

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA)

CASE NO: 35476/2013

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
18/9/2013	<i>E. K. Mashinani</i>
DATE	SIGNATURE

18/9/2013

In the matter between:

RIVERWALK TRADING 453 CC

T/A MINUTEMAN PRESS BEREA

PLAINTIFF/APPLICANT

and

COMPANY AND INTELLECTUAL

PROPERTY COMMISSION

DEFENDANT/RESPONDENT

J U D G M E N T

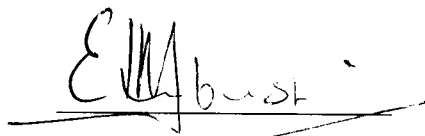
KUBUSHI, J

- [1] This is an application for summary judgment. What is at issue is whether the plaintiff's claim falls within the category of claims set out in uniform rule 32 (1).
- [2] The plaintiff's claim against the defendant is for services rendered. The parties entered into an agreement whereby the plaintiff would render services and goods to the defendant. The said services were to include the creation and design of branding and signage for the defendant. The defendant repudiated the agreement. The plaintiff's contention is that at the time of repudiation it had already rendered certain services in respect of the quality of the design. The plaintiff is thus claiming the cancellation of the agreement and payment in respect of the rendered services. The claim is based on the damages suffered by the plaintiff in the amount claimed being the reasonable market related value for the creation, design and production of the quality of goods as specified.
- [3] The defendant is opposing the application on the basis that the plaintiff's claim falls outside the parameters of uniform rule 32 (1). According to the defendant's counsel a claim based on damages can never be a liquidated amount as required in terms of uniform rule 32. Once the plaintiff alleged that the amount claimed is a reasonable market related claim, expert evidence has to be led to prove that market related value. Such a claim is thus not easily determinable.
- [4] As a point of departure, the plaintiff's counsel submits that the defence raised by the defendant is technical in nature and cannot be raised in a summary judgment application. I am of the view that a defendant is entitled to raise such a defence. As is trite a plaintiff is entitled to summary judgment on a claim only if the claim falls within one of the categories listed in the sub-rule. If a claim is not one listed in uniform rule 32 (1), the procedure in that sub-rule does not apply. See Harms: *Civil Procedure in the Superior Courts* at B – 213.

- [5] What requires determination is whether the plaintiff's claim falls within the category of claims listed in uniform rule 32 (1).
- [6] The defendant's contention is that the plaintiff's claim does not fall within the categories listed in the rule because it is not for a liquidated amount in money. The defendant's counsel argued that a claim based on damages and which is also for a reasonable market related value cannot be a liquidated amount in money. Such a claim according to counsel requires to be proved by expert evidence to determine the damages suffered and the quantum and what a reasonable market related value in the circumstances of this claim is.
- [7] A liquidated amount means an amount, either ascertained or capable of speedy and prompt ascertainment. See *Fatti's Engineering Co (Pty) Ltd v Vendick Spares (Pty) Ltd* 1962 (1) SA 736 (T).
- [8] I am in agreement with the defendant's counsel that the claim in this instance does not fall within the category of claims listed in uniform rule 32 (1). This is so because the claim is not for a liquidated amount in money. The claim in this instance requires the damages to be proved by means of expert evidence. The submission by the applicant's counsel that the amount claimed by the plaintiff is easily ascertainable because it is the amount normally charged by the plaintiff to its customers when it provides a service of the nature rendered to the defendant, is flawed. This is not what the plaintiff based its action in its particulars of claim.
- [9] As regards the costs I am of the view that this is not a case where there are special circumstances which require a punitive scale as requested by the defendant's counsel. It is my view that the plaintiff was entitled to form an opinion in regard to its case and was also entitled to argue that opinion in court.

[10] In the premises I make the following order:

- a. the summary judgment application is dismissed with costs.
- b. The defendant is granted leave to defend the action

A handwritten signature in black ink, appearing to read 'E. M. Kubushi', is written over a horizontal line.

E. M. KUBUSHI

JUDGE OF THE HIGH COURT

Appearances:

HEARD ON THE	: 10 SEPTEMBER 2013
DATE OF JUDGMENT	: 18 SEPTEMBER 2013
PLAINTIFF/APPLICANTS' COUNSEL	: ADV OSCHMAN
PLAINTIFF/APPLICANTS' ATTORNEY	: OPPERMAN ATTORNEYS
DEFENDANT/RESPONDENT'S COUNSEL	: ADV KRUGER
DEFENDANT/RESPONDENT'S ATTORNEY	: CHRISTO BOTHA ATTORNEYS