REPUBLIC OF SOUTH AFRICA

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

Case Number: 39094/2018

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

11/11/2019
DATE

SIGNATURE

In the matter between:

SOUTHERN AFRICAN QUANTUM CONSULTANTS AND ACTUARIES (PTY) LTD Applicant

And

AMPLATS GROUP PROVIDENT FUND Respondent

JUDGMENT

FISHER J:

[1] The applicant, Southern African Quantum Consultants and Actuaries (Pty) Ltd ("SAQ"), renders actuarial services, health risk services, risk benefit administration services, and financial services to pension funds. The respondent, Amplats Group

Provident Fund ("the Fund") is a pension fund organisation as defined in section 1 of the Pension Funds Act.

[2] The matter involves a dispute as to whether a contract has been concluded between the parties in terms of which SAQ would provide certain claims administration services to the fund. SAQ says that there is a contract, the Fund denies this and states that in any event the matter should not be heard on application as the dispute is not resoluble on paper.

[3] On 27 June 2018, after a written proposal was made by the applicant and the parties had been engaging with one another for some months, the Principal Officer of the Fund, Mr Motlatjo Seima addressed a letter to Baldwin Kock , the CEO of SAQ which reads:

"*Dear Baldwin,*

Thank you for your proposal to offer risk benefits claims administration to the Fund and your subsequent presentation to the Operations Sub- Committee on 21 June 2018.

It is with pleasure that I inform you that your proposal has been successful as it did achieve the highest ranking under the evaluation methodology employed by the Committee.

In this regard, you are requested to commence as the Fund's risk benefits Claims Administrator with effect from 1 Jul 2018 following conclusion of the necessary contractual arrangements.

On behalf of the Fund we look forward to a fruitful relationship with you."

[4] On 28 June 2018 SAQ sent a letter to the Fund that reads as follows:

"*Dear Siema,*

We acknowledge receipt of your letter dated 27 June2018 confirming the appointment of SA Quantum Consultants and Actuaries (Pty) Ltd as the Risk Benefit Administrator of the Fund with effect from 1 July 2018.

We hereby confirm that SA Quantum Consultants and Actuaries (Pty) Ltd accepts the appointment.
We attach herewith our Draft Service Level Agreement [SLA] for consideration.
Thank you for the confidence you have in us to deliver a superior quality service to you and the members of your Fund.
We look forward to a long and fruitful partnership which will take Amplats Group Provident Fund to a higher level."

[5] SAQ then set about implementing the SLA. It seeks to argue that this resulted in the parties engaging with each in a manner which SAQ alleges should be construed as conduct which is consistent with an intention to be bound by the SLA. This included SAQ invoicing the Fund for services which it alleged that it rendered pursuant to the SLA.

[6] This apparently happy state of affairs was dashed when on 10 September 2018

"*Dear Baldwin,*
This letter serves to confirm that the Board of Trustees, at the meeting on 3 September 2018, has reviewed its procurement practices. As a result, the appointment letter dated 28 June 2018 is hereby rescinded..."

[7] This, gave rise to SAQ urgently seeking an interim interdict against the Fund in terms of Part A of this application which sought to interdict the conclusion of a contract with another service provider for the services and the interim implementation of the contract contended for by the applicant. This was resolved by agreement which was made an order of court by Spilg J on 26 September 2018. In essence, the interim relief claimed was ordered by agreement.

[8] I am now asked to deal with part B of the application. SAQ seeks final relief against the Fund to the effect that it be ordered to comply with and give effect to the agreement contended for. In other words specific performance of the alleged contract is sought.

"*The Fund denies that there was any contract concluded. It argues that the acceptance by it as expressed in the letter of 27 June 2018 was only of a proposal which was non-specific as to the terms on which the parties would contract. It argues that the intention of the parties as expressed in the exchanges quoted above was not to contract but to negotiate further with a view to contracting on written terms. It seeks to emphasise that reference is made in its letter to the "conclusion of the necessary contractual arrangements".*

[9] SAQ asks that I apply the principles set out in CGEE Alstom Equipment et Entreprises Electriques, *South African Division v GKN Sankey(Pty)Ltd*"[1] where Corbett JA said:

"*The parties may well intend by their agreement to conclude a binding contract, while agreeing, either expressly or by implication, to leave the outstanding matters to future negotiation with a view to a comprehensive contract. In the event of agreement being reached on all outstanding matters the comprehensive contract would incorporate and supersede the original agreement. If however the parties should fail to reach agreement on the outstanding matters then the original contract would stand. (See generally Christie The Law of Contract in South Africa at 27- 8J Whether in a particular case the initial agreement acquires contractual force or not depends upon the intention of the parties which is to be gathered from their conduct the terms of the agreement and the surrounding circumstances.*"[2]

[10] It is often a difficult matter to determine intention in circumstances where the parties are engaged in negotiations and have expressed their intention by letter. On the papers before me I am unable to resolve the different positions taken by the parties one way or the other.

[11] Even if the resolution of the dispute as to the contract were not intractable, there is still the issue of whether specific performance as claimed would be a proper remedy. To my mind, the papers do not provide sufficient information to allow for the proper exercise of my discretion.

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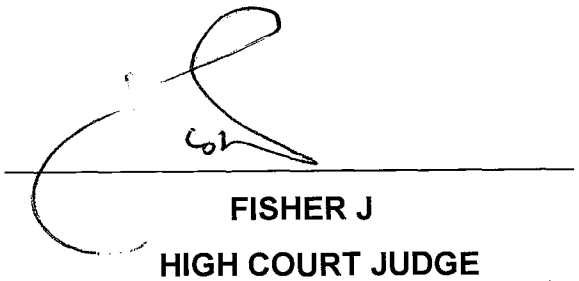
[1] 1987 (1) SA 81 (A).
[2] ibid at 92D-F.

[12] SAQ did not seek a referral to evidence it stuck fast to its assertion that the application was capable of being determined on the papers. It is sought on behalf of the Fund that the application be dismissed with costs.

[13] In the circumstances, the application is dismissed. There is no reason why costs should not follow the result. The costs of the determination of part A were reserved. I order that such costs are also to be paid by the applicant.

[14] I thus order as follows:

a. The application is dismissed.
b. The applicant is to pay the costs of the application (both parts A and B) which shall include the costs of two counsel where employed.



FISHER J

HIGH COURT JUDGE

GAUTENG LOCAL DIVISION

Date of Hearing: 9 October 2019.

Judgment Delivered: 11 November 2019.

APPEARANCES:

For the Applicant	: Adv G. Goedhart SC
Instructed by	: Shepstone Wylie.
For the Respondent	: Adv I Green.
Instructed by	: Norton Rose Fulbright South Africa Inc.