

REPUBLIC OF SOUTH AFRICA



**IN THE SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)**

CASE NO: 2011/14177

DATE:16/09/2011

In the matter between

CATAI TRANSPORT SOLUTIONS (PTY) LTD

APPLICANT

and

AIM GROUP (PTY) LTD

RESPONDENT

**J U D G M E N T
(LEAVE TO APPEAL)**

VAN OOSTEN J:

[1] The unsuccessful respondent now seeks leave to appeal against the judgment and order I granted in favour of the applicant. For ease of reference I will retain the nomenclature of the parties as in the main application.

[2] In support of the application for leave to appeal counsel for the respondent, with reference to the interpretation I afforded to the October email, submitted that another court may reasonably interpret the contents thereof differently or decide that further evidence may well provide a satisfactory answer to the difficulties which admittedly arise from a plain reading of the document. I am unable to agree. The document, on a plain interpretation thereof, can only be

reconciled with an unreserved intention to pay an existing indebtedness in regard to the respondent's Witbank account with the applicant resulting from a reconciliation of that account and is therefore in the nature of an acknowledgement of debt. The contention that further evidence as to the meaning if its contents may well be held to be justified is without merit: the author of the email was afforded the opportunity to address and explain the contents of the email which he availed himself of. I have dealt in the judgment with the unsatisfactory explanation he has tendered. There is nothing to show why he should be afforded a further opportunity to again deal with the selfsame issue. Finally, this of course was not the only ground on which I found against the respondent. Preciously little was submitted concerning the other findings I have made.

[3] It was lastly contended by counsel for the respondent, that my finding that the respondent could still avail itself of the right to institute action against the applicant in respect of the alleged counterclaims, was unfair to the respondent in that the applicant, in the meanwhile, will have been paid in full in respect of its claim and the respondent then facing the possibility of the applicant eventually being unable to pay, should it be successful in its counterclaims. There is no merit in the contention. The respondent has had the benefit of the equipment manufactured for and sold to it. The respondent, as alluded to in the judgment, has onsold all the equipment contrary to the provisions of the credit agreement concluded between the parties for which it was paid and thereby depriving the applicant of its security, pending payment. The respondent's payment in terms of the order I have made, accordingly cannot result in the kind of prejudice now contended for. As fully dealt with in the judgment, the respondent has failed to meet the threshold of showing *bona fide* sustainable counterclaims justifying the stay of the applicant's claim in these proceedings. I am not satisfied that another court may reasonably come to a different conclusion on this aspect.

[4] For these reasons I conclude that there are no reasonable prospects of a successful appeal. It follows that the application for leave to appeal must fail.

[5] In the result leave to appeal is refused, with costs.

**FHD VAN OOSTEN
JUDGE OF THE HIGH COURT**

***COUNSEL FOR THE APPLICANT
APPLICANT'S ATTORNEYS***

***ADV X STYLIANO
RAMSAY WEBBER***

***COUNSEL FOR THE RESPONDENT
RESPONDENT'S ATTORNEYS***

***ADV EB CLAVIER
GILDENHUYS LESLIE INC***

***DATE OF HEARING
DATE OF JUDGMENT***

***16 SEPTEMBER 2011
16 SEPTEMBER 2011***