

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 4370 /2014

In the matter:

MANGAUNG METROPOLITAN MUNICIPALITY

Applicant

and

MALUTI PLANT HIRE CC

Respondent

JUDGMENT: MIA AJ

HEARD ON: 14 MAY 2015

DELIVERED ON: 2 JULY 2015

MIA AJ:

- [1] The applicant launched this application wherein it seeks an order that the respondent finalise repairs to and deliver certain equipment and machinery upon payment of certain monies by the applicant. The respondent opposed the application and filed a counter application in response to the applicant's application for delivery of the equipment. The counter application requests

similar relief as requested by the applicant save for the leave to sue by way of summons to recover storage costs for the equipment which is the subject of this application. It is necessary to furnish a brief background of the facts which gave rise to this application.

BACKGROUND

- [2] During June 2012, the applicant required repairs to be effected on a Caterpillar D7R Bulldozer-Fleet 1411. The applicant requested a quotation from three service providers as required by its supply chain policy. The respondent was the third service provider requested to provide a quotation. The respondent removed the bulldozer from the applicant's premises without obtaining permission from the applicant's fleet management services. The purpose of the removal, as advised by the respondent's Mr Drake Ahadji (Mr Ahadji) was to clean the bulldozer as it was too dirty to determine the damage to the undercarriage. The respondent furnished the applicant with an invoice for transporting the bulldozer and cleaning it. It also furnished a quote to effect repairs on the bulldozer. The applicant upon receipt hereof, took a decision to have the work done by Barlows Equipment (Barlows). When a representative of Barlows went to the respondent to collect the bulldozer from the respondent's premises, Mr Ahadji refused to release same until payment was made on the invoice for cleaning and transporting the bulldozer.

- [3] The applicant's representative recommended payment to the respondent on the particular invoice to enable Barlows to collect the bulldozer and commence the repair required. The applicant's representative communicated this decision to the respondent to ensure the release of the bulldozer. The respondent's representative refused to release the bulldozer and indicated that it intended to hold onto the property until it received payment on the invoice in relation to the bulldozer as well as other invoices in relation to repairs on other items of equipment, which amounts included rentals for equipment and storage costs. The request in relation to the bulldozer was issued in 2012. The respondent's invoices attached to the papers are dated 2014, approximately two years later after the bulldozer was collected from the applicant's premises.
- [4] The applicant refused to pay for rentals and this dispute forms the subject of a summons which has been issued by the respondent. The applicant indicated that it needed to inspect the equipment to ascertain whether the repairs had been effected before payment could be authorised. The applicant indicated it only became apparent in 2014 whilst consulting on the claim for collection of rentals that the equipment which is the subject of this application was not included in the instruction in relation to the rentals. The parties corresponded with each

other in relation to this matter and the applicant suggested certain proposals to resolve the matter in February 2014.

- [5] The applicant did not make payment on invoices issued as it sought to inspect the work prior to payment. There appears to have been a misunderstanding between the applicant and the respondent regarding the discussions that continued with regard to the other equipment. The applicant believed the invoices included the bulldozer which is the subject of this application because the respondent had made the release of the machines subject to the payment of rentals. The respondent did not. The applicant upon discovering this misunderstanding through its attorney issued a letter tendering payment and requesting confirmation that the machinery would be released. This was met with a threat to issue summons in respect of the invoice. The applicant still tenders payment of the invoices upon delivery of the machinery.
- [6] The respondent filed an opposing affidavit herein and counter application. The relief requested by the respondent in the counter application is for payment of the amounts which are tendered by the applicant in any event. On the respondents version the dispute which prevented the parties from finding each other in this matter is the invoice related to storage costs. The applicant sought to settle the matter on the basis that a

written agreement be drafted which reflected their agreement and that the issue of settlement of storage costs be addressed by way of an action. A proposed settlement was sent to the applicant by the respondent. No further progress was made in this matter as the issue of the storage costs still clouded the waters. The matter has now found its way before this court on the basis that each party requests substantially the same relief with neither party wanting to take the step necessary to realise their intention.

- [7] On the basis of the undisputed facts before me the applicant is entitled to recover its equipment upon payment of the amounts due to the respondent. The applicant did not dispute any of the invoices. The respondent is entitled to payment for services rendered. The issue of consequential damages raised by the applicant as well as the issue of recovering monies for rental and storage costs raised by the respondent are matters to be determined by way of action and this too has been conceded by both parties.

- [8] In view of the above and in order to pull the parties out of the stalemate they have created it is necessary that an order be made directing the course of action of the parties. In view of the facts above the applicant has been substantially successful in its application and it follows that costs should follow the cause.

ORDER

[9] In the result the following order is made.

1. The counter application is dismissed with costs.
2. The respondent is ordered to deliver the five hydraulic cylinders of the refuse Compaction Truck, the caterpillar D7R Bulldozer – Fleet 1411 and the Dresser Grader No 4780 to the applicant's premises within 14 days from the date of this order.
3. The applicant is ordered to pay the amount of R32944.86, R17 328.00 and R253 194.00 within 20 days from the date of this order.
4. The respondent is ordered to pay the costs of this application.

S. C. MIA, AJ

On behalf of the appellants: N W Phalatsi
Instructed by: NW Phalatsi Attorneys
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On behalf of the respondents: Adv P Zietsman SC
Instructed by: Matsepes Inc
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