IN THE HIGH COURT OF SOUTH AFRICA, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

13/05/2011

CASE NO. 6759/2010

In the matter between:-

COMPENSATION SOLUTIONS (PTY) LIMITED — Plaintiff

and

COMPENSATION COMMISSIONER — First Defendant

DIRECTOR GENERAL OF THE DEPARTMENT OF LABOUR OF THE NATIONAL GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA — Second Defendant

JUDGMENT

KEMACK AJ

1. This is an application for summary judgment in terms of Uniform Rule 32(1)(b), for a liquidated amount in money.

2. As stated by Griesel J in Tredoux v Kellerman 2010 (1) SA 160 (CPD), at paragraph 18: "*a liquidated amount of money is an amount which is either agreed upon or which is capable of 'speedy and prompt ascertainment' or, put differently, where ascertainment of the amount in issue is 'a mere matter of calculation*"'. See also the cases cited in Erasmus, Superior Court Practice, B1-210, footnote 4

3. In its particulars of claim, the plaintiff claims R29,871,595, the total of individual sub-claims exceeding 21,000 in number, set out in a 464 page schedule attached to the particulars of claim. The debts go back at least as far as 21 October 2006, the date of the first entry, and the schedule includes entries as recent as October 2010. The vast number of individual sub-claims makes these individual sub-claims incapable of speedy and prompt ascertainment for purposes of summary judgment.

4. The plaintiff's cause of action against the defendants is pleaded as an obligation arising from an agreement, made an order of court in earlier proceedings under case number 35047/2009, which is annexure "POC2" to the particulars of claim.

5. The plaintiff pleads that in terms of this order, the defendants were obliged to process, validate and effect payment of validated medical accounts within 75 days of the acceptance by the first defendant of claims for compensation under the Compensation Act, by employees resulting from injury while on duty, and that the schedule to the particulars of claim refers to claims submitted by the plaintiff and processed and validated by the defendants without making payment after 75 days in breach of the order.

6. In paragraph 11 of the particulars of claim, the plaintiff expressly pleads that: "*as is apparent from annexure 'POC3', the First and Second Defendants are indebted to the Plaintiff in terms of the*

provisions of the aforesaid Court Order as at 31 January 2011 in the sum of R29,871,595.00 which amount is currently due, owing and payable by the first and second defendants to the plaintiff together with interest thereon as set out below". This is the plaintiff's cause of action.

7. The plaintiff seeks interest on each individual sub-claim from the 76th day after validation, until payment.

8. In the summary judgment application, the plaintiff seeks payment of a balance of R22,173,427, plus interest, on the basis that R7,698,168 was paid after the issue of summons.

9. The agreement, annexure "POC2" to the particulars of claim, was made an order of court on 31 July 2009. *Inter alia* it states:

   9.1. "*The First Respondent shall process medical accounts submitted to him in relation to medical aid provided by employees by medical practitioners, as envisaged in the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ('the Act') within a reasonable time from the submission of such accounts*" (paragraph 1 thereof);

   9.2. "*In respect of the submission of a medical account relating to a claim which has been accepted (i.e. the First Respondent has accepted liability for the claim), and in respect of a medical account submitted after such acceptance, a* *reasonable time for the First Respondent to process, validate and effect payment of such validated medical accounts is within 75 days of the acceptance of a claim, or where this occurs after acceptance of the claim, the date of submission of such accounts. For avoidance of doubt, it is recorded that in respect of medical accounts submitted before acceptance of a claim, the 75 days will be calculated from the date of acceptance of the claim*" (paragraph 2 thereof);

9.3. "*The First Respondent shall process the backlog of medical accounts referred to in annexure JL12, at page 88 of the Record, in this application, by 30 October 2009*" (paragraph 3 thereof);

9.4. "*The First Respondent shall pay the Applicant interest at the current legal rate of interest (being 15.5% per annum) on all currently outstanding medical accounts to which the letter of demand dated 25 March 2009 (Record, pages 88/9) relates, from such date of demand to the date of payment of each such respective account*" (paragraph 4 thereof);

9.5. "*This agreement shall apply equally to the Second Respondent as the party principally responsible for compliance with the obligations and performance of the functions set out in the Act*" (paragraph 7 thereof).

10. Annexure "JL12" to which the agreement refers, is not part of the papers before the court in this action. It is accordingly not possible to ascertain the backlog of medical accounts to which it refers, for purposes of this summary judgment application.

11. Similarly, the letter of demand dated 25 March 2009 to which reference is made in paragraph 4 of the order, is not before the court in this application, and it is not possible to identify the "*currently outstanding medical accounts*" to which reference is made in paragraph 4 of the order, for purposes of this summary judgment application.

