

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	<u>NOT</u> REPORTABLE
(2)	<u>NOT</u> OF INTEREST TO OTHER JUDGES

CASE NO: 2021-21032

DATE: 12th JULY 2024

In the matter between:

GRID ELECTRONICS (PTY) LIMITED

Plaintiff

and

**QUANDOMANZI INVESTMENTS (PTY) LIMITED t/a
SM STRUCTURES**

Defendant

Coram: Adams J

Heard: 22, 23 and 24 January 2024

Delivered: 12 July 2024 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to *CaseLines* and by release to SAFLII. The date and time for hand-down is deemed to be 11:30 on 12 July 2024.

Summary: Contract – material supplied and services rendered in terms of written agreement – breach of contract – defendant failing to deliver all of the material and failing to complete a portion of the works – general and special contractual damages claimed by plaintiff arising from such breach of contract – defendant disputes amounts claimed and plaintiff's entitlement to special

damages – calculation of general damages – plaintiff bears the onus to prove the amount needed to place him in the same position he would have been in if the defendant had performed in terms of the contract – therefore, the reasonable costs of remedying the defendant's defective performance – special damages – plaintiff required to plead and prove – that the loss, which does not generally flow from a breach of the agreement in question – therefore, unless the plaintiff proves that the parties actually or presumptively contemplated that a loss of that kind would probably ensue on such a breach, such damages are too remote and not recoverable –

Judgment granted in plaintiff's favour for general damages only.

ORDER

(1) Judgment is granted against the defendant in favour of the plaintiff for: -

- (a) Payment of the sum of R103 618.45;
- (b) Payment of interest on the amount of R103 618.45 at the applicable legal interest rate of 7% per annum from date of service of the summons, being 7 May 2021, to date of final payment; and
- (c) Costs of suit on the appropriate Magistrates Court scale.

JUDGMENT

Adams J:

[1]. The plaintiff, Grid Electronics (Pty) Limited ('Grid Electronics'), is a distributor and a supplier of automotive sound and accessories. The defendant, Quandomanzi Investments (Pty) Limited ('SM Structures'), trades as SM Structures and, as its trade name suggests, is a manufacturer, producer and a supplier of building structures such as steel warehouse structures. On 29 October 2019 Grid Electronics concluded an agreement with SM Structures for the supply and the erection on Erf 83, Blue Hills Agricultural Holdings

(‘plaintiff’s property’), of a portal frame steel structure with the following dimensions: 15 meters wide by 60 meters long by 6 meters high at column height, with a roof pitch of 10 degrees and with no internal Columns. The contract price agreed upon was the sum of R435 500, inclusive of value added tax (‘VAT’) and the contract expressly provided that the sheeting to be used for the roof was to be *0.5mm IBR Chromadek*, which is a special type of high-quality roof sheeting.

[2]. The further express terms and conditions of the contract between the parties, as well as the detailed specifications relating to the structure, were all incorporated into the written part of the agreement – the quote dated 28 October 2019, which was accepted by Grid Electronics on 29 October 2019. As regards the delivery time, the agreement specifically provided that ‘[t]he structure will be delivered within 2 weeks from order and receipt of the first payment required as detailed below’. Payment of the contract was to be effected as ‘progressive payments’ as follows: (a) 30% payment with order; (b) 60% of quoted value on arrival of structures on site; and (c) 5% of quoted value on completion of the frame. The balance, 5% of quoted value, was payable on completion of erection.

[3]. In terms of and pursuant to the agreement, Grid Electronics paid to SM Structures the following amounts on the following dates: (a) the first payment of R115 800 on 27 September 2019, which date in fact preceded the date of the final conclusion of the agreement; (b) the second payment of R276 150 on 31 October 2019; and (c) the third payment of R21 775 on 29 June 2020. A balance of R21 775 therefore remained outstanding on the contract price, which would have been payable on completion of the installation and erection of the whole structure.

[4]. Grid Electronics alleges that SM Structures breached the agreement in that it failed to complete the installation of the roof on the structure, in addition to it failing to deliver a sufficient number of *0.5mm IBR Chromadek* galvanised roof sheeting to complete the installation of the roof of the structure. In my view, there does not appear to be much dispute about the foregoing, I will revert to this aspect of the matter shortly.

