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.

26 April 2012 EHD VAN OOSTEN

In the matter between

HEIDELBERG GRAPHIC SYSTEMS SA (PTY) LTD APPLICANT

and

THE BUREAU DIGITAL MEDIA (PTY) LTD RESPONDENT

J U D G M E N T

VAN OOSTEN J:

[1] The parties to this application are involved in the printing industry. The respondent has been a customer of the applicant since 1997. The applicant sold and provided servicing repairs in regard to printing equipment to the respondent in terms of the

applicant's standard terms and conditions. In this application the applicant claims from the respondent payment of six specified amounts, totalling R246 162.83, in respect of servicing repairs and related charges. In regard to each of the amounts claimed the applicant has annexed to the papers, a specified invoice, as well as the relevant job card which were rendered to the respondent. The applicant alleges that the transactions and amounts claimed have never been disputed and that the amounts are accordingly due owing and payable. The respondent in defending the application, in essence, relies on a counterclaim in excess of the amount claimed by the applicant and further disputes liability for payment of the claims now made, on the grounds I will presently revert to.

[2] It is firstly necessary to consider the respondent's alleged counterclaim. It is important to bear in mind that the services, which are the subject matter of the applicant's claims, were rendered during the period 15 July 2010 to 4 February 2011. The fact of those services having been provided is not in dispute. The respondent's alleged counterclaim arises from an admitted agreement between the parties which the respondent contends had come to an end in 2008, as a result of the applicant's alleged repudiation thereof. A further agreement is alleged to have been concluded regarding future repairs to be affected by the applicant to certain printing equipment. The equipment in fact did break down in July 2010, but the applicant failed to honour its obligations resulting in the respondent suffering damages in the sum of R280 000.00.

[3] The applicant hotly disputes the alleged counterclaim on a number of substantial and *prima facie* sustainable grounds. In the view I take of the matter it is not necessary to delve any further into this aspect. Of importance is the respondent's failure, from the latest July 2010 when its claim for the alleged damages arose, to take any further steps for the enforcement thereof. On the contrary, the respondent, in the face thereof, maintained the constant flow of instructions to the applicant, obviously in terms of and pursuant to their contractual relationship that had existed for many years, in the period I have referred to, to provide the services which are the subject matter of the applicant's claims herein.

[4] I am accordingly not satisfied that the counterclaim relied upon by the respondent ought to be heard in the same action. It is clear from what I have set out above, that the respondent considered the counterclaim as an entirely separate issue, which in my

view, and having regard to the contractual relationship between the parties, should not now be departed from.

[5] This brings me to the applicant's claims. The respondent has placed very little in dispute. The material allegations made by the applicant in support of its claims are met with general denials without anything in substance offered in answer thereto. One of the disputes raised concerned the job cards I have already referred to. The respondent was at pains to show that those were signed by its representative before the work had been performed or the prices and costs inserted. The applicant's version is to the effect that the completed job cards were so signed. The difference, if any, is semantic. Accepting the respondent's version as I am bound to do based on the *Plascon-Evans* rule, the facts show exactly what the applicant's standard terms and conditions (clause 21) provide for, which is that the applicant's usual charges in respect of services would apply. That, of course, still results in an absence of a factual dispute concerning the work or the charges in respect thereof. It is significant that at no stage, prior to filing of the answering affidavit, was any complaint or issue raised concerning the services rendered by the applicant. Nor, significantly, does one find any reference to it in the letter by the respondent's attorneys, in response to the demand made on behalf of the applicant for payment of its present claims. In that letter the respondent's attorneys merely referred to and elaborated on the alleged counterclaim and, indeed, indicated that a set-off would be applied in the event of the applicant's failure to pay the amount of the alleged counterclaim.

[6] In my view no dispute has been shown to exist concerning the claims of the applicant. It follows that the application must succeed. The respondent's entitlement to institute action in respect of its alleged counterclaim, should it be advised to do so, notwithstanding the outcome of this application, remains intact.

[7] In the result an order is made in terms of prayers 1, 2 and 3 of the notice of motion.

FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR APPLICANT	*ADV MM SEGAL*
APPLICANT'S ATTORNEYS	*LH GARB & RAYMOND JOFFE*
COUNSEL FOR RESPONDENT	*ADV N SEGAL*
RESPONDENT'S ATTORNEYS	*CRANCO KARP & ASS INC*
DATE OF HEARING	*25 APRIL 2012*
DATE OF JUDGMENT	*26 APRIL 2012*