewrite a clear bargain.

22. *Pacta sunt servanda* remains an important constitutional value, as confirmed in *Beadica* 231 CC v *Trustees for the time being of the Oregon Trust* 2020 (5) SA 247 (CC). But enforcement is necessarily subject to legislation governing the bargain. Where the CPA applies, contractual certainty and statutory consumer protection must be accommodated within the scheme enacted by Parliament.

Does Section 49 of the CPA apply to the warranty exclusion in the contract?

23. The respondent's submission that section 49(1)(a) is confined to classic delictual exemption clauses is in my view too narrow. The statutory language is deliberately broad: it refers to a provision that limits "in any way" the risk or liability of the supplier. Nothing in the text confines the subsection to negligence disclaimers or indemnities. Classic exemption clauses plainly fall within it, but they do not, in my view, exhaust it.

24. Clause 10.1.3.3, viewed in isolation, is indeed framed as a positive obligation imposed on the client. But it cannot be interpreted in isolation. Clause 10.4 is expressly headed "Exclusions" and clause 10.4.1 makes the warranty invalid if the client is in breach of any term or condition of the service agreement. The combined legal effect is that non-compliance with the testing obligation extinguishes a liability which the respondent would otherwise bear under clause

10.1.1. That is, in my view, in substance and effect, a limitation of the respondent's warranty liability.

25. This conclusion does not depend on labelling the warranty itself an "exemption clause". A limited warranty is simply a contractual undertaking of which the scope may legitimately be defined by conditions. Section 49 does not prohibit such conditions. It regulates the manner in which a supplier must disclose a condition where its effect is to limit the supplier's risk or liability.

26. The question is functional: what does the provision do? Here the testing obligation, coupled to the blanket invalidation clause, operates as a complete defence to an otherwise accrued warranty claim.

27. The distinction is important. A term defining the positive content of the promised benefit may not invariably amount to a limitation of liability. But where an agreement first promises payment upon a specified event and then provides, under an express heading of "Exclusions", that the promise becomes invalid upon breach of another contractual duty, the exclusion is within the ordinary and statutory meaning of a limitation of liability. The respondent's contrary construction would give insufficient effect to the words "in any way" in section 49(1)(a).

Compliance with section 49

28. The next question is whether the respondent complied with s 49(3) to (5). The applicant's case is that the standard terms appeared in highly compressed form on the reverse of a subscriber application form; apart from headings and defined terms, the impugned provisions were not highlighted, boxed, separately signed or otherwise made conspicuous. The respondent relies principally on the applicant's signature acknowledging that he had read and accepted the

terms and on passages in the founding papers said to demonstrate actual knowledge of the warranty.

29. A signed acknowledgement that standard terms have been read is relevant to contractual incorporation and may be evidentially important. It is not, however, a substitute for the distinct statutory enquiry under s 49(4): whether the fact, nature and effect of the liability-limiting provision itself was drawn to the consumer's attention in a conspicuous manner and form likely to attract an ordinarily alert consumer. The Tourvest matter confirms the independent force of that requirement.
30. On the papers before me, there is no evidence that the respondent separately drew the applicant's attention, before contracting, to the consequence that a failure to initiate a quarterly test, even if the unit was in fact operational, would invalidate the entire warranty. Nor is there evidence that clause 10.1.3.3, read with clause 10.4.1, was typographically or otherwise presented in a manner materially more conspicuous than the surrounding dense standard terms.
31. Actual awareness of the existence of the warranty or even of a testing obligation is not necessarily equivalent to proof that the "fact, nature and effect" of the exclusion was conspicuously drawn to the consumer's attention in the statutorily required manner. The statutory focus is on the supplier's disclosure of the limiting provision and its effect before conclusion of the transaction.
32. I therefore conclude, that the respondent has not established compliance with s 49(4) and (5) in relation to the combined operation of clauses 10.1.3.3 and 10.4.1.

The appropriate remedy under section 52(4)

33. The applicant asks that clause 10.1.3.3 be severed from the contract or declared to have no force or effect. In my view, the vice lies not in the existence of a sensible operational obligation to test a tracking unit, but in the respondent's reliance on that obligation, through clause 10.4.1, as a complete exclusion of warranty liability without the notice required by section 49. Section 52(4) does apply.

Interpretation of the contract

34. For completeness, I do not accept the applicant's alternative contention that, as a matter of ordinary contractual interpretation, receipt of a courtesy SMS stating that a unit was functioning relieved him of the obligation to test the unit quarterly.
35. The words "*It is the responsibility of the Client to ... Test the Unit on a quarterly basis*" impose a direct obligation on the client. The stated purpose: "*to ensure that it is operational*" explains why the obligation exists; it does not convert the obligation into one that arises only if the respondent has not independently generated a status notification. No such qualification appears in the contract.
36. The expression "*quarterly basis*" may leave room for debate as to the precise day on which a test must occur, but it is not reasonably capable of the broader meaning advanced by the applicant, namely that no client-initiated test is required whenever a courtesy notification is received. Context and purpose cannot be used to insert that qualification. Nor does contra proferentem justify doing so where the alleged ambiguity is not genuine.
37. The respondent's rejection letters are nevertheless troubling insofar as, on the applicant's uncontested account, they quoted clause 10.1.3.3 with additional

words to the effect that the obligation applied “*notwithstanding any system generated or courtesy testing undertaken by Cartrack*”. Those words were not part of the contract. Their insertion cannot amend the agreement retrospectively. It does, however, demonstrate why the respondent considered it necessary to distinguish client-initiated tests from its own courtesy testing. That distinction may be commercially explicable, but it had to be conveyed through the actual contractual wording and, where it operated to exclude warranty liability, in compliance with the CPA, which was not done.

38. Taking into consideration the papers filed of record and argument presented by the parties’ legal representatives, I am of the view that the Respondent did not comply with section 49 of the CPA.

Costs

39. The respondent seeks punitive costs if successful and relies on a contractual costs provision. The applicant also seeks costs. Punitive costs are exceptional and ordinarily require conduct warranting the Court’s marked disapproval. The fact that a party advances a losing interpretation of a consumer contract does not, without more, justify such an order. On the conclusion reached above, the applicant is substantially successful and there is no basis to depart from the ordinary rule that costs follow the result.

Order

1. It is declared that clauses 10.1.3.3 and 10.4.1 of the agreement, read together insofar as they purport to invalidate the Limited Recovery Warranty by reason of non-compliance with the quarterly testing requirement, constitute a

provision contemplated in s 49(1)(a) of the Consumer Protection Act 68 of 2008 and is severed from the agreement in terms of section 52(4)(a)(ii).

2. The respondent is precluded from relying upon that exclusionary effect in respect of the applicant's claims arising from the theft of the Toyota Hilux on 16 February 2021 and the Toyota Prado on 19 March 2022.
3. The respondent is to pay to the applicant a total amount of R 300 000.00 together with interest thereon as follows:
 - 3.1 9 % per annum on the amount of R 150 000.00 calculated from 1 June 2021 to date of final payment thereof, and
 - 3.2 9 % per annum on the amount of R 150 000.00 calculated from the date of 1 July 2022 to date of final payment thereof.
 - 3.3 The respondent is to pay the costs of the application on the High Court scale, scale B, including cost of counsel.


TROMP AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

DATE OF HEARING: 6 FEBRUARY 2026

DATE OF JUDGMENT: 4 SEPTEMBER 2026

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