



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 No: 2152/2013

In the matter between:

LOUHAN CIVIL (PTY) LTD / HIGH POINT JV

Plaintiff

and

ACL GROUP (PTY) LTD

Defendant

[Registration Number 2007/008763/07]

CORAM: MOROBANE, AJ

JUDGMENT: MOROBANE, AJ

HEARD ON: 04 JUNE 2019

DELIVERED ON: 27 JUNE 2019

[1] In these action proceedings the plaintiff claimed damages against the defendant arising from a breach of contract. The dispute relates to a disagreement between the parties about the execution of a subcontract for the horizontal drilling of a tunnel under the Bloemfontein – Thaba Nchu Road.

- [2] The parties concluded a partly written and partly oral agreement originally contained in a Purchase Order delivered by the plaintiff to the defendant for the amount of R1 139 606.70 (the "Agreement"). Subsequently, the purchase order was amended for the amount R488 182.20 which constituted the final written part of the agreement between the parties. In terms of the agreement, the defendant would do a horizontal drilling for a sewer main connection to connect the Grassland and Bloemspruit areas in Bloemfontein. The defendant's services were defective as they could not be executed for purposes for which the services were to be delivered without extensive repairs and replacement.
- [3] Judgment was delivered by my sister Murray, AJ on 17 December 2015 in which the plaintiff's claim succeeded on the merits. At this stage, the only issue for a determination is the quantum.
- [4] On 1 April 2019, the defendant's attorneys of record filed their notice of withdrawal and also furnished the defendant's last known address. The matter was set down, but there was no appearance of the defendant during the trial. Two witnesses testified on behalf of the plaintiff and their testimony is summarised below.
- [5] The first witness, Johannes Hendriks Ceronio, is the plaintiff's chief executive officer and was personally involved in the project. He testified that the defendant was called upon to rectify the defective work, but failed to do so. The maximum defect was 500 mm below the sewer course with no natural pressure or fall. In order to minimise the company's liability, plaintiff appointed an

alternative contractor to remedy the defects. After the latter were located, the rest of the pipeline was cut into pieces and a 'regROUT' was done. He further testified that the costs incurred by the plaintiff were computed on the market norms and could not have been prepared for less.

- [6] Casper Nicolaas Kempff, a professional engineer, has over 30 years of experience in the field and an engineering expert. He confirmed his report and highlighted his summaries. He testified that the level of the sewer line was not straight and had to be re-aligned; it was most appropriate to remedy the work at the time; the prices were set by the government and the sector; he reviewed the costs and found them to be in accordance with the industry norms; the costs were justified and the prices reasonable; and the total price is fair as it could not have been done for less. He testified further that horizontal drilling is risky where the formation differs and it could not be done next to the defect, unless you have a specialised services to do so.
- [7] The witnesses were honest and truthful during their testimony. I have no reason to doubt them and I accept their testimony.
- [8] Only the plaintiff's evidence is before me to consider and make a determination of the quantum. It is also uncontroverted and I have no reason to reject the same. In the light thereof, the plaintiff has made out a case for judgment on the quantum as claimed.
- [9] In the premise the following order is made:

1. Judgment is granted against the defendant for payment of the amount of R976 545.51.
2. Interest on the amount of R976 545.51 at the rate of 15.5% per annum *a tempore morae*.
3. The defendant to pay the costs.

V.M. MOROBANE, AJ

On behalf of the plaintiff: Adv. MC Louw
Instructed by:
Azar & Havenga Inc.
BLOEMFONTEIN

On behalf of the defendant: BH Mellet (Director)
Instructed by:
ACL Group (Pty) Ltd
BLOEMFONTEIN