[5]. In this defended action, Grid Electronics claims contractual damages arising from the alleged breach of contract by SM Structures. An amount of R147 756.60 is claimed by Grid Electronics as representing the fair and reasonable costs of purchasing the shortfall of the galvanized roof sheeting and the cost of completing the erection of the roof – general / direct damages. A further sum of R428 506.08 is claimed in respect of additional rental payable by Grid Electronics to its erstwhile Landlord (from whom it was renting business premises at the time) after the date on which it had expected to take occupation of the new premises housed in the aforesaid portal frame steel structure – that is for the period 1 December 2020 to 31 March 2021. The latter amount represents alleged ‘special’ or ‘consequential’ damages.

[6]. The claim of Grid Electronics is resisted by SM Structures on the basis that the agreement in question, on which the cause of action is based, was in fact concluded by SM Structures with a Mr Mather (the sole shareholder and sole director of Grid Electronics) and not with Grid Electronics, as alleged by it in its particulars of claim. The case on behalf of SM Structures is therefore that it concluded the agreement with Mr Mather in his personal capacity and not on behalf of Grid Electronics. This is in fact the main defence by SM Structures as regards the liability issue. Secondly, SM Structures denies that it breached the agreement. This denial by SM Structures is however somewhat equivocal especially if regard is had to the undisputed facts in the matter. Lastly, SM Structures denies that Grid Electronic suffered the contractual damages and the amount thereof as alleged by it.

[7]. At the commencement of the trial before me on 22 January 2024, SM Structures, through its attorney, Mr Meintjies, made the formal concession that it supplied and fitted only 88 of the actual 176 *Chromadek* sheeting provided for in the agreement, thus admitting to a shortfall and a short supply of 88 roof sheeting. The concession was incorporated into a formal ‘with prejudice’ tender by SM Structures to pay to Grid Electronics R75 458.50 in full and final settlement of the latter’s claim, conditional upon Grid Electronics proving that it (the company) was the party to the agreement and therefore has the necessary *locus*

standi in iudicio to claim the contractual damages from SM Structures. I interpret this 'with prejudice' tender as an admission by SM Structures that there was a breach of the contract and that damages arose from such breach. This was in fact confirmed by Mr Meintjies in his written heads of argument.

[8]. This then means that the issues to be adjudicated by me in this action are the following: (a) Whether the contract was concluded between SM Structures and Grid Electronics and whether the latter's sole director, Mr Mather, acted personally or on its behalf when he signed the written agreement; and (b) a calculation of the amount of the contractual damages suffered by Grid Electronics as a result of the breach of contract by SM structures. As regards the calculation of the contractual damages, the main issue to be considered by me relates to whether or not Grid Electronics is also entitled to special / consequential damages relating to the additional rental it had to fork out as a result of the installation of the portal steel structure not being completed on time.

[9]. The aforesaid issues are to be decided against the factual backdrop of the matter, the facts being by and large common cause as set out in the paragraphs which follow, and which facts are gleaned from the evidence led during the trial on behalf of both parties, as well as from the documentary evidence introduced via the medium of these witnesses. In that regard, there were two witnesses called on behalf of Grid Electronics, namely its sole shareholder and director, Mr Courtenay Robert Dilbey Mather ('Mr Mather'), and an expert, Mr Dennis Edward White ('Mr White'), whereas SM Structures called its sole director, Mr Stephen John Maycock ('Mr Maycock'), as its only witness.

[10]. I now proceed to deal firstly with the issue as to whether the contract was indeed concluded between Grid Electronics, as against Mr Mather personally, and SM Structures. I intend making short thrift of this aspect of the matter for the simple reason that, according to Mr Mather and his uncontested and undisputed *viva voce* evidence, his intention throughout was to enter into the agreement not in his personal capacity but for and on behalf of Grid Electronics. The fact that the quote dated 28 October 2019, which formed the basis of the agreement

between the parties, was addressed to him and apparently accepted by him, is neither here nor there. The simple fact of the matter is that his evidence was that when he signed the quote and concluded the agreement, he acted in his capacity as the sole director of Grid Electronics. As I have already indicated, that evidence is unchallenged and undisputed and cannot be challenged on sound grounds.

[11]. Moreover, as confirmed by Mr Mather during his evidence, the invoices were made out and addressed to Grid Electronics, which also paid by electronic funds transfer, the amounts due and payable in terms of the agreement. The structure was erected and installed on land owned by and registered in the name of Grid Electronics, which intended to use the structure as its new business premises. All of the foregoing proves, in my view, conclusively that the agreement was indeed between Grid Electronics and SM Structures. I have no doubt that that is exactly how the parties understood the agreement as well.

