HOW THE CONSUMER PROTECTION ACT LIMITS YOUR FREEDOM

Category: Commercial Law
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The Consumer Protection Act 68 of 2008 ("the CPA") is one of the simplest pieces of legislation – and consequently, it provides for the plain and simple language in consumer contracts. The law of contract is regulated by common law and the CPA seeks to create statutory obligations to impact the common law of contract. As a result, the CPA covers a few common law principles and this article will expand on the common law principle of the freedom to contract.

Freedom to contract

The principle of freedom to contract provides that parties are free to decide on the terms of their agreement with the only exception that an agreement must be lawful or legally possible. This means that parties' can agree to even the most absurd terms.

The CPA, however, contains a number of provisions that restrict or limit the parties' freedom to contract. In particular, the following provisions are of importance when entering into a written consumer agreement:

Section 14 of the CPA limits a consumer agreement to 24 months unless the consumer expressly agrees to this and the supplier can prove a financial benefit for the consumer. In terms of such an agreement, either the supplier or consumer may be allowed to cancel the agreement on 20 business days' written notice. For the consumer's protection, the CPA provides additional obligations on the supplier. The supplier must notify the consumer in writing of the impending expiry date of the agreement, any material changes that will apply to the agreement after the expiry date and that the agreement will continue on a month-to-month basis unless the consumer directs otherwise.

Section 17 of the CPA affords the consumer a right to cancel a reservation, booking or order for goods (other than special goods) and a reasonable cancellation fee may be imposed by the supplier.

Section 26 of the CPA requires a supplier to provide the consumer with a written record of each transaction entered into with the consumer.

Section 47 of the CPA states that where a supplier fails to supply goods or services on an agreed date or time due to a shortage of stock or incapacity, the supplier must provide same or equivalent goods or services to the consumer, or the supplier must refund the consumer all amounts paid with prescribed interest and incidental costs for breach of the agreement.

Section 48 of the CPA provides that the supplier must not enter into an agreement with a consumer on terms that are unfair, unjust or unreasonable. Section 48(2) lists generally when a term or agreement is unfair, unjust or unreasonable, while reg 44(3) of the regulations in terms of the CPA specifies such instances. The test in this regard is subjective as the supplier may prove otherwise.

Section 51 of the CPA prevents a supplier entering into an agreement with a consumer on prohibited terms (a list is provided in s 51). The test in this regard is objective and may not be proven otherwise by a supplier.

Section 58(1) of the CPA requires that the supplier draw notice to the attention of the consumer relating to a risk (and its nature and possible effect(s)). Where the risk is of an unusual nature or could result in serious injury or death, the consumer must assent to it.

While the CPA limits your freedoms to some extent, those limits are to widen consumer protection.