



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 5073/2019

In the matter between:

MALUTI PLANT CRUSHERS CC

Plaintiff

and

SEDTRADE (PTY) LTD

Defendant

JUDGMENT BY: REINDERS, J

HEARD ON: 23 AUGUST 2023

DELIVERED ON: 24 NOVEMBER 2023

- [1] The plaintiff (Maluti Plant Crushers CC – “Maluti”) issued summons against the defendant (Sedtrade (Pty) Ltd – “Sedtrade”) for payment in the amounts of respectively R 4 701 134-00 (Claim A) and R 999 702-76 (Claim B). It is common cause that the parties had a business relationship which entailed that Maluti would supply crushed stone to be used by Sedtrade (a construction company with Mr Zaid Dockrat as its Chief Executive Officer [CEO]) in two of the latter’s road rehabilitation projects. The roads under rehabilitation was that between Sasolburg and Heilbron (the “Heilbron project”) and the other from Twickenham to Polokwane Road (the “Limpopo project”).

- [2] To cater for the needs of the Heilbron project (and on instruction of Sedtrade), Maluti had established a crusher plant (borrow pit) during March 2018 at site near Heilbron where certain of its equipment were used, including a plant crusher and a diesel bowser trailer. It is also not in dispute that a meeting (the "meeting") was held between the parties at the head offices of Sedtrade in Vereeniging on 29 August 2018 to resolve certain issues. The persons present at the meeting were, on behalf of Sedtrade, Messrs Mike Valente (contracts manager), Malcolm Victor (site agent), Sudesh Manilall (quantity surveyor) and Nazir Kathrada (legal advisor). Mr Drake Ahadji represented Maluti. The Heilbron contract was later terminated and site de-establishment had to take place.
- [3] In opposing the relief claimed by the plaintiff defendant, amongst others, raised a special plea of a compromise that was reached between the parties in respect of Claim A and requested this court to dismiss this claim with costs. At the onset of the trial the parties called upon me to adjudicate on the special plea first.
- [4] I find it apposite to quote (verbatim) the special plea of the defendant, as it stood at the time:

"1. Special Plea: Compromise of Claim A:

- 1.1 The plaintiff instituted two claims against the defendant, namely Claim A for payment of R 4 701 134.00 and Claim B for payment of R 999 702.76.
- 1.2 Claim A is in respect of alleged contractual damages suffered by the plaintiff on the Sasol to Heilbron Road rehabilitation project, commonly referred to between the parties as "the Heilbron-project" and claim B is in respect of alleged contractual damages suffered by the plaintiff on the Twickenham to Polokwane Road Rehabilitation Project, commonly referred to as "the Limpopo Project".

1.3 On 29 August 2018 at Vereeniging, the defendant represented by Mr Zaid Dockrat and the plaintiff represented by Mr Drake Ahadji concluded a written settlement agreement in respect of the plaintiff's claim against the defendant on the Heilbron-project. A copy of the written agreement is appended marked "ZD1". The express terms, alternatively tacit terms of the settlement agreement are:

1.3.1 Subject to the Defendant making payment to the Plaintiff of R 600 000-00 on 30 August 2018 in respect of the Limpopo project:

1.3.1.1 The dispute between the parties in relation to purchase orders number 23054 and 2745 on the Heilbron-project will be resolved subject to the defendant handing over ownership of a 1000 l Diesel Bowser trailer to the plaintiff;

1.3.1.2 Defendant to transport the plaintiff's yellow plant located at the Heilbron borrow pit to the plaintiff's premises in Bloemfontein, on the plaintiff's written request and at the defendant's cost, subject to the availability of the defendant's lowbed truck; and

1.3.1.3 The balance of the moneys due by the defendant to the plaintiff in respect of the Limpopo-project will be paid at a later date, still to be agreed.

1.4 Defendant complied with all the provisions of the settlement agreement

1.6 (*sic*) In the circumstances the dispute between the plaintiff and the defendant in respect of claim A – the Heilbron project – is settled."

[5] Annexure "ZD1" is a letter prepared by Sedtrade's legal advisor, signed by Mr Dockrat and send to Mr Ahadji via electronic mail communication (email) for his signature. Of importance are the following paragraphs:

"3. I record below resolution of the matters in dispute.

4. Subject to Sedtrade making payment to Maluti in the sum of R 600 000.00 in respect of the Limpopo Project by tomorrow morning, 30 August 2018:

- 4.1 the dispute relating to Heilbron (Purchase Order Numbers 23054 and 27475) will be resolved subject to Sedtrade handing-over ownership of a 1000 liter (sic) diesel bowser trailer to Maluti;
- 4.2 Sedtrade will transport Maluti's last yellow plant located at the Heilbron borrow pit and deliver it to Maluti's premises in Bloemfontein, at Sedtrade's cost. The date of delivery will be at Maluti's written request, and according to the availability of Sedtrade's low-bed truck;
- 4.3 The balance of the monies due to Maluti by Sedtrade in respect of the Limpopo Project will be paid at a later date, still to be agreed.

5. The above is in full and final settlement of the Heilbron dispute."

Paragraph 5 was scratched through by Mr Ahadji, signalled at the end of that sentence, signed at the bottom of the document and duly returned.

[6] Subsequent to the testimony of Mr Dockrat (to be dealt with herein below) the defendant, without objection thereto, filed its amended special plea. Paragraph 1.3 of the initial special plea was substituted with the following:

"1.3 On or about 29 August 2018 at Vereeniging, Mr Zaid Dockrat representing the Defendant and Mr Drake Ahadji representing the Plaintiff, both duly authorised, concluded an oral settlement agreement in respect of the Plaintiff's claim against the Defendant on the Heilbron project. The express, alternatively implied, in the further alternative tacit terms of this agreement were:"

The remainder of the special plea as quoted in paragraph 4 remained the same.

