

REPUBLIC OF SOUTH AFRICA

THE NORTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO. 20293 / 2015

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
1/07/2015 DATE <i>[Signature]</i> SIGNATURE	

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001
2015 -07- 10
JUDGE'S SECRETARY REGTERS KLERK GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

In the matter between:

COMPENSATION SOLUTIONS (PTY) LTD

PLAINTIFF

And

THE COMPESANTION COMMISSIONER

FIRST DEFENDANT

DIRECTOR-GENERAL OF THE DEPARTMENT OF

LABOUR, NATIONAL GOVERNMENT OF THE

REPUBLIC OF SOUTH AFRICA

SECOND DEFENDANT

 Judgment

SIBUYI A J

- [1]. This is an opposed application for summary judgment in respect of monies allegedly due to the plaintiff in terms of the Compensation for Occupational Diseases and injuries Act, Act 130 of 1993 ("COIDA") read with the court order granted by Makhafola AJ on 31 July 2009 in a previous matter between the same parties under case number 35047 / 09 ("the court order").
- [2]. The plaintiff conducts the business, *inter alia*, of factoring the accounts of medical service providers that are payable by the defendants from the Compensation Fund established in terms of section 15 of COIDA. The plaintiff claims that the first defendant is required by COIDA to process and validate such medical accounts and to effect payment of the validated accounts to the plaintiff. In terms of the court order the defendants are obliged to process and validate medical accounts and effect payment of such medical accounts within 75 days of the acceptance of a claim. The first defendant has paid R 7 566 347. 42 of the claimed amount of R 17 501 764,51 since date of summons and the plaintiff is now seeking judgment for the sum of R 9 935 417. 08, being the balance due and payable by the defendants.
- [3]. In due course the defendants entered appearance to defend, the plaintiff applied for summary judgment and thereafter the defendants filed an opposing affidavit wherein they denied liability. The defendants raised and argued several defences to the plaintiff's claim. By reason of the view I am going to take on the matter it is not necessary for me to make any finding in respect of each defence raised by the defendants.

[4]. Assuming in favour of the plaintiff and without deciding the disputed issue; that the court order relied upon by the plaintiff applies to this matter, of importance is that "the defendants are obliged to process submitted medical accounts within reasonable time from the date of submission of such accounts¹. It is recorded in the court order that in respect of medical accounts submitted after the defendants have accepted liability thereon, a reasonable time to process, validate and effect payment on such validated medical accounts is within 75 days from the date of acceptance of the claim².

[5]. It is alleged and contended on behalf of the plaintiff that the schedule of accounts attached as "POC3" to the particulars of claim show that the medical accounts claimed have been processed and validated, but not paid by the defendants within the 75-day period³. The defendants, on the other hand contend among other grounds, that the claims are not due and payable as they either have not been investigated, validated, and or approved for payment⁴. I find nothing in annexure "POC3" indicating that plaintiff's claims were validated and or approved for payment by the defendants. Due to the voluminous nature of the claims, the plaintiff should have identified each validated and approved claim. It did not. Though it is possible that some of the claims may have been validated and approved for payment, the plaintiff failed to identify such validated and approved claims in its papers. Had it done so, it could have been entitled to seek summary judgment on such validated and approved claims.

¹ See paragraph 1 of the court order.

² See paragraph 2 of the court order.

³ See paragraph 9 of the particulars of claim.

⁴ See paragraphs 14, 15 and 16 of the opposing affidavit.

[6]. The other problem is that the court order does not provide any remedy in the event of the defendants failing to process, validate and effect payment on validated medical accounts within 75 days from the date of acceptance of the claim. I am of the view that the correct remedy for the plaintiff under those circumstances is to compel compliance with the court order and not to institute legal action for payment of unliquidated amounts. This is so because logically, in terms of the court order, an accepted claim will not necessarily be due and payable after the expiry of 75 days. It only becomes due and payable after it has been processed and validated.

[7]. At the summary judgment stage of proceedings the rule does not require a convincing defence by the defendant but a *bona fide* defence, which is good in law. The defendants' above-mentioned defence, if ultimately proved at the trial of the matter, would amount to valid defence in law to the plaintiff's claims. This being the threshold to overcome an application for summary judgment, summary judgment must be refused.

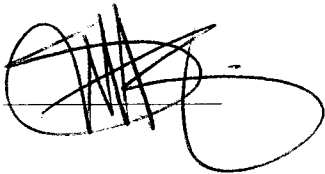
[8]. Summary judgment is an extraordinary and stringent remedy, which ought to be granted only if there is no doubt that the plaintiff, has an unanswerable case. However, if doubt exists then summary judgment should be refused⁵. In the light of the above, I find that the plaintiff in this matter has no unanswerable case.

⁵ See *Tesven CC and Another v South African Bank of Athens* 2000 (1) SA 268 (A) at 277H - 278A.

Therefore, I am satisfied that the defendants have a *bona fide* to the plaintiff's claims and summary judgment must be refused.

I accordingly order as follows:

- 1 Summary judgment is refused.
- 2 Leave is granted to the defendants to defend the action.
- 3 The costs of this application are to be costs in the cause.

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by several vertical strokes and a large loop at the end.

SIBUYI A J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

For the plaintiff	:	Advocate C. J. Welgemoed
Instructed by	:	Stegmanns Incorporated
For the defendants	:	Advocates S. S. Maakane SC, with M. Vimbi
Instructed by	:	The State Attorney, Pretoria
Date of hearing	:	5 June 2015