



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

JUDGMENT

NOT REPORTABLE
Case no: 11245/2015

In the matter between:

MOTEKO CONSTRUCTION COST
CONSULTANTS & PROJECT MANAGERS CC
(REGISTRATION NUMBER 2003/061502/23)

PLAINTIFF

And

UMTSHEZI MUNICIPALITY

DEFENDANT

Coram : Seegobin J
Heard : 2nd February 2016
Delivered : 5th February 2016

ORDER

- (a) The application for summary judgment is refused;
 - (b) The defendant is granted leave to defend the action; and
 - (c) The costs of the application including the costs of the opposed hearing are reserved for decision by the trial court.
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JUDGMENT

SEEGOBIN J:

[1] This is an opposed application for summary judgment.

[2] By way of a simple summons the plaintiff claims an amount of R2 574 629.82 from the defendant being the Umtshezi Municipality. Plaintiff avers that the said amount represents the balance due to it in respect of certain services rendered by it to the defendant during the period February to November 2014. In substantiation of its claim the plaintiff put up Annexures A-G which are invoices that reflect the specific amount owing as at date of each invoice.

[3] In its opposing affidavit resisting summary judgment, the defendant avers in the main that invoices A and B do not in any way relate to it but to the Newcastle Municipality having regard to the reference 'NEWCPA' which appears on each of these invoices. As far as invoices C-G are concerned, the defendant avers that the amounts reflected thereon have been paid in full. In paragraph 8 of its opposing affidavit it sets out in some detail the dates when payment was effected in respect of each invoice as well as the method of payment, whether by cheque or by electronic transfer. The defendant accordingly avers that it is not indebted to the plaintiff in the sum claimed or at all.

[4] On behalf of the plaintiff it was submitted that in the first instance the defences raised by the defendant are bald, incomplete, laconic and sketchy and in the second instance, the affidavit resisting summary judgment, without actual

proof of the payments made, clearly demonstrates a lack of *bona fides* on the part of the defendant.

[5] I do not consider it necessary to delve into the numerous legal principles which have been established by our courts over the years when faced with matters of this nature. For purposes of this judgment it suffices to state that a defendant is only required to place sufficient information before a court to persuade the court that it has a genuine desire and intention of adducing evidence at the trial, which, if found to be true, would constitute a valid defence to the plaintiff's claim/s¹. A defendant is not required to deal exhaustively with the facts and evidence relied upon to substantiate his defences, he must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the court to decide whether the affidavit discloses a *bona fide* defence².

[6] In *Joob v Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture*³, Navsa JA provides a useful analysis of summary judgment applications and states at paragraph [32] the following:

“The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. After almost a century of successful application in our courts, summary judgment proceedings can hardly continue to be described as extraordinary. Our courts, both of first instance and at the appellate level, have during that time rightly been trusted to ensure that a defendant with a triable issue is not shut out. In the Maharaj case at 425G-426E, Corbett JA, was keen to ensure first, an examination

¹ Breitenbach v Fiat SA (Edms) Bpk 1976(2) SA 226(T) at 229 D-F; Citibank NA, South Africa Branch v Paul NO and Another 2003(4) SA 180(T) AT 201 c-h; Nair v Chandler 2007(1) SA 44(T) at 46 G-I.

² Maharaj v Barclays National Bank 1976(1) SA 418(A) at 426 B-D.

³ 2009(5) SA (1) SCA.

of whether there has been sufficient disclosure by a defendant of the nature and grounds of his defence and the facts upon which it is founded. The second consideration is that the defence so disclosed must be both bona fide and good in law. A court which is satisfied that this threshold has been crossed is then bound to refuse summary judgment. Corbett JA also warned against requiring of a defendant the precision apposite to pleadings. However, the learned judge was equally astute to ensure that recalcitrant debtors pay what is due to a creditor.”

[7] In light of the above, I consider that the defendant has set out its defence with sufficient particularity and completeness in order to comply with the provisions of Rule 32(3)(b) of the Uniform Rules. While the defendant can be criticised for not putting up the actual proofs of payment relating to invoices C-G, this does not mean that it lacks *bona fides* or that its defence is bad in law. The position would have been quite different if the defendant merely alleged that it made payment without so much as stating when and how it did so. In such an instance, one would be justified in concluding that the allegations are vague and laconic. In the present instance I consider that the defendant has gone far enough to show that it has evidence which, if established at the trial, will constitute a valid defence to the plaintiff's claim. It stands to reason that should the defendant fail to establish its defence fully at the trial, it runs the risk of judgment being granted against it. Additionally, the deponent to the affidavit resisting summary judgment runs the risk of committing perjury should the allegations in the affidavit prove to be false. In all the circumstances, I am satisfied that the defendant has raised triable issues and should not be shut out at this stage.

ORDER

[8] In the result, I make the following order:

- (a) The application for summary judgment is refused;
- (b) The defendant is granted leave to defend the action; and
- (c) The costs of the application including the costs of the opposed hearing are reserved for decision by the trial court.

Date of hearing	:	2 nd February 2016
Date of Judgment	:	5 th February 2016
Counsel for Plaintiff	:	K Ioulianou
Instructed by	:	Ramsay Webber Inc. c/o Hay Scott Attorneys
Counsel for Respondent	:	PC Bezhuidenhout SC
Instructed by	:	Messrs Lalparsad Inc. c/o Carlos Miranda Attorney