

REPUBLIC OF SOUTH AFRICA




SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)

CASE NO 3522/2012

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED.

30 May 2012


FHD VAN OOSTEN

In the matter between

HEIDELBERG GRAPHIC SYSTEMS
SA (PTY) LTD

APPLICANT

and

THE BUREAU DIGITAL MEDIA
(PTY) LTD

RESPONDENT

Leave to appeal – grounds relied on - no prospect successful appeal shown - leave to appeal refused

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

VAN OOSTEN J:

[1] The unsuccessful respondent in the main application now seeks leave to appeal against the whole of my judgment and the order made. For the sake of convenience the reference to the parties as in the main application will be retained.

[2] The application for leave to appeal is mainly based on the contention that the applicant's standard terms and conditions were not applicable to the agreements relied on by the applicant. This aspect can swiftly be disposed of. Assuming the general terms and conditions did not apply does not assist the respondent. It is the respondent's version that in respect of each of the agreements, orders were placed by its employee (usually Mr Peshigan Naidu), who specified on the applicant's job card the problem that had to be attended to (eg "Main drive faulty"; "Motor not running"; "Belt slipping"; "Centre bracket broken" etc) and he then signed the job card. After completion of the repair work the charges in respect thereof, were filled in under the headings "Labour and Travel Report"; "Spare parts and travel report " and, finally, "Job costing". It is common cause that, concerning each such transaction, an invoice specifying the repair work and charges in respect thereof, to which a copy of the relevant job card, duly completed, was attached, was rendered to the respondent.

[3] The applicant's charges in respect of the repair work clearly constituted its usual charges, based on a business relationship that had existed between the parties since 1997. It was accordingly a tacit term of the agreement between the parties that the applicant's usual charges in respect of repairs would apply: their conduct, as I have referred to, clearly confirmed as much.

[4] This brings to the fore the respondent's acceptance of the repair work and charges in respect thereof. I have mentioned in the judgment that at no stage prior to the filing of the answering affidavit, nor in the answering affidavit, was any dispute raised concerning either the nature of the repair work or the charges levied in respect of the applicant's present claims. In the answering affidavit the respondent's alleged counterclaim is set out in considerable detail but in regard to the applicant's present claims, merely the following is stated:

'As set out above the Respondent has on numerous occasions complained about the nature of the services rendered and has at no stage agreed to any amount relating thereto.'

The complaints referred were all in respect of the respondent's alleged counterclaim.

There is no reference to a single complaint concerning the applicant's present claims. Nor did the respondent's attorneys in response to the applicant's attorneys' letter of demand, concerning these very claims, refer to any dispute of any kind. On the contrary, as I have pointed out in the judgment, the respondent accepted to benefits of the applicant's repairs and indeed, over an extended period of time, continued to instruct the applicant to effect further repairs.

[5] Counsel for the respondent referred to a further alleged dispute concerning the applicant's repairs: in the answering affidavit the respondent, in the vaguest possible terms, refers to its printing press that had broken down. No specific date is mentioned. The applicant, so the narration continues, instructed the applicant to repair the printing press, which the applicant did. In the words of the deponent: "The applicant duly replaced the motor with a new motor". Evidently no dispute is raised concerning the applicant's workmanship. No reference to, or, connection with, any of the applicant's present claims is shown. All that the deponent says, in regard thereto, is the following:

'The respondent was prepared to make payment of a reasonable charge for the services rendered by applicant (*ie* the printing press). However, it was not at all clear what such reasonable charge would consist of. There were certainly no agreements between the applicant and the respondent to such charge. It would have been necessary for a full account to have been furnished by the applicant which the respondent would then have considered.'

The absence of detail is strikingly apparent. The relevance of these allegations to the applicant's present claims escapes me. No complaints in regard to the applicant's charges in respect of the printing press were at any stage raised. It merely, in my view, confirms the delaying tactics employed by the respondent: it availed itself of the benefits of the repairs to the printing press which, on the respondent's own version, were properly affected without any payment having been made, or, for that matter, any further enquiries having been made concerning the "reasonableness" of the applicant's charges.

[6] One further example of the respondent's delaying tactics needs to be dealt with: having been apprised of all the details concerning the applicant's repairs and charges in respect thereof, the respondent states:

'I note the invoices referred to in this paragraph (*ie* the applicant's invoices in respect of the

present claims). However, the invoices do not set out what services were rendered or the basis upon which the amounts claimed therein have been arrived at. The contents of the invoices are cryptic to say the least and it is not possible to ascertain therefrom what services have been rendered and the basis upon which the amounts claimed are arrived at.'

The absence of any further enquiries or complaints or reference thereto, at any stage after acceptance of the full benefit of the repairs, obviates the need for further comment.

[7] Counsel for the respondent unconvincingly contended that the finding of respondent's liability to pay, being based on the applicant's usual charges and therefore a tacit agreement, was not the case the applicant had made out in the founding papers where it relied on agreed charges. There is no substance in the contention. The issues were all properly ventilated and on the respondent's own version, liability to pay has been shown.

[8] One further comment concerning the separation of the respondent's alleged counterclaim is necessary. Counsel for the applicant convincingly showed that the respondent's allegations in support of the alleged counterclaim, in any event, are oblique, vague and significantly unsubstantiated by any documents. For that further reason, I am unable to find any prospects of a successful appeal.

[9] Finally, counsel for the respondent lamely contended that a dispute of fact existed. I am unable to agree: the applicant's claims, as I have pointed out, were met with vague unsubstantiated allegations, showing a clear intention to avoid the inevitable which is payment of those claims.

[10] I am satisfied that another court would not reasonable come to different conclusion on any of the grounds relied on and that here are accordingly no reasonable prospects of a successful appeal.

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



FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

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RESPONDENT'S ATTORNEYS

CRANCO KARP & ASS INC

DATE OF HEARING

30 MAY 2012

DATE OF JUDGMENT

30 MAY2012