

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 3452/2010

In the matter between:-

TARFIX (PTY) LTD

Plaintiff

and

**MEC, DEPARTMENT OF PUBLIC WORKS
AND RURAL DEVELOPMENT, FREE STATE
PROVINCE**

1st Defendant

**THE DIRECTOR GENERAL OF THE
DEPARTMENT OF PUBLIC WORKS AND RURAL
DEVELOPMENT, FREE STATE PROVINCE**

2nd Defendant

JUDGMENT BY: MATHEBULA, AJ

HEARD ON: 22 SEPTEMBER 2011

DELIVERED ON: 2 FEBRUARY 2012

[1] The plaintiff is claiming provisional sentence relying on an agreement between the parties. The relevant aspect is the “payment certificate” by an engineer alleged to be the agent of the defendants. This aspect is denied by the defendants. The other defence raised by the defendants is that there is a counterclaim for damages as a result of breach of the provisions material to the agreement by the plaintiff.

- [2] This procedure provides a summary remedy to the creditor in possession of a liquid document. In defence, the defendants must file an opposing affidavit. In this matter the opposing affidavit including annexures comprises pages 256 to 330 of the record. As this is part of the record, I do not intend to repeat them.
- [3] A lengthy period elapsed after the filing of the opposing affidavit, before the defendants set the matter down for hearing. It appeared as though the interest of the plaintiff in the matter has waned.
- [4] In his submission Mr Williams was of the view that I grant an order that the defendants file a plea within twenty (20) days and that the matter proceed to trial. This has been the proposal made by the instructing attorneys in a letter dated the 19th September 2011 to the Defendants' attorneys. The crux of his submission is that the defendants deal mainly with the question whether the agent who signed the documents had the necessary authority or not. The issue of whether the "payment certificate" relied upon is a liquid document or not is a peripheral issue. He therefore requested for an order as

outlined above and that the cost be costs in the cause.

[5] Mr Fischer submitted that that matter be dismissed with costs. He argued that the plaintiff bears the onus of proof on a balance of probabilities that the agent in question had the necessary authority to sign the “payment certificate”. In essence the defendant was entitled to raise the defence denying that the agent had the necessary authority to sign the “payment certificate”. He submitted that the said agent one Johannes Steyger did not have the necessary authority. He was not in the employ of the defendants but that of the plaintiff. The “payment certificate” relied upon was not in fulfilment of the provisions of the agreement. As a result the “payment certificate” relied upon could not be termed a liquid document.

[6] A liquid document is described as a “written document signed by the defendant or his agent evidencing an acknowledge of indebtedness which is unconditional and of a fixed amount in money”.

See Civil Procedure in the Superior Court – L.T.C. HARMS at B-78.

The relevant example in this matter of a liquid document is an Engineer's "payment certificate". One of the key requirements is that the engineer who signed the certificate must be the authorised agent of the defendant(s).

[7] As Mr Fischer correctly argued out, the plaintiff must discharge his onus on a balance of probabilities. Among other the plaintiff bears onus regarding the authenticity of the defendants' agent's signature and authority of the defendants' agent. It is on these aspects that the plaintiff falls short. On page 83 of Annexure "A" the Engineer is described as the Chief Director: Expanded Public Works Programme (EPWP). This is a government official. This aspect is dealt with at length in an affidavit deposed by the Director: EPWP namely Zwelinzima Godfrey Jacobs. He also deals with the possible counterclaim by the defendants.

[8] In totality the document relied upon is not a liquid document as it does not meet the requirements. In this regard the plaintiff has not discharged the necessary onus of proof on a balance of probabilities.

[9] As far as the costs are concerned, I could find no reason to depart from the rule. The costs follows the event.

[10] Accordingly, I make the following order:-

10.1 Provisional sentence is dismissed with costs.

M.A. MATHEBULA, AJ

On behalf of the plaintiff:

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