

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE THIRD DIVISION)

CASE NO: 10185/2008

DATE: 28 AUGUST 2008

5 In the matter between:

SMITH TABATHA BUCHANAN BOYES PLAINTIFF

and

JOHAN EDUARD MOSER 1ST RESPONDENT

BRAINWAVE PROJECTS 1129 CC 2ND RESPONDENT

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ORDER

CLEAVER, J:

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This is an application for summary judgment in which the plaintiff
sues on the strength of an acknowledgment of debt. It is apparent
from the particulars of claim that the acknowledgment of debt was
achieved as a compromise after the plaintiff had initially claimed a
20 larger amount in respect of professional fees rendered to the
defendant. The particulars of claim contain details to this effect
and that is not denied.

The defence raised on behalf of the defendant is firstly that he places the amount set out in the acknowledgment of debt in dispute as he says that it is excessive and should be subject to taxation. In my view there is no merit whatsoever in this submission, once the defendant has signed an acknowledgment of debt the need for taxation falls away.

The next, and only point really raised was that he had signed the acknowledgment of debt under duress, alleging that he had been told that unless he signed the acknowledgment of debt steps would be taken to sequester him. As pointed out by plaintiff's counsel the defendant had told the plaintiff that he was unable to pay the amount claimed at the time, thus indicating that he had in fact committed an act of insolvency. In the circumstances the submissions that he had signed under duress have no legal basis.

Another point made was that the acknowledgment of debt having referred to payment which was due to him from a development, indicated that the agreement between him and the plaintiff was that he could continue to expect grace to be given to him to pay until the development was completed. On this basis it would seem to me that he might be able to avoid payment forever if the development was not completed. That clearly cannot be

reconciled with the clear undertaking to pay out of the first management fees which were due, or by a stated date.

In the circumstances there will be JUDGMENT FOR THE
5 PLAINTIFF, WITH COSTS.



CLEAVER, J