

IN THE NORTH GAUTENG HIGH COURT, PRETORIA**(REPUBLIC OF SOUTH AFRICA)**CASE NO: *A454/14*
A545/2014

DELETE	WHICHEVER	IS	NOT
			APPLICABLE
(1)	REPORTABLE:	YES/NO	
(2)	OF INTEREST TO OTHER	JUDGES:	YES/NO
(3)	REVISED		
	DATE:	<i>22 Dec 2014</i>	
	SIGNATURE:	<i>[Signature] arsen</i>	

24/10/2014

In the matter between:

LAWAAIWATER CC

Appellant

And

AGRINET LIMITED T/A LAND MARK
(Registration No. 1999/001922/06)

Respondent

JUDGMENT

JANSEN J

- [1] This matter is an appeal against the judgment granting summary judgment by magistrate M. J. Venter against the appellant which was delivered on 31 October 2013 at Delmas.

- [2] The reasons granted by the magistrate for the grant of the summary judgment are very sparse, and are, effectively, that the answering affidavit was not filed timeously and that proper reasons were not granted for the late filing of the answering affidavit and further that no proper *bona fide* defence against the plaintiff's claim was set out as required by the rules of court. The magistrate did not traverse the merits of the matter in her judgment.
- [3] Mr Ellis, who appeared on behalf of the appellant, sought to rely upon further grounds of appeal against the magistrate's judgment in addition to those already filed. They were technical of nature and referred to the personal knowledge or otherwise of the deponent confirming the plaintiff's cause of action. It is unnecessary to deal with these grounds for the reasons set out below.
- [4] The respondent/plaintiff's cause of action is based on unjustified enrichment. The respondent alleged that it had delivered a submersible pump to the appellant/defendant which had not been returned, and demanded the return of the pump alternatively, in the event that the pump was not returned within 14 days, payment of R23 013.90. The agreement between the parties was allegedly an oral agreement to the effect that the

respondent would fix and repair the pump and redeliver it to the appellant. Allegedly, the respondent took it upon itself to effect the repairs to the pump by sending the pump back to its suppliers. In the interim, the respondent provided the appellant with a replacement pump intended only to be used by the appellant up until delivery of the repaired pump. The appellant allegedly only paid for the originally ordered pump and allegedly refused to return the replacement pump.

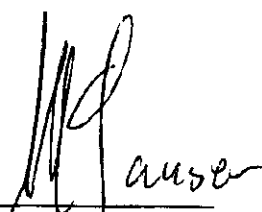
[5] Two delivery notes were attached to the plaintiff's particulars of claim. It was clear, *ex facie* the delivery notes, that they were different and that the one was signed by a Phillips, a representative of the appellant as pleaded by the respondent, but that the other delivery note bore only a tick mark. It was wholly unclear as to what one was to make of the delivery notes and whether they referred to one or two pumps. From the papers it is clear that the appellant had a *bona fide* defence in that it was clearly possible that only one pump had been delivered to it. The respondent also admitted that it had made an incorrect entry in its bookkeeping system. The precise impact thereof is unclear. From this, *a fortiori*, it is clear that the matter should go to trial.

[6] Given the lack of clarity of the plaintiff/respondent's particulars of claim and the annexures thereto, it cannot be said that the appellant did not disclose a *bona fide* defence.

Order

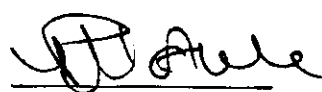
In the result, the appeal is upheld with costs and the following order is substituted for that of the magistrate: —

1. The summary judgment is refused with costs.
2. The appellant is granted leave to defend the action.



JANSEN J
JUDGE OF THE HIGH COURT

I agree



MOTHLE J
JUDGE OF THE HIGH COURT

For the Appellant Advocate A P Ellis

Instructed by Ian Baile Attorneys (012-424 0200)

For the Respondent Advocate Bernette Bergenthuin

Instructed by Rina Rheeders Attorneys (012-460 9819)