[12]. I therefore conclude that there is no merit in the defence raised by SM Structures relating to the supposed lack of *locus standi* on the part of Grid Electronics. That would also then take care of any dispute relating to the breach of contract by SM Structures. This is so because, during his *viva voce* evidence, Mr Maycock admitted that his company, SM Structures, had breached the agreement during or about October 2019 when it short delivered by 88 the *Chromadek* sheets. SM Structures, by their 'with prejudice' tender, has also conceded that Grid Electronics suffered general or direct damages amounting in total to R75 458.50 in respect of the short supply of 88 chromadek sheets.

[13]. The only remaining dispute between the parties as regards general damages is the amount of such damages. It was submitted on behalf of SM Structures that such damages amount to R75 458.50, as per their formal tender, whereas it was submitted on behalf of Grid Electronics that, after certain recalculations, the actual amount of its damages is the sum of R122 012.60.

[14]. It is therefore necessary for me to have regard to the respective calculations on behalf of the parties and to quantify the actual damages suffered

by Grid Electronics. In that regard, it was only Grid Electronics which called an expert witness to give an indication of the reasonable costs of the supply and installation of the 88 short-supplied *Chromadek* sheets.

[15]. The starting point for Grid Electronics' calculation of their general damages is a quotation by a third-party supplier of *Chromadek* roof sheeting, namely Icon Doors, Maintenance & Electrical CC ('Icon'), for a total amount of R136 344 (inclusive of VAT), as well as a final tax invoice from Icon dated 25 November 2020, confirming that Grid Electronics paid to the said company R136 344 for the following material supplied and services rendered by them: (a) Supply and install '82 x 8.1m dove grey sheets'; (b) Supply and install '30m of flashings'; (c) Waterproof 30m of wall; and (c) Fit centre knock on factory sheeting. The amount quoted and invoiced in respect of the material supplied was the total sum of R102 960 (exclusive of VAT) and for the labour was R15 600 (excluding VAT).

[16]. The expert, Mr White, who was called as a witness by Grid Electronics, confirmed the reasonableness of the amounts quoted in respect of the material supplied and the services rendered. He did however concede that the amount relating to the supply and the installation of the 'flashings' is a duplication in that, according to a delivery note signed off by Grid Electronics during October 2019, the required number of flashings had in fact been delivered to their premises. The charges relating to the supply and installation of the flashings, as well as the charges relating to the waterproofing of the wall, ought to be deducted from the actual amount paid on the invoice. The waterproofing clearly was not part of the initial quote by SM Structures and therefore did not form part of the services to be rendered by them. During his cross-examination, Mr White confirmed that the reasonable amount to be deducted from the total claimed to provide for these two items is R17 000 (excluding VAT), representing R15 000 for the material to be supplied and R2000 for the rendering of the service in relation thereto. This amounts to R19 550 (inclusive of VAT), leaving a balance due of R116 794 in respect of the 82 sheets supplied by Icon.

[17]. To this total should be added a further amount to provide for the additional

six sheets required to complete the roof. In that regard, it will be recalled that the shortfall amounted in total to 88 (half) of the total 176 sheets quoted for initially by SM Structures. In support of the claim relating to the aforesaid, Grid Electronics relies on a further invoice from another third-party supplier, namely Freestock Steel Traders, dated 1 February 2021, for a total amount of R11 412.60 (inclusive of VAT) for the supply and delivery of eight 8.1m dove grey IBR 0.5mm sheets, which total also includes the delivery charges. Mr White confirmed the reasonableness of these amounts, which, according to him, were in fact a very good price if regard is had to the fact that, at the time, there was a shortage of *Chromadek* sheeting and that the prices were rising almost on a daily basis. He described the R11 412.60 paid for the eight sheets as a 'top price'. This then means that a reasonable price for six of the sheets would have amounted to R8 599.45, which should be added to the R116 794 for the 80 sheets as per the calculation above, giving a grand total of R125 393.45.

[18]. This, in my view, is the correct calculation of the reasonable cost of remedying the defective performance of SM Structures, which translates into the quantum of the general contractual damages suffered by Grid Electronics as a result of the admitted breach of the contract by SM Structures. Lastly, from this total of R125 393.45, should be deducted the balance outstanding on the contract price, which had not been paid by Grid Electronics, that being R21 775, leaving a grand total of **R103 618.45**.

[19]. The reasoning behind this deduction is simply that contractual damages is calculated on the basis that a plaintiff should be placed in the position he would have been in had the breach not occurred. That would be accomplished by supposing that Grid Electronics would have paid the whole amount of the contract price. A defendant would then be liable for the costs of remedying the defective performance on the assumption that the full amount of the contract price had been paid. *In casu*, R21 775 had not been paid by Grid Electronics, hence the deduction.