- [7] The plaintiff replied to the special plea and admitted the content of the letter dated 29 August 2018 (the "letter") attached to defendant's plea. It denied the said letter to constitute a settlement of all defendant's indebtedness to plaintiff and denied that defendant performed in terms thereof. It is averred that the payment and delivery of the diesel bowser would have settled part of plaintiff's claim against the defendant but not all claims and not plaintiff's claim for damages against defendant for the Heilbron project. It is pleaded that the agreement was not in full and final settlement in respect to all claims between the parties and that it did not settle the Heilbron project nor the Limpopo project.
- [8] To prove its special plea of a compromise the defendant called Mr Dockrat (CEO) and Mr Manilall, the projects manager of the Heilbron project at the time.
- [9] The essence of Mr Dockrat's testimony in the end entailed that he was not present during the meeting when the averred settlement was concluded between the parties, arriving only at the end of the meeting when he was informed by Mr Valente of such a settlement. He "thought the matter had been settled as we shook hands on it". According to him after having shaken hands with Mr Ahadji, Mr Ahadji complained to him about Maluti's diesel bowser which was damaged during public unrest at the time. The witness was referred to an email dated 29 August 2018 which on face value was sent by Sedtrade's legal advisor Mr Kathrada at 18h40 to the plaintiff. The mail refers to the signed letter referred to in his (unamended) special plea and states: "With regard to you deleting paragraph 5, I cannot recommend to Zaid to make payment of the R 600k as Sedtrade will be at risk in respect of Heilbron as it's not settled". Despite the aforementioned advice, he however decided to effect such payment the following day as he wanted to honour the agreement.

- [10] According to Mr Manilall's testimony the meeting dealt with a dispute between the parties relating to the quality of the crushed stone provided by Maluti. During cross-examination he conceded that he was unable to recall whether the main issue discussed at the meeting related to a dispute on payment to be made in respect of the Limpopo project. He could likewise not deny that Mr Ahadji said during the meeting that he did not agree that the settlement was a final settlement between the parties.
- [11] Mr Ahaji testified that the plant hire site was established in March 2018 and Maluti's equipment remained on the site for a period of six months. He was the one who requested the meeting because of Sedtrade's lack of payment and arrears on the Limpopo project and the issue of Maluti's equipment being at risk (and in fact damaged in respect of the diesel bowser that was burnt down) during a public unrest. Mr Katrada and Mr Valente It was also agreed that Sedtrade would return Maluti's equipment and replace the diesel bowser. him that Sedtrade would pay R 600 000-00 in respect of the Limpopo arrears. Although he agreed therewith, it was most certainly not a final settlement as Mr Valente raised the issue that Maluti had to be compensated for the Heilbron project. He had invoiced Sedtrade on the Heilbron project and was simply not prepared to merely write off the outstanding amounts due. According to him Maluti's equipment tampered with and damaged had to be taken to Bloemfontein to be repaired. It was agreed that Sedtrade will replace the damaged diesel bowser that was burned down during the unrest.
- [12] It is common cause that the defendant alleges a compromise (*transactio*). The defendant therefore avers a substantive contract which exists independently of the *causa* that gave rise to the compromise. The onus to prove on a balance of probabilities a compromise is on the party who raises same – *in casu* the defendant.

See in general ***Gollach and & Gomperts (1967) (Pty) Ltd v Universal Mills & Produce Co (Pty) Ltd***¹.

Recently in ***The Road Accident Fund v Taylor and other matters***² it was held that:

“The essence of a compromise (*transactio*) is the final settlement of disputed or uncertain rights or obligations by agreement. Save to the extent that the compromise provides otherwise, it extinguishes the disputed rights or obligations.”³

- [13] As stated in paragraphs 9 and 10 above, Mr Dockrat were not present during the negotiations and the alleged settlement, and only arrived at the conclusion of the meeting. Likewise, Mr Manilall could not confirm a final settlement and the terms thereof. In my view it has to be accepted that on 29 August 2018 Plaintiff before signing the letter, deleted paragraph 5 thereof. On receiving the signed document with the deleted paragraph 5, defendant’s legal advisor himself wrote an email to plaintiff stating that he could not recommend to the defendant to make payment of the R 600 000-00 as defendant would be at risk in respect of Heilbron “as it is not settled”. As mentioned, defendant ultimately did not rely on the disputed written agreement. On the contrary, it expressly abandoned it in the amended special plea and relied on an oral settlement agreement with the terms as stated. Mr Dokrat testified that he only arrived at the end of the meeting when he was told that there was a settlement. His evidence most definitely did not prove an oral compromise as averred in the amended special plea, let alone what the terms of such transaction were to be. The onus was on the defendant to convince me of the alleged compromise and the terms thereof which was denied by plaintiff in testimony.

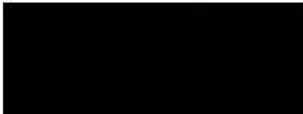
¹ 1978 (1) SA 914 (A).

² (11361140/2021) [2023] ZASCA 64 (8 May 2023).

³ At para [36] thereof.

- [14] The result is that I am not convinced on probabilities that the parties settled and/or compromised on the basis and terms as set out in the amended special plea. Accordingly, the following order is made:

The defendant's special plea of a compromise in respect of Claim A is dismissed with costs.


C/REINDERS, J

On behalf of the plaintiff
Instructed by:

Adv PJ Zietsman SC
Noordmans Attorneys
BLOEMFONTEIN

On behalf of the defendant:

Adv S Grobler SC
Instructed by:
Raees Chothia Attorneys
c/o Rossouws Attorneys
BLOEMFONTEIN