

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2021/14183

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

20 May 2022

Date


Signature

In the matter between:

PROJECT HOUSE PROJECT MANAGEMENT (PTY) LTD

Applicant

and

PAUL ROUSSOS

Respondent

Heard: 22 February 2022

Judgment: 20 May 2022

JUDGMENT

MOVSHOVICH AJ:

Introduction and background

1. This is an application for summary judgment.
2. The plaintiff alleges in its particulars of claim (and application for summary judgment) that on 4 September 2018 it concluded an agreement with the defendant in Johannesburg. It is not pleaded whether the agreement was oral, written or tacit. It then followed up the conclusion of the agreement with a letter to the defendant dated 4 September 2018, stipulating that the "*terms and conditions of appointment shall be as per the PROCSA document (available on request)*". An unsigned version of a PROCSA Agreement is annexed to the summons. The plaintiff alleges that in terms of the above, it was appointed as project manager in respect of a building project by the defendant.
3. The plaintiff then pleaded that it fulfilled certain stages in the PROCSA Agreement and invoiced for those, but has not been paid.
4. The defendant's plea is not detailed. He essentially denies that any agreement was concluded between him and the plaintiff. He does not plead any alternate version of an agreement with the plaintiff. He does, however, point out the improbability of any alleged agreement by virtue of the fact that he was not in Johannesburg on 4 September 2018 and that he does not even own the property to which the project covered by the alleged PROCSA Agreement relates.

Analysis

5. The key question is whether a *bona fide* defence has been pleaded and whether a triable issue arises. In this regard, the plaintiff avers that the defendant's pleadings are bare and thus no *bona fide* defence arises. It is fair to state that the plea lacks

detail. The defendant's version is that he did not conclude any agreement with the plaintiff at all. In those circumstances, where there is a void or an absence of fact, it may well be sufficient simply to plead a denial: it is difficult to prove a negative or say much more about it. This kind of pleading would not fall into the category of uncreditworthy bare denials contemplated in *Wightman*.¹ The defendant also substantively pleaded his absence from Johannesburg on the date of the alleged agreement.

6. In my view, although the pleadings could have been more detailed, they suffice to raise a triable issue.
7. Given the opaqueness with which the defendant framed his pleadings, and general lack of clarity as to the surrounding circumstances of any work carried out by the plaintiff, in my view it would be fair and just for the costs of the summary judgment proceedings to suffer the fate of the main action.
8. The defendant has put up additional defences to the application. I do not propose to deal with them in detail in this judgment, given my conclusions above. I note, however, that the defendant's contention that this Court has no jurisdiction because the defendant is not resident in Johannesburg but in Cape Town needs to be approached with caution. Residence is not the sole basis for establishing jurisdiction and the plaintiff can make out a case for "cause of action" jurisdiction by this Court.

Order

9. I thus make the following order:

¹ *Wightman t/a J W Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA), para [13].

- 9.1 the summary judgment application is dismissed;
- 9.2 the defendant is granted leave to defend the action;
- 9.3 the costs of the summary judgment application shall be costs in the cause of the action.

Hand-down and date of judgment

- 10. This judgment is handed down electronically by circulation to the parties or their legal representatives by email and by uploading the judgment onto Caselines. The date and time for hand down of the judgment are deemed to be 13:00 on 20 May 2022.

VM MOVSHOVICH

ACTING JUDGE OF THE HIGH COURT

Applicant's Counsel: SB Friedland

Applicants' Attorneys: Beder-Friedland Inc

Respondents' Counsel: S Kabelo

Respondents' Attorneys: KWA Attorneys

Date of Hearing: 22 February 2022

Date of Judgment: 20 May 2022