

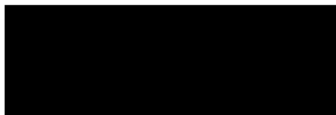


IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 39343/2015

- 1. Reportable: No
- 2. Of interest to other judges: No
- 3. Revised: Yes



Wright J
26 April 2023

In the matter between:

ROCKWOOD ELECTRICAL MOTORS CC

APPLICANT

And

AUTOCON SYSTEMS CC

RESPONDENT

Neutral Citation: *Rockwood Electrical Motors CC v Autocon Systems CC* (Case No: 39343/2015) [2023] ZAGPJHC 414 (26 April 2023)

JUDGMENT – WRIGHT J

WRIGHT J

1. During 2015 Rockwood issued summons against Autocon. Rockwood claimed an amount of money, to put it broadly, for materials supplied and work done of an electrical nature. Related costs were sought.
2. Autocon is yet to plead. The papers are replete with amendments, attempts at amendments, objections thereto, exceptions, Rule 30A notices, much correspondence between the opposing attorneys and the swapping of affidavits in which the attorneys take issue with each other.
3. On 24 November 2020, Mia J upheld a second exception by Autocon to Rockwood's seemingly amended declaration. My learned sister ordered Rockwood to "*amend its Declaration to set out with specificity the amounts making up [Rockwood's] claims with regard to the charges set out in the invoices annexed to [Rockwood's] Declaration as Annexures "REM2 to REM9"* .
4. In my view, it is in the interests of justice that I deal with the heart of the problem rather than attempting unnecessarily to dissect the minutiae.
5. Before me are three applications.
6. Firstly, an application by Rockwood, dated 26 May 2021 for condonation of the late delivery of a notice of intention to amend dated 5 January 2021 consequent upon the order of Mia J. This application is not opposed by Autocon and it has been agreed that each side should carry its own costs. The lateness was a few days at most and there is no prejudice to Autocon. The lateness must be condoned.

7. Secondly, a Rule 30 A counter-application by Autocon. It is common cause that the only issue here now is the question of costs. The Rule 30A counter-application apparently became moot after Rockwood delivered its condonation application referred to above.
8. Thirdly, the latest attempt by Rockwood to amend its declaration as set out in its notice of intention to amend dated 5 January 2021. This is the real issue before me.
9. In the declaration before Mia J on exception by Autocon, Rockwood had alleged "*a partly written partly verbal agreement.*" A copy of the alleged verbal part was attached to the declaration. The declaration sets out the required work and alleged compliance by Rockwood. A "*total charge*" was alleged in the sum of R 680 411,70. A verbal amendment to the agreement was pleaded relating to additional work and supplies. These included further work to be done and material supplied. It was also alleged that Autocon would be liable for the plaintiff's usual charge or a reasonable charge. It was further alleged that Autocon would be liable for Rockwood's usual or reasonable charge for transport, accommodation and preliminaries and general. Rockwood then referred to eight invoices, each with its own total. Rockwood then alleged two credit notes with specific amounts. Payments by Autocon of R250 991,59 were alleged. A balance of R426 854,66 was claimed. The real problem, it would appear was that the eight invoices, and accordingly the declaration, did not set out with sufficient detail how the figures for material, labour, accommodation, travel and p's and g's were arrived at. Hence, the upholding of the second exception by Mia J.
10. The amendment before me, dated 5 January 2021, seeks to delete the old declaration and replace it with a new one. The new declaration reduces the amount claimed to R374 490,32. The partly written and partly oral agreement is now alleged to be oral. No further agreement or altered agreement is now alleged. The claim is now as per one invoice less the two credit notes previously pleaded. No payments by Autocon are alleged as was the case in the old declaration.

11. The new declaration pleads the supply of material and services during the period March to June 2014 as reflected in an invoice dated 27 March 2014 and annexed to the new declaration. In my view, the invoice contains great detail. Reference is made in the invoice to a spreadsheet regarding labour charges. The spreadsheet details dates, names of workers, what they allegedly did and the rate applicable. Whether or not the detail is right or wrong is not something which should deter the amendment sought.
12. Claims for accommodation, travel and p's and g's appear to have been dropped.
13. Autocon suggests that in effect the new declaration seeks to withdraw admissions made by Rockwood in the old declaration. This argument is wrong in law. The legal basis for the claim is pleaded differently but it is no more than that. Autocon is not prejudiced by the amendment sought.
14. It is in the interests of justice that the matter now moves at a faster pace.
15. In my view, costs in all three matters before me should be carried by each party. Both sides appear not to have moved proceedings as speedily as they could have.

ORDER

1. Rockwood is granted condonation for the late delivery of its notice to amend dated 5 January 2021.
2. Rockwood may amend its declaration as per its notice to amend dated 5 January 2021.
3. The parties will carry their own costs in relation to Rockwood's condonation application, Rockwood's intended amendment dated 5 January 2021 and Autocon's R30A counter- application dated 30 April 2021 and annexed as NOM-CA to an affidavit of Mr Xavier deposed to on 30 April 2021.



GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 26 April 2023

DELIVERED : 26 April 2023

APPEARANCES

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