

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2015/16799

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

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SIGNATURE

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DATE

In the matter between:

MONT BLANC CONSTRUCTION (PTY) LTD

PLAINTIFF/APPLICANT

And

**STAIR CASES JOHANNESBURG PTY LTD
T/A COOLSTAIR**

DEFENDANT/RESPONDENT

J U D G M E N T

SWARTZ AJ

[1] During or about February 2014 and at Johannesburg, the parties concluded an oral agreement in terms whereof the respondent would supply and fit staircases (“the works”) at the applicant’s construction site located in Hyde Park, Johannesburg. The applicant paid a deposit of R380 801.50. The applicant allege that the respondent commenced with the works but breached the agreement by failing to deliver and complete the works; caused various delays on the site; caused

handover of the site to the client to be delayed and failed to complete the works within an agreed or reasonable time. The agreement was cancelled. Works completed on the construction site amounted to the value of R181 881.14. Summons was issued for the repayment of R198 920.38, being the difference between the deposit paid and the quantity of the works actually completed.

[2] Gail Maier ("Maier"), the sole member of the respondent, filed an affidavit resisting summary judgment. She avers that the respondent has a *bona fide* defence, a counter claim and that defence was not entered purely for the sake of delay. The contract price for the works to be completed amounted to R599 900; the applicant was required to pay a deposit of 65% that amounted to R389 935; the project would start in March 2014 and would be completed within a reasonable time. No completion date for the works had been agreed upon. Circumstances beyond the respondent's control, a steel workers strike, caused delays in the completion of the work. Despite this, the respondent had taken all possible steps to ensure continuation of the project. The contract was cancelled. The applicant's reconciliation of the works done is disputed. An expert assessment quantifying the amount of work done is required. As a result of the dispute, the application is not based on a liquidated amount of money. The respondent filed a counter claim, alleging that the applicant committed a serious breach of the agreement by intimidating the respondents workers; barring the respondent access to the site and thus prohibiting the respondent from completing the work in terms of the agreement. The respondent alleges that it has a counter claim for the full contract price and the balance due of R219 098.50.

[3] At the commencement of these proceedings the parties agreed that the respondent be granted leave to defend. It is common cause that the parties entered into an agreement in terms of which the respondent would perform the works; that the applicant paid the respondent an amount of R380 801.50; that certain works were in fact rendered by the respondent and that the contract was cancelled. In issue is the value of the works completed and the counterclaim.

[4] The only issue this court has to determine is the applicant seeking summary judgment for payment of the sum of R64 945.50. The applicant bases its claim on an acknowledgement by the respondent that it is indebted to the applicant in the

amount of R64 945.50. The respondent on the other hand raises a defence of specific performance, that it is entitled to claim the full contract price and that the amount of R64 945.50 remains in dispute.

[5] Correspondence exchanged between the parties reflect a dispute arising and the applicant addressing a letter to the respondent on 22 August 2014 demanding a refund of R198 920, 36. In response to this the respondent addressed a letter to the applicant on 27 August 2014 saying:

‘As far as our reconciliation goes, we have managed to complete ten (10) staircases and nine (9) walls...As such, we do not recognise the value of, as you put it, “our entity is indebted to Mont Blanc (Pty) Ltd in the amount of R198 920,35” but rather, we can only acknowledge Rand 64 946.50 as the amount due by us to Mont Blanc’.

It was submitted that the plaintiff seeks summary judgment for an amount that is common cause and acknowledged between the parties. Further, that the defence raised is bold, vague and sketchy and that the counterclaim is without merit. The applicant submitted that the respondent fails to comprehend and acknowledge that the agreement has been cancelled and that the cancellation and validity thereof has not been placed in dispute. Furthermore, that the respondent failed to allege performance in terms of the agreement and that it has tendered its performance of its contractual obligations. The contract was cancelled and incapable of resuscitation. The respondent on the other hand contends that it was barred by the applicant from performing its duties in terms of the contract. The respondent was locked out of the premises and could not perform, even if it had wanted to. There was a complete breakdown in the relationship. Even though the respondent tried to return and complete the agreement, it was precluded from doing so. Although the R64 946.50 was admitted, it was done at a stage when the contract was still ongoing. The applicant breached the contract before cancellation thereof. With regard to the respondent acknowledging the amount claimed, Maier in her opposing affidavit says the following:

‘I admit that during the time when I was still under the assumption that the agreement had not yet been cancelled, I admitted on behalf of the respondent that an amount of R64 946.50 was due to the Applicant based on the work completed minus the money paid. ‘

[6] The amount of R64 946.50 appears to have been paid as part of the deposit for completion of the works. There is a factual dispute between the parties which has to be resolved by the trial court. The amount of R64 946.50 forms part of the amount in dispute. It is not for this court to decide whether the respondent’s counterclaim is bad in law and without merit. Despite the respondent in a letter acknowledging indebtedness of the amount claimed, she submits that it was done at

a time when she assumed that the agreement had not, at that stage, been cancelled. As this issue remains in dispute, I cannot find that the amount claimed is for a liquidated amount of money. This court cannot summarily shut the door for the respondent. The respondent will be severely prejudiced should it be precluded from ventilating all the issues properly before the trial court, including whether the respondent acknowledged its indebtedness to the applicant for payment of the sum of R64 946.50, and the circumstances under which it was made.

Order:

The respondent is granted leave to defend, costs in the cause.

SWARTZ E
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

DATE OF HEARING:	17JULY 2015
DATE OF JUDGMENT:	5 TH AUGUST 2015
COUNSEL FOR PLAINTIFF:	W C CARTENS
INSTRUCTED BY:	
COUNSEL FOR DEFENDANT:	V OLIVIER
INSTRUCTED BY	

