

REPUBLIC OF SOUTH AFRICA



IN THE SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO: 25340/2013

- (1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.

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DATE

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SIGNATURE

In the matter between:

JOSHEK FOTO ENTERPRISES t/a KAMERAZ

Plaintiff

and

**BLUEPRINT STRATEGIC MARKETING
COMMUNICATIONS CC**

Defendant

J U D G M E N T

MASHILE, J:

[1] This is an application for summary judgment by which the Applicant seeks payment of an amount of R312 220.00

[2] The background facts are that on or about 27 November 2012 to 11 February 2013 the parties concluded a verbal agreement for the sale and delivery of goods at the special instance and request of the Respondent.

[3] In compliance with the agreement the Applicant delivered goods to the value of R312 220.00 to the Respondent. It rendered three discrete invoices amounting in all to R312 220.00.

[4] Formal demand notwithstanding the Respondent failed to make payment of the amount of R312 220.00 and the Applicant issued and served summons upon the Respondent claiming the amount.

[5] The Respondent reacted to the summons by making an offer to settle the amount in three instalments and made the first payment of R100 000.00. The Applicant responded thereto as follows:

“Good Morning Brendan

Thank you very much for you letter and proof of first payment. We herewith wish to advise that it is our instruction to accept your proposal for 3 payments, for the capital amount. Our client however is only prepared to accept same if legal costs and interest in inclusive thereof.

Please confirm.

Kind Regards”

[6] The Respondent did not reply to the letter but having paid the first amount of the three instalments, R100 000.00, subsequently served and filed its Notice of Intention to Defend the action.

[7] The Applicant launched an application for summary judgment. In addition to the affidavit in support of summary judgment containing the standard averments, the Applicant inserted the following paragraphs which read:

- “3. *I hereby advice the above Honourable court that on 19 July 2013, after the Defendant/Respondent received the Summons, they paid the amount of R100 000.00 towards settlement of the amount claimed in the Summons. Attached herewith and marked as Annexure A is a copy of such proof of payment received from the Defendant/Respondent.*
4. *I furthermore confirm that I accepted the settlement offer made by the Respondent/Defendant on 22 July 2013, in which I will accept the capital amount in three instalments, and the interest and legal costs in settlement. I also confirmed receipt of payment in the amount of R100 000.00. Attached herewith and marked as Annexure “B” is a copy of the letter accepting payment*
5. *I therefore confirm that the amount outstanding and claimed as per the Summary judgment is now only R212 220.00.”*

[8] The Respondent opposed the summary judgment application and the reasons for its opposition are firstly, that the Applicant’s initial cause of action was based on goods sold and delivered at the special instance and request of the Respondent. The Applicant’s acceptance of the offer of settlement meant that the first cause of action was no longer available to it. The Respondent argues that the Applicant was obliged to sue in terms of the settlement agreement

[9] Secondly, the Applicant cited the Respondent as a close corporation instead of a company albeit that all other information such as address, contact particulars, registration number and other information was correct and proved that the close corporation was in fact the company.

[10] These two defences, which the Respondent believed to be bona fide, constituted the basis of what the Respondent maintained would render the claim of the Applicant against it assailable.

[11] With regard to the defence that the wrong party has been sued, the Respondent conceded that it was technical and for that reason it was prepared to withdraw it. The court having been satisfied that it was indeed a cosmetic typing error, it allowed an amendment. Close corporation was as a result substituted for proprietary limited

[12] It is now convenient to turn squarely to the Respondent's main defence being that the claim of the Applicant became settled and the Applicant's claim ought to have been based thereon.

[13] The Respondent's offer was prompted by the claim of the Applicant as captured in the summons. It is plain that the Applicant also accepted the offer directly induced by the contents of its summons. Being for goods sold and delivered at the special instance and request of the Respondent.

[14] At the time when the offer was made an action for a claim based on goods sold and delivered had been instituted. It follows that the payment of R100 000.00 could not have been made in respect of the so-called settlement agreement. It was instead, part of the three instalments proposed by the Respondent.

[15] The fact that the Applicant chose to introduce three paragraphs explaining the discrepancy of the amount in the summons and the one for which he was praying in the summary judgment application is of no consequence.

[16] In fact, it happens all the time that a party would come to court opposing a summary judgment having partly liquidated part of the debt. In that event the Applicant would normally acknowledge receipt of payment and accordingly pray for a lesser amount at the time of the hearing.

[17] I am still to hear a party raising as a defence the fact that it has made part payment and that in consequence the cause of action has changed. That argument is untenable and devoid of any merit and stands to be rejected.

[18] In the premises the application for summary judgment succeeds and I make the following order:

1. Summary judgment is granted.
2. The letters CC in the name of the Respondent are removed and substituted therefor with (Pty) Ltd; and
3. Respondent is to pay the costs.

B MASHILE
JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

Date of Hearing: 25/10/2023

Date of Judgment: 08/11/2013

Counsel for Applicant: Adv. Robert Scholtz
Instructed by: Meijers Attorneys

Counsel For Respondent: Adv. A. Scott

Instructed by: De Kooker Attorneys