



IN THE NORTH GAUTENG HIGH COURT PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO. 24413/2013

Reportable	Yes/No	No
Of interest to other judges	Yes/No	No
Reviewed on	18/4/2014	
<div style="display: flex; justify-content: space-between;"> <div style="width: 15%;">JUDGE</div> <div style="width: 85%; border-top: 1px solid black; text-align: center;"> </div> </div>		

11/4/2014

In the matter between:

KGAFELA CONSTRUCTION CC

Applicant

and

TBH SCAFFOLDING SUPPLIES CC

Respondent

CORAM EBERSOHN AJ

HEARD ON 27th MARCH 2014

JUDGMENT HANDED DOWN ON 11 APRIL 2014

JUDGMENT

EBERSOHN AJ.

[1] The applicant applied for leave to appeal. The parties will in this judgment be referred to as plaintiff and defendant respectively.

[2] The plaintiff sued the defendant for payment of the sum of R749 089,50 in respect of scaffolding materials supplied and services rendered by the plaintiff to the defendant. The defendant defended the matter and the plaintiff applied for summary judgment which was granted by this court the court having found that the defendant did not make out a *bona fide* defence.

[3] Instead of stating the proposed grounds of appeal, the application for leave to appeal was couched in the form of an overview of the requirements of rule 32 apparently relying on the dismissal by this court of the defendant's second point *in limine* raised in the opposing affidavit apparently, and wisely, abandoning the first point *in limine* namely that the deponent to the affidavit in support of the application for summary judgment has not clearly stated the basis upon which he has the requisite knowledge of the facts to verify the cause of action. Upon what was stated in the verifying affidavit the court was able to make a factual finding that that the deponent was a person who could swear positively to the facts alleged in the summons and be able to form the opinion that there was no *bona fide* defence available to the defendant and that the notice of intention to defend was given solely purpose of delay. (See my judgment in *Firststrand Bank Ltd. v Beyer* 2011 (1) SA 169 (GNP).)

[4] The ground of appeal based on the second point *in limine* is that not enough particulars were divulged in the simple summons to enable the defendant's deponent to the opposing affidavit, one Sono, to identify the plaintiff and to respond to the claim for scaffolding and services rendered in connection therewith. In paragraph 3 of his

affidavit he stated that the defendant has “a *bona fide* defence to the plaintiff’s claim.” However, nowhere in the rambling, repetitive affidavit, is it denied that the defendant entered into the agreement as alleged by the plaintiff during the period June 2012 to September 2012 and that scaffolding materials were supplied and services were rendered by the plaintiff to the defendant at the defendant’s special insistence and request and that the amount claimed namely R749 089,50 was calculated in accordance with agreed prices.. Strangely though, the second point *in limine* is to the effect that the summons was vague and embarrassing and/or alternatively lacked the averments which are necessary to sustain a cause of action and also excipiable (the deponent to the affidavit and the person who drafted the affidavit apparently not being aware thereof that a simple summons is not a pleading and therefore not excipiable.) There is no merit in this point at all. (See *Icebreakers No. 83 (Pty) Ltd v Medicross Health Care Group (Pty) Ltd* 2011 (5) SA 130 (KZN) at 1311-132A; *Trans-African Insurance Co. Ltd. V Maluleka* 1956 (2) SA 273 (A).

[5] It is also strange on what grounds and in an absurd manner the deponent and the person who drafted the affidavit could speculate about it possibly being a delictual claim.

[6] The court must also deal with paragraphs 3.18 and 5.10 of the heads of argument filed by counsel for the defendant. They read as follows:

“3.18 Paragraph (j) of the application for leave to appeal states that the Defendant is a large construction company who enters into contracts with suppliers and subcontractors on a daily basis. As such, the Defendant would need to be placed in possession of more information in order to be in a position to respond thereto. The plaintiff’s claim was vaguely and baldly set forth in the summons.”

"5.10 The same can be said for the plaintiff and defendant in the present matter where the defendant is an entity more specifically a large construction company who enters into contracts with suppliers and subcontractors on a daily basis and has numerous representatives who act on its behalf and as such the entity itself or its director cannot possibly be required to know what the correct price of all goods purchased or the agreed prices in respect of all goods sold are unless, more information is provided by the plaintiff in the manner in which it sets forth its claim."

[7] What was stated in paragraph 1.1 (j) of the application for leave to appeal and in the two quoted paragraphs *supra* was grasped from the air and was not based on the answering affidavit and should be ignored. If what is stated therein is true it would have been the easiest thing in the world for Sono, by merely punching the defendant's computer to obtain a printout of the details regarding the plaintiff and their agreement and agreed prices, within a few seconds. The fact that Sono was silent in his affidavit about the aspect of his firm's bookkeeping data indicates that he was not candid with the court. If Sono nevertheless didn't know anything about the plaintiff and the alleged contract he was not a competent deponent to depose to the answering affidavit and the defendant should have caused a person with knowledge about the plaintiff and the contract to depose to the answering affidavit. In that sense paragraph 1.3 of the answering affidavit is not true.

[8] The plaintiff and defendant are both from around Pretoria. If Sono was so lacking in knowledge about the plaintiff's claim he easily could get details about it from the plaintiff. The mere fact that he did not take the court into his confidence in this regard shows that he apparently did not do so, and it also reflects negatively against him. Instead of getting the details he elected to come to court with a rambling defence of vagueness and excipiability etc. regarding the plaintiff's claim.

[9] There are no reasonable prospects that another court may come to the conclusion that this court erred in exercising its discretion incorrectly by granting summary judgment.

[10] The following order is accordingly made:

1. The application for leave to appeal is dismissed with costs.


P.Z. EBERSOHN AJ

ACTING JUDGE OF THE HIGH COURT

The applicant's counsel

Adv M.C. ERASMUS SC

ADV. S. MARITZ

The applicant's attorney

Diemont Inc.

Ref. Diemont/DD2061

Tel 012 348 613

The respondent's counsel

Adv. S. STRYDOM

The respondent's attorneys

Anton Lombard Att.

TEL. 012 452 8900

REF. Rosemary Farelo/IL00 2066