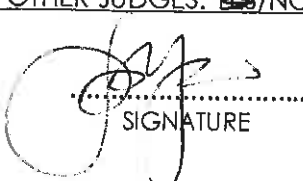


REPUBLIC OF SOUTH AFRICA



SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 2012/35043

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
<u>02.04.14</u> DATE	
 SIGNATURE	

In the matter between:

ANGLO AMERICAN PROPERTIES LTD

Plaintiff

and

CITY OF JOHANNESBURG METROPOLITAN

Defendant

J U D G M E N T

MAKOPO: AJ

[1] The Plaintiff claims payment of the sum of R 1 183 147 and interest at 15.5% from 1st August 2003 to date of payment.

- 1.1 The Plaintiff claim arises from a tax invoice issued by the defendant on the 28 July 2008 acknowledging that the Plaintiff's account was in credit with the amount of R1 183 149.00.

[2] The defendant in its answers to pre-trial agenda dated 18 February 2014, handed up as Exhibit C 11-12.

- 2.1 The defendant admitted that the tax invoice was generated by the Defendant.

- 2.2 That the Defendant admitted that the said tax invoice indicated an amount of R1 183 149.00 due by the defendant to the Plaintiff.

[3] The defendant contends that the plaintiff's claim has prescribed for the following reasons.

- 3.1 The tax invoice is dated 27 July 2008 and at least on to the Plaintiff's version, the Plaintiff had knowledge of the debt as of the 3 December 2008 and the summons were issued on 14 September 2012, more than 3 (three) years.

- 3.2 The defendant disputes that the period was interrupted as there was no acknowledgement of indebtedness by the defendant.

[4] The defendant denies that the claim has prescribed and contends that the prescription was interrupted 29 March 2011, where Mr Hannes de Beer, (an employee of the defendant) acknowledged that the amount of

R1 183 149.00 was due to the Defendant and it should be claimed, to Mr Reon Louw.

[5] Alternatively, when Ms Sylvia Ravhutulu (an employee of the defendant) acknowledge to Mrs Lynette Rajchrt (an attorney then representing the plaintiff) that the amount would be paid.

[6] The Plaintiff in proving its case lead the evidence of Lynette Rajchrt and Reon Louw.

[7] Mrs Rajchrt testified in relation various e-mails sent to Mrs Ravhutulu and various undertakings made by Ms Ravhutulu in regard to the payment of the credit due to the Plaintiff.

[8] Ms Rajchrt is a Director of Strauss Scher Inc, a firm of attorneys instructed by the Plaintiff to demand payment of the credit due to the Plaintiff by the Defendant.

[9] The next witness for the Plaintiff Mr Reon Louw, a consultant employed by the Plaintiff.

9.1 His evidence was very brief and he confirmed that Mr Hannes de Beer's undertaking that there was credit due to the Plaintiff and it can be claimed once the electricity issue was sorted.

[10] The Defendant then called its legal advisor the jist of his evidence that he had advised the Defendant not to pay as the claim had prescribed, this

was based on him seeing the date of the invoice and the date of the summons.

[11] The Defendant's next witness called Ms Sylvia Ravhutulu, Customer Liason Officer, who testified that she received instructions from her boss Mr Mohlala to follow-up the Plaintiff's query for the refund.

11.1 She confirmed that she telephoned Ms Rajchrt, and advised that she has been given the Plaintiff's query and that she will do all she can to assist her with the query for refund.

[12] She denied that she had undertaken to pay the Plaintiff's refund and she said that they did not have access and that she would only refer the query to the relevant department that would have investigated and upon investigation paid the refund.

[13] Ms Ravhutulu's recollection of the telephonic conversation with Ms Rajchrt was challenged during cross-examination by counsel for the Plaintiff, more so her version was not put to Mrs Rajchrt as a matter of fact but as a general proposition.

13.1 I found that is due to the fact that the Defendant did not dispute the facts as it had not consulted with the witness on time.

[14] The simple issue for me to decide is whether the Plaintiffs claim has prescribed and that the undertaking as pleaded in paragraph 4 of its particulars of claims interrupted prescription.

[15] Mr Louw evidence was not challenged in cross-examination and the Defendant did not lead the evidence of Mr Hannes de Beer.

15.1 I was referred to *Agnew vs Union and south West Africa Insurance Co Ltd* 1977 (1) SA 612.

16.1.1 In order to show that the relevant letter amounted to an express acknowledgement of liability, appellant must establish that respondent acknowledged that the insured driver was the sole or cause of the collision, that the Appellant was injured as a consequence thereof and that the respondent is in law responsible for any damages which the Appellant may have sustained.

[17] The Defendant contends that there was no acknowledgment of indebtedness and there was an investigation still to be done and therefore there was no interruption of prescription.

[18] The Plaintiff's counsel referred to *Adams vs SA Motor Industry Employers association* 1981 (3) SA 1189 @ 1198, it was held that an acknowledgement in order to constitute a claim must reflect both the indebtedness and intent to pay. The intent may be implicit, and reference can be had to surrounding circumstances.

[19] The Plaintiff contends that tax invoice shows the amount claimed as outstanding is common cause, the remaining question is whether it shows an intention to pay.

[20] The Plaintiff relies on the letter by Mr Louw, at page 10 of Exhibit "D".

[21] In my view, there is no doubt that the credit is due to the Plaintiff and in the absence of evidence contrary from the Defendant in regard to Mr Louw's evidence, I have to accept, there was an acknowledgement of indebtedness and undertaking to pay.

[22] I accordingly finds that the Plaintiff's claim has not prescribed, and as envisaged in S 14 of the Prescription Act 56 of 1972 by express acknowledgement by Mr Hannes de Beer in March 2011, that the credit due to the Plaintiff and it can be claimed.

[23] Therefore I would dismiss the Defendant's special plea, and make the following order:

1. The Defendant is ordered to pay the Plaintiff the sum of R1 183 147.00 with interest on the aforesaid sum at 15.5% from 1st August 2003 to date of payment.

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2. The Defendant is ordered to pay the costs of suit.

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a vertical stroke and a horizontal crossbar, all enclosed within a circular loop.

**N MAKOPO
ACTING JUDGE OF THE SOUTH
GAUTENG HIGH COURT, JOHANNESBURG**