[20]. Mr Meintjies, the attorney who appeared on behalf of SM Structures,

submitted that the calculation of the general damages should be done on a basis different from that on which Grid Electronics did it. He proposed that the figures reflected on the invoice from Freestock Steel Traders – R9 687.60 (inclusive of VAT) for eight sheets, therefore R1 210.95 for one sheet – should be used as a starting point and a basis for the calculation of the loss. He also then introduces the square meterage to be covered and on that basis submits that the amount of the damages is R86 346, from which is to be deducted R10 887 = R75 459.

[21]. I do not accept these calculations nor the basis on which they were done, as they are not supported by the evidence. Importantly, Mr Mather confirmed during his evidence, and this was not disputed, that the invoices from Icon and Freestock Steel Traders were in fact paid by Grid Electronics. Mr White, the expert witness, testified that the prices were on the up at the relevant time and this trend was influenced by the fact that it was becoming more and more difficult to source *Chromadek* roof sheeting. I am therefore inclined to accept the figures of Grid Electronics as representing the reasonable prices and costs relating to the supply of the short supplied sheets and the charges relating to its installation. The alternative postulation by SM Structures is not fact based and, in my view, is an artificial approach which does not accord with the realities in the matter.

[22]. In sum, the general contractual damages suffered by Grid Electronics as a result of the breach of the contract by SM Structures amounted to R103 618.45.

[23]. That brings me to the damages claim by Grid Electronics relating to the costs of hiring alternative premises as a result of the delay in the completion of the structure by SM Structures. As indicated *supra*, Grid Electronics claims an amount relating to the rental paid by them for the period from 1 December 2020 to 31 March 2021 (a four-month period). By the time the trial commenced before me, SM Structures had agreed that an amount of R428 506.08 represents the fair and reasonable rental payable by Grid Electronics during that period. The only issue remaining in that regard was therefore whether SM Structures is legally liable to pay to Grid Electronics such outlay.

[24]. The claim was pleaded by Grid Electronics as a claim for special / consequential damages. However, in his written heads of argument and during closing argument, Mr Fouché, Counsel for Grid Electronics, contended that this is in fact also a claim for general damages. In that regard, I was referred to *Shatz Investments (Pty) Ltd v Kalovyrrnas*¹, in which the Appellate Division held that where, in terms of a lease, the premises are expressly let for a profit-making business, loss of profits may, on breach of the lease by the lessor, be recoverable in appropriate circumstances. Such damages are ordinarily regarded, not as general damages, but as special damages. *A fortiori* a claim for loss of goodwill on disposal of the business is a claim for special damages. It is not a loss that generally flows from a breach of the lease of business premises. Consequently, so the AD held, unless the plaintiff proves that the parties actually or presumptively contemplated that a loss of that kind would probably ensue on such a breach, such damages are too remote and not recoverable.

[25]. Importantly, the court held at p550 as follows: -

'According to these particulars, plaintiff's claim was not for (a) 'general damages', but was for (b) 'special damages'. Sometimes the corresponding terms 'intrinsic' and 'extrinsic' damages are used (see *Pothier, Obligations*, (*Evans' translation*, paras. 161 and 162), and *Whitfield v Phillips and Another* 1957 (3) SA 318 (AD) at p. 329D – E). I use the former terms here as well known, convenient labels to respectively differentiate, broadly and without any pretence at precision, between (a) those damages that flow naturally and generally from the kind of breach of contract in question and which the law presumes that the parties contemplated would result from such a breach, and (b) those damages that, although caused by the breach of contract, are ordinarily regarded in law as being too remote to be recoverable, unless, in the special circumstances attending the conclusion of the contract, the parties actually or presumptively contemplated that they would probably result from its breach (see *Lavery and Co Ltd v Jungheinrich* 1931 AD 156).'

[26]. The decisive time for ascertaining the parties' contemplation that such a loss would ensue on breach of the contract is when they contract and not when the contract is breached. Not only must there have been common knowledge that such a loss would ensue on breach of the contract, but the parties must have

¹ *Shatz Investments (Pty) Ltd v Kalovyrrnas* 1976 (2) SA 545 (A).

entered into the contract on the basis of such knowledge.

