

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

Case number: 1153/2014

In the matter between:

IMMACULATE TRUCK REPAIRS CC

Plaintiff

and

CAPITAL ACCEPTANCES LTD

Defendant

CORAM: RAMPAL, J

HEARD ON: 17 NOVEMBER 2015

JUDGMENT BY: RAMPAL, J

DELIVERED ON: 14 JANUARY 2016

[1] These were action proceedings. The plaintiff caused the summons to be issued against the defendant on 13 March 2013. The relief sought was payment of the sum of R136 287.48, interest thereon at the rate of 15.5% per annum a *tempore morae* and costs. The action was defended.

[2] The hearing started on Tuesday 17 November 2015. The plaintiff led the evidence of Mr Stanton, its expert witness. After his testimony the plaintiff closed its case. The defendant did not

open its case. Instead it applied for an order of absolution from the instance. The ground on which the absolution application was based was that the plaintiff had not proved the enrichment of the defendant. The plaintiff signalled its intention to oppose the application.

- [3] The plaintiff's counsel was not ready to instantly argue the matter. In view of that, the plaintiff requested that the matter be postponed to enable its counsel to prepare and file written heads of argument. I acceded to the plaintiff's request. Consequently I fixed a deadline for the filing of heads of argument by the plaintiff, granted the defendant leave to file further heads of argument, if so advised, directed that there would be no further oral argument, postponed the matter *sine die*, and ordered the plaintiff to pay the costs occasioned by the postponement.
- [4] The plaintiff filed its original heads of argument on 1 December 2015. The defendant filed its heads of argument on 2 December 2015. The plaintiff supplemented its original heads and filed its supplementary heads on 2 December 2015. The defendant filed its heads of argument in reply on 14 December 2015.
- [5] Mr Du Plessis, counsel for the defendant, submitted that the plaintiff had adduced no evidence to show the enrichment of the defendant or evidence to prove the quantum in the event that there was enrichment shown. Therefore, counsel urged me to grant absolution from the instance with costs.

- [6] Mr Olivier, counsel for the plaintiff, differed. He contended that the plaintiff had provided more than sufficient evidence to show that it incurred necessary expense in order to preserve the plaintiff's motor vehicle. He then submitted that the defendant had, therefore, been enriched at the expense of the plaintiff. Accordingly counsel urged me to dismiss with costs the defendant's application for absolution from the instance.
- [7] I have considered the evidence and the argument. The undisputed evidence of the plaintiff's witness was that the plaintiff and a third party, Touro Trucking (Pty) Limited, concluded an oral agreement; that the plaintiff had to do certain repairs to the truck; that the plaintiff was only required to repair but not to preserve the truck; that the plaintiff, on its own accord, towed the truck from the roadside scene of the breakdown to its premises where the truck was repaired; that the plaintiff performed the necessary work in order to repair the engine of the truck; that the plaintiff incurred certain costs in connection with the purchase of spares and the towing of the truck, and that such costs were useful expenses. Mr Olivier argued that since the defendant, as the owner of the truck, was thereby enriched and the plaintiff impoverished, and that those costs were implicitly necessary expenses and therefore claimable.
- [8] At this juncture, I am not persuaded that there is no *prima facie* case of enrichment for the defendant to answer. I would, therefore, dismiss the defendant's application for absolution from the instance.

[9] I make the following order:

8.1 The application for absolution from the instance is dismissed with costs;

8.2 The plaintiff is directed to immediately set the matter down again for further hearing.

M.H. RAMPAL, J

On behalf of the plaintiff: Adv. J. L. Olivier
Instructed by:
Saffy & Associates
BLOEMFONTEIN

On behalf of the defendant: Adv. D. T. v R. du Plessis SC
Instructed by:
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