

**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2021/26409

Reportable: NO

Of interest to other judges: NO

10 May 2022

In the matter between:

STRUCSTAR INVESTMENTS (PTY) LTD

(Registration No: 1998/021602/07)

and

Plaintiff/Applicant

ESKOM HOLDINGS SOC LTD

(Registration No: 2002/015527/30)

Defendant/Respondent

JUDGMENT

MOORCROFT AJ:

Order

[1] I make the following order:

1. *Summary judgment is granted against the defendant for:*

1.1. *Payment in the sum of R474 906.00 plus value added tax calculated at 15%, the total being R546 141.90;*

1.2. *Interest at the rate of 7% per annum on the amount of R474 906.00 from 8 November 2019 to date of payment.*

2. *Costs.*

[2] The reasons for the order are set below.

Introduction

[3] The two questions to be decided in this summary judgment application is

3.1 whether or not the plaintiff's claim is for a liquidated amount of money¹, and if so

3.2 whether the plaintiff is entitled to summary judgment.

[4] This first question in turn depends on whether the defendant unequivocally admitted the amount of the plaintiff's claim in the amount of R474 906.00 exclusive of value added tax at the rate of 15%².

The lease

[5] In 2012 the parties entered into a lease agreement³ in terms of which the plaintiff leased certain premises to the defendant initially for a period of 5 years. After the expiry of the initial term, the lease was relocated on a monthly basis on the same terms. The defendant finally vacated the premises in September 2019.

[6] The plaintiff alleges that during the currency of the lease the defendant caused material damage to the premises. This damage was quantified in the amount of R474 906.00.

[7] In terms of clause 9.3 of the agreement the defendant undertook to make good and repair any damage or breakages. Should the defendant fail to do so the plaintiff was entitled to perform the work and recover the expenditure from the defendant.

The claim for reinstatement of the premises

[8] The defendant was furnished with a spreadsheet setting out the costs for the reinstatement of the premises in terms of the contract following an inspection of the premises on 2 October 2021. The total amounted to R474 906.00 for all works, to

¹ See Rule 32(1)(b). See also Van Loggerenberg and Bertelsmann *Erasmus: Superior Court Practice* vol 2, D1-379.

² It is common cause that the plaintiff is a registered VAT vendor. ³ Annexure "POC6" to particulars of claim (Caselines 001-39).

which was added various additional amounts for supervision and project management. These additional amounts are not claimed in the action.

[9] On 25 October 2019 the plaintiff wrote to the defendant and provided it with the aforesaid spreadsheet. This was done under cover of an email, the relevant parts of which read as follows:

“Please find attached the pricing. Please bear in mind that Eskom did very little if any maintenance over the leased term of 12 years on this property and this is clear given the poor state of the premises.

... All risk will be on us and there will be no comebacks to Eskom with regard to price increases, quality of work, measurement discrepancies or delays in the time to complete the works ie this will be in full and final settlement of reinstatement claims.”³

[10] On 31 October 2019, Eskom responded and wrote that:

“The received quotations for the required work appear reasonable and can be agreed to; thank you.”

10.1 The correspondence then went on to query the project management fee on the amount of the works and made it clear that the defendant could not accept the management fee *“as it is far beyond what we normally pay for project management fees. We hereby propose 8%”*.

10.2 The defendant also queried other charges such as rental cost for November 2019.

10.3 What was conceded was that there was required work, that the quotations appeared reasonable, and the amount could be agreed to. This was a reference to the amount of R474 906.00.

³ See Caselines 011-83.

[11] On 4 November 2019 the defendant again wrote to confirm that the management fee of 23% could not be agreed to and that rental for November 2019 was also disputed. The letter then says:

“We are of the view that the quoted works, plus an 8% project management fee is fair.”

[12] The ‘quoted works’ is a reference to the quote for R474 906.00. The defendant offered a 8% management fee on the amount of R474 906.00.

[13] There was correspondence about the question whether or not the defendant was going to do the work itself and on 5 November 2019 the defendant informed the plaintiff that:

“Kindly be advised that we are not going to attend to the work ourselves. The intention was to agree to costs and pay you as the landlord for actual quoted costs.”

[14] On the same day the defendant wrote to say that:

“We agree to the work but we do not agree to the project management fee nor can we agree to the contingency fee.”

[15] The amount of R546 141.90 (inclusive of value added tax) is therefore a liquidated amount and one then turns to the question whether the plaintiff is entitled to judgment for this amount. In its affidavit resisting summary judgment, the deponent to the affidavit stated that:

“the defendant did not expressly agree to the cost of the alleged repairs. Eskom acknowledged that repair work is needed to the premises following Eskom

vacating the premises when the lease expired. Eskom, however, did not agree on the proposed amount for the repairs.”⁴

[16] The affidavit then goes on to say that while the defendant “*acknowledged that the quoted amount appears to be reasonable and that it was prepared to agree to the amount, no actual agreement on the amount was ever reached*”. It is then stated that the defendant “*had to first establish if the amount proposed by the defendant was market-related and comparable in relation to the alleged damages in this instance*”.

[17] When one has regard to the correspondence referred to above, it is clear that there was agreement on the amount of the damages in respect of certain repairs, but not in respect of a management fee, a contingency fee, and rental for periods after termination of the lease.

[18] The work was also expressly agreed to.

[19] Even if one were to interpret the correspondence to say that the amount of the claim was agreed but not the entitlement to have the work done (an argument defeated by the very words used in the correspondence) it nevertheless follows that the amount was a liquidated amount and the plaintiff set out its entitlement to payment of the liquidated amount satisfactorily in its affidavit while the defendant fails to set out an arguable defence.

[20] I conclude that the plaintiff is therefore entitled to summary judgment.

[21] The plaintiff made no attempt to prove the interest rate alleged and is therefore entitled only to *mora* interest in terms of the Prescribed Rate of Interest Act, 55 of 1975. The rate is 7%.

J MOORCROFT
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION
JOHANNESBURG

⁴ See CaseLines 100-5 and para 13 of the affidavit.

Electronically submitted

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of the judgment is deemed to be **10 MAY 2022**.

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INSTRUCTED BY:	FYFER INC
COUNSEL FOR DEFENDANT/RESPONDENT:	M MUSANDIWA
INSTRUCTED BY:	CHEADLE THOMSON & HAYSOM INC
DATE OF THE HEARING:	3 May 2022
DATE OF JUDGMENT:	10 May 2022