[27]. I am of the view that, *in casu*, the claim by Grid Electronics for a refund of the rental paid by them to their erstwhile Lessor is special damages. To borrow from *Shatz Investments*, 'that is not a loss that generally flows from such a breach' of the agreement for the supply of material and the rendering of services. It is not an intrinsic loss, that being one affecting the services rendered and material supplied agreement *per se*, but an extrinsic one, incidentally affecting the other business affairs of the Grid Electronics, notably where they operate their business from. Its recoverability therefore depends upon the special circumstances surrounding the conclusion of the agreement in question to have been known to SM Structures at the time the contract was concluded.

[28]. The main difficulty that Grid Electronics have is that its cause of action in that regard is not supported by the evidence. Importantly, Mr Mather, when giving evidence, indicated that during September 2019 he was searching online for a supplier who could assist them with the supply and installation of a portal steel frame structure. He then received a quote from SM Structures and that appears to have been the sum total of the engagement between the parties prior to the acceptance by Grid Electronics of the final quote from SM Structures. Moreover, Mr Mather confirmed that Grid Electronics' lease with its then Lessor was to expire during April 2020, but he confirmed that this information was not conveyed to SM Structures at the time of the conclusion of the agreement. This issue was probably raised during 2020. The lease was in fact extended for a further period until 31 October 2020. However, this does not assist Grid Electronics as the parties ought to have contemplated the loss when the agreement was concluded and not afterwards.

[29]. The simple point is that when Grid Electronics and SM Structures – especially the latter – concluded the agreement there must not only have been common knowledge that such a loss would ensue on breach of the contract, but the parties must have entered into the contract on the basis of such knowledge. In other words, the parties (especially SM Structures) must have understood that,

in the event of the completion of the structure being delayed, Grid Electronics would be forced to continue renting alternative premises at a costs of about R107 000 per month and that SM Structures would be liable to indemnify Grid Electronics in respect of such expenditure, which could amount to a sum in excess of the actual contract price.

[30]. As I have already indicated, the evidence does not support such an inference or such a conclusion. In fact, on the probabilities, it can safely be concluded that, had Grid Electronics insisted on concluding the agreement on that basis, SM Structures would not have entered into the arrangement. It would not have made business sense for SM Structures to enter into such a contractual arrangement. Moreover, and this is instructive, Condition of Sale 18 of the agreement between the parties expressly provides as follows:

‘No penalty clauses or a retention of our final balance will be accepted’.

[31]. In sum, I do not accept the submissions on behalf of Grid Electronics that the claim by Grid Electronics to recover their additional rental payments is a claim for general / direct damages. In my judgment, those damages are special / consequential damages. Grid Electronics has not made out a case entitling it to such damages. In particular, it has not proven that there was common knowledge between the parties that such a loss would ensue on breach of the contract, nor have they proven that the parties entered into the contract on the basis of such knowledge and understanding.

[32]. For all of these reasons, I am of the view that the second claim by Grid Electronics for damages should fail. This means that Grid Electronics is entitled only to a judgment in its favour for payment of the general damages as calculated above.

Costs

[33]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are

good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*².

[34]. I can think of no reason why I should deviate from this general rule *in casu*.

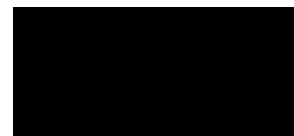
[35]. The quantum of the damages awarded to Grid Electronics does however fall well within the jurisdiction of the Magistrates Court. It would therefore be just and fair that it be allowed to recover costs only on the appropriate Magistrates Court scale.

Order

[36]. In the result, the order which I grant is as follows: -

(1) Judgment is granted against the defendant in favour of the plaintiff for: -

- (a) Payment of the sum of R103 618.45;
- (b) Payment of interest on the amount of R103 618.45 at the applicable legal interest rate of 7% per annum from date of service of the summons, being 7 May 2021, to date of final payment; and
- (c) Costs of suit on the appropriate Magistrates Court scale.



L R ADAMS
Judge of the High Court
Gauteng Division, Johannesburg

² *Myers v Abramson*, 1951(3) SA 438 (C) at 455

HEARD ON:	22 nd , 23 rd and 24 th January 2024
CLOSING ARGUMENT ON:	24 th January 2024
JUDGMENT DATE:	12 th July 2024
FOR THE PLAINTIFF:	Advocate Van Rhyn Fouché
INSTRUCTED BY:	David Bayliss Attorneys, Blairgowrie, Randburg
FOR THE DEFENDANT:	Attorney S J Meintjies
INSTRUCTED BY:	Retief & S J Meintjies Incorporated, Weltevreden Park, Roodepoort