12. The opposing affidavits filed on behalf of the defendants, include affidavits by three deponents. Only one of the three directly sets out details of the defences raised by the defendants. It is signed by Mr. Jan Ralabakeng Madiega, the Deputy Director of the Medical Directorate in the office of the Compensation Fund.

13. The defences raised by Mr. Madiega may be summarised as follows:

    13.1. The amount of R29,871,595 is disputed;

    13.2. The R22,173,427 claimed in the summary judgment affidavit is disputed;

    13.3. There have been substantial payments to the plaintiff since 15 March 2011 when the summary judgment affidavit was signed;

13.4. Claims detailed in schedules annexed to the summary judgment opposing affidavit marked "JRM1.1" and "JRM1.2" totaling R20,987,633.59, have been paid by electronic fund transfers to individual service providers ("the paid claims");

13.5. R1,162,443.02 is conceded, but was not paid because the Fund had taken the view that it had already paid in excess of what was owing, had blocked the payment system, and had inadvertently not removed the block (referred by the defendants as "*the provisional payments*", and set out in annexures "JRM2.1" and "2.2" to the summary judgment affidavit);

13.6. An admitted indebtedness of R21,234.99 ("the cheque payments") is due to service providers who had not provided their banking details when the Commissioner decided to replace cheque payments with electronic fund transfers to avoid fraud;

13.7. Claims totaling R1,726.98 were to be paid on 28 April 2011 ("claims to be paid 28/04/2011"). There was no proof of payment of these amounts when the application came before the court on 3 May 2011.

14. Regarding the "cheque payments", the defendants give no details of

any obligation on the plaintiff to provide individual service providers' banking details for electronic payments, or of any attempts by the defendants to obtain these details. As a result the defendants have not raised a valid and *bona fide* defence in respect of the admitted category of "cheque claims".

15. The difficulty in speedily and promptly ascertaining and calculating the plaintiff's sub-claims, is partly ameliorated by the defendants' affidavit acknowledging the provisional payments, the cheque payments, and the claims to be paid 28/04/2011. In this regard, Griesel J stated in Tredoux v Kellerman at paragraph 19: "*furthermore, it has been held that the court is entitled to have regard to the defence raised by a defendant in opposition to a claim for summary judgment, in deciding whether or not the claim is liqudated*".

16. To the extent that the amounts of certain portions of the plaintiff's overall claim have been categorised and conceded by the defendants, for purposes of summary judgment these conceded amounts are capable of speedy and prompt ascertainment.

17. The total of the conceded amounts is R1,185,404.99.

18. On behalf of the plaintiff, Mr. Rorke submitted that the defendants have erred by basing their defence on a deduction of their paid claims, provisional payments, cheque payments and claims to be paid 28/04/2011, from the balance of R22,173,427 claimed in the summary

judgment application, rather than from the initial claim of R29,871,595 in the particulars of claim. Mr. Rorke submitted that even taking into account the amounts raised under these categories in the defendants' opposing affidavit, a balance of R3,409,921 remained of the R29,871,595 originally claimed, for which balance summary judgment should be granted.

19. This approach does not solve the problem of speedily and promptly ascertaining liability on each of the thousands of individual sub-claims, and the *mora* date on each sub-claim for purposes of interest. It is simply not possible to deal with each of the plaintiff's thousands of individual sub-claims and the interest claimed on them, for purposes of a summary judgment application based on claims for liquidated amounts in money.

20. This difficulty is compounded by a lack of clarity from both the plaintiff's and defendants' papers, regarding whether the totals of the defendants' four categories include or exclude the R7,698,168 payment alleged in the plaintiff's summary judgement application, which does not indicate to which sub-claims this amount should be allocated

21. In the court's view, however, the plaintiff is entitled to summary judgment for the amounts totaling R1,185,404.99 conceded by the defendants, and in respect of which no evidence of payments has been placed before the court.

22. Although this conceded capital amount is ascertainable, the individual sub-claims and due dates making up this amount are not ascertainable from the documents before the court, as a result of which interest claims on the sum of R1,185,404.99 are not suitable for the granting of summary judgment.

23. In terms of Uniform Rule 32(6), if on the hearing of a summary judgment application it appears that the defendant is entitled to defend as to part of the claim, the court shall give leave to defend to the defendant as to part of the claim and enter judgment against him as to the balance of the claim.

24. The amounts involved and the complexity of the issues justified the appearance of senior counsel, Mr. Rorke SC for the plaintiff and Mr. Mtshaulana SC (with Ms Hassim) for the defendants.

25. Summary judgment is granted against the defendants jointly and severally for payment of R1,185,404.99, and costs including the cost of senior counsel.

26. The defendants are granted leave to defend the balance of the plaintiff's claims, including the claims for interest on the sum of R1,185,404.99 which interest claims stand over for determination by the trial court.

Kemack AJ
13 May 2011