

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 25437/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
Date: 3 December 2021 E van der Schyff

In the matter between:

FOURIE FISMER INCORPORATED

APPLICANT

And

THE ROAD ACCIDENT FUND

RESPONDENT

REASONS

Van der Schyff J

[1] The application concerned was enrolled for hearing in the unopposed motion court on 3 November 2021. In the notice of motion, the applicant sought an order against the respondent in the following terms:

- i. Payment of the sum of R13 675 644.48;

- ii. Interest on the above amount from the date of judgment to the final date of payment at the prevailing prescribed mora interest rate;
- iii. Costs of suit;
- iv. Further and/or alternative relief.

- [2] In its founding affidavit, the applicant related that the respondent appointed it as a 'Preferred bidder: Experienced Legal Firm to provide specialised legal services relating to Civil Litigation and Personal Injury Law to the Road Accident Fund for a period of five (5) years'. The parties concluded a Service Level Agreement (SLA). The original tender was later extended. The applicant rendered legal services on behalf of the respondent in accordance with the requirements for such services as contained in the SLA. The respondent was satisfied with the applicant's services and continued to instruct the applicant during the entire period for which the tender endured. The applicant provided the respondent with Bills of Costs and disbursements in accordance with the SLA. The respondent internally assessed these Bills of Costs and disbursements, and the respondent furnished the applicant with written confirmation of all the approved accounts to which the application had regard. All the amounts referred to in the application were due and payable before the application was issued. Notwithstanding demand, the respondent failed to make payment before the application was issued.
- [3] The respondent filed a notice of intention to oppose but failed to deliver any answering affidavit and did not give notice of an intention to raise a question of law as provided for in Rule 6(5)(d)(iii), or a point *in limine*. The notice of set down in the unopposed motion court was timeously delivered to the respondent.
- [4] On the day of the hearing, I was informed that the respondent had paid a substantial portion of the amount claimed, and the remaining outstanding amount was R1 293 677.73. This was the only amount the applicant wanted judgment for. However, counsel appeared on behalf of the respondent. It was related to the court that counsel came bearing a settlement offer. The matter stood down for counsel to discuss. I was presented with a draft order. Although the order is framed as an order-

by-agreement, counsel indicated that they were not *ad idem* on the issue of interest and the scale of costs.

- [5] The applicant sought the inclusion of a term in the order that the respondent be liable for interest on the amount of R1 293 677.73 at the rate of 7% per annum calculated from 25 May 2021, being the date of service of the application on the respondent, until date of payment, which the parties agreed would be on or before 3 December 2021. I included this term in the order.

- [6] The respondent now filed a request to be provided with written reasons for including this obligation in the order.

- [7] It is evident from the founding affidavit that the amounts claimed by the respondent, which collectively constitute the amount of R13 675 644.48, were due and payable by 14 May 2021. A consolidated monthly statement of account was submitted on 22 April 2021. More than 30 days have lapsed since this account was submitted. The current application was served on the respondent on 25 May 2021.

- [8] Centlivres CJ stated in *Linton v Corser*:¹

‘The old authorities regarded interest *a tempore morae* as *poenaal ende odieus*, vide *Utrechtsche Consultation*, 3, 63, p. 288. Such interest is not in these modern times regarded in that light. Today interest is the life-blood of finance, and there is no reason to distinguish between interest *ex contractu* and interest *ex mora*.’

- [9] The Supreme Court of Appeal held in *Crookes Brothers Limited v Regional Land Claims Commission for the Province of Mpumalanga and Others*² that:

‘Even in the absence of a contractual obligation to pay interest, where a debtor is in mora in regard to the payment of a monetary obligation under a contract, his creditor is entitled to be compensated by an award of interest for the loss or damage that

¹ 1952 (3) SA 685 (A) 695G.

² 2013 (2) SA 259 (SCA)

he has suffered as a result of not having received his money on the due date.'

- [10] The tardy payment of monetary obligations almost invariably deprives a creditor of the productive use of money and causes loss. Thus, it is in the public interest that creditors be compensated when debtors fail to make payment.
- [11] In the present matter, the applicant's case is uncontested. The court cannot but find that the respondent was in mora before the application was issued. Although the applicant, in the notice of motion, sought interest from the date of judgment, the respondent was represented by counsel when the draft order was presented. The applicant, in a balancing act to settle the matter, agreed to an order that the amount due be paid only by 3 December 2021, but as a trade-off sought that interest be payable on this amount from the date of service of the application on the respondent until the date of payment. The date from which the respondent was in mora precedes the date of the service of the application. The applicant accommodated the respondent by requesting that mora interest be calculated from the date of service of the application. The applicant also sought further and/or alternative relief, and in the circumstances, the inclusion of this term in the order constitutes such alternative relief.



E van der Schyff

Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date for hand-down is deemed to be 3 December 2021.

For the applicant:

Mr. L Fourie

Instructed by:

FOURIEFISMER INC

For the respondent:

Adv. K Kollapen

Instructed by:

MALATJI & CO

