CONSUMER CASE PROCEDURE ACT LEADING TO UNINTENDED DELAYS

The Consumer Case Procedure Act (CCPA), which came into effect on Aug 23, 2008, was heralded as a new law that would give better protection to consumers. One of its major intents was to streamline the whole procedure to enable consumers to obtain a legal remedy more quickly and more effectively than under the existing Civil Procedure Code (CPC).

In practice, however, the CCPA has had the opposite effect of actually increasing the time taken to handle cases under both the CCPA and the CPC. This is because in many cases an initial determination has to be made over how the case should be handled, by the CCPA or the CPC.

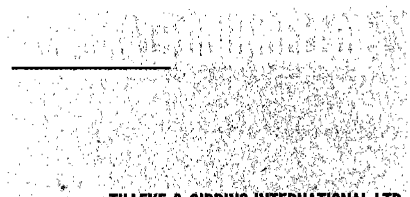
This article uses two examples to illustrate this problem.

Case 1: This case related to a lease agreement, which is considered a service transaction. Both the landlord and lessee were companies. When the lease expired a dispute arose in relation to restoring the property to the same physical state as at the beginning of the agreement. The landlord was not satisfied with the lessee's renovation and refused to return the deposit.

Such a dispute would previously have been filed under the CPC. However, the court officer recommended the case be heard under the CCPA on the basis that the lease agreement was a service transaction. The lessee did not agree that it was a consumer within the CCPA's meaning and as defined in the Consumer Protection Act. The lessee therefore submitted the complaint under the CPC.

The case was transferred to the Appeals Court for consideration as to whether it should be heard under the CCPA or the CPC. Ultimately the Appeals Court agreed that the lessee was not a consumer, and the case should be submitted under the CPC. However, this determination delayed the procedure by three months.

Case 2: The issues relating to the CCPA in this case arose in relation to the administration of an estate. The deceased's wife was appointed by the court as the administrator of the estate. The following day there was an objection to the appointment. The lower court scheduled a new trial and confirmed the appointment of the deceased's wife as the administrator. The objector appealed and the Appeals Court is currently considering the case. However,



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pending the Appeals Court's consideration, the appointment of the deceased's wife as administrator is effective under the law.

Two issues arose in the administrator's attempt to manage the estate. A bank refused to allow the administrator access to a safe deposit box on grounds that the case was not finalised. Similarly, an agent who had custody over the deceased's securities refused to provide details of the securities to the administrator for the same reason. Under the law, the administrator is entitled to force both the bank and the agent to provide the estate assets to her and is not required to wait until the case is finalised.

In the past, the administrator would have filed a complaint against both the bank and the agent under the CPC. However, since the relationship between the bank and the deceased was a service relationship, the complaint against the bank must now be filed under the CCPA. The relationship between the agent and the deceased was an agency relationship, not a service relationship, so this complaint must be filed under the CPC.

However, both the bank and the agent had the right to ask the Appeals Court to determine whether the appropriate procedure to be followed was the CCPA or the CPC, resulting in significant delay.

It has long been a delaying tactic of defendants to raise jurisdictional arguments for initial determination. Now the CCPA has had the unintended effect of providing defendants with an opportunity to delay a case by raising procedural arguments against the initial determination. Arguably, a ministerial regulation is required to clarify the instances in which the CCPA should be used to remedy this problem of delay.

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