



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

CASE NO: AR700/2017

In the matter between:

BWK PROJECT MANAGEMENT AND CIVILS CC

Appellant

and

AFRICAWIDE CONSULTING (PTY) LTD

Respondent

ORDER

The appeal is dismissed with costs on the attorney and client scale, including the costs of the application for leave to appeal.

JUDGMENT

Delivered on: 8 February 2019

PLOOS VAN AMSTEL J (JAPPIE JP and NKOSI J concurring)

[1] This is an appeal against an order for summary judgment. The appeal is with the leave of the court below. For the sake of clarity I refer to the appellant as the defendant and to the respondent as the plaintiff.

[2] The plaintiff's claim related to project management services pursuant to a contract between it and the defendant. The claim was based on four separate invoices, with a total value of R 7 242 831.47. Vahed J granted summary judgment in respect of the first three invoices, totalling the sum of R 5 755 358.30. The plaintiff

did not pursue the application for summary judgment in respect of the fourth invoice, and the defendant was granted leave to defend that claim.

[3] The grounds for the appeal, in summary, are that the learned judge should have exercised his discretion to refuse summary judgment, on the basis that the particulars of claim were vague and embarrassing and not technically correct; that the amount claimed was not liquidated; that there were multiple allegations of breach of performance on the part of the plaintiff; and that there existed a counterclaim. Not all these grounds were pursued in argument, as I will explain after a brief reference to the pleadings.

[4] It was averred in the particulars of claim that in terms of the contract the plaintiff would provide the defendant with invoices and supporting documents; the defendant would in turn invoice the client (which was Eskom); and the defendant would pay the plaintiff within 24 hours of receipt of payment from the client.

[5] The four invoices referred to in the particulars of claim were invoice 2013060007, dated 21 September 2015, for a sum of R1 849 374.27; invoice 2013060008, dated 13 October 2015, for a sum of R2 155 084.73; invoice 2013060009, dated 9 November 2015, for a sum of R1 750 899.30; and invoice 2013060010, for a sum of R1 487 473.17. The total of the four invoices is the sum of R7 242 831.47, which was the amount for which judgment was claimed in the prayer.

[6] The complaint that the particulars of claim were excipiable was not pursued in argument, nor was the point that the amount of the claim had not been properly verified.

[7] Counsel for the defendant submitted that the particulars of claim were nevertheless confusing. He pointed out that in paragraph 14 the plaintiff averred that it had furnished the defendant with invoices amounting to a total sum of R9 248 704.82, but then proceeded to list only the four invoices to which I have referred, which total a sum of R7 242 831.47. He also pointed out that the letter of demand which was annexed to the particulars of claim referred to a sum of R5 755 358.75, which was a lesser amount than that claimed in the prayer. Counsel submitted that this was confusing and formed part of the overall argument that as a matter of discretion summary judgment should have been refused.

[8] Vahed J rejected the contention that the particulars of claim were vague and embarrassing. I agree with his conclusion. On a fair reading of the particulars of claim the amount for which judgment was sought was the total of the four specified

invoices, namely the sum of R7 242 831.47. The amount of R9 248 704.82 referred to in paragraph 14 was plainly an error as it was not the total of the four amounts set out in the sub-paragraphs that follow. The lesser amount referred to in the letter of demand plainly referred to the first three invoices (except that the cents were wrong).

[9] The particulars of claim, read as a whole, in my view made it perfectly clear what the plaintiff's cause of action was. It pleaded that the defendant had received payment from the client in respect of the plaintiff's invoices and that in terms of the contract it was obliged to make payment of those invoices to the plaintiff. This was only disputed by the defendant in respect of the fourth invoice, on which summary judgement was not granted. The fact that a lesser amount was referred to in the letter of demand seems to me to be immaterial.

[10] The submission in the heads of argument that in the light of the said discrepancies the amount claimed is not a liquidated amount has no merit and nothing further needs to be said about it.

[11] In the affidavit opposing summary judgment the defendant referred to alleged breaches of the agreement by the plaintiff, relating to the amount charged per kilometre, a change in personnel without proper notification, a possibility that the plaintiff may have charged expert rates for personnel who were not considered to be experts, and that it failed to provide certain reports.

[12] A document annexed to the opposing affidavit records an exchange between the plaintiff and Eskom in which reference was made to an incorrect rate, and an apparent agreement that this would be rectified in the next invoice. The only reference to a change in personnel was an enquiry whether Eskom had been notified, and an assurance that it had.

[13] The deponent also refers to a possibility that the plaintiff may have charged expert rates for personnel who were not considered to be experts. No evidence of this is provided, nor any detail of the potential problem. There were also bald allegations of defamation (which was not pursued in argument), unfair competition, and an assertion that Eskom did not pay an amount of some R3 million to the defendant as a result of the plaintiff not having produced certain reports. Logic suggests that if the plaintiff had failed to provide the reports it would not have been paid for them. No factual details are provided and it is by no means clear that there is a valid claim for damages against the plaintiff.

[14] A defendant, in order to establish a bona fide defence, must set out facts which, if proved, would establish a valid defence or counterclaim. Bald, sketchy and vague allegations are not enough.

[15] I agree with Vahed J that the averments made in the opposing affidavit were insufficient to establish a bona fide defence or a claim in reconvention on the basis of which summary judgment should have been refused. There is no need to say anything further about this appeal. The only puzzling aspect of it is why leave to appeal was granted.

[16] Counsel were agreed that the provision in the contract regarding costs on the attorney and client scale also applies to the appeal.

[17] The appeal is dismissed with costs on the attorney and client scale, including the costs of the application for leave to appeal.

Ploos van Amstel J

Appearances:

For the Appellant	:	P. Wallis
Instructed by	:	Morris Fuller Williams Inc.
	:	C/o J Leslie Smith & Company Inc.
		Pietermaritzburg

For the Respondent	:	N. Lombard
Instructed by	:	Bregman Moodley Attorneys
	:	C/o Shepstone & Wylie Attorneys
		Pietermaritzburg

Date Judgment Reserved	:	30 January 2019
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Date of Judgment	:	8 February 2019
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