

**FREE STATE HIGH COURT, BLOEMFONTEIN**  
**REPUBLIC OF SOUTH AFRICA**

Case No.: 4117/2010

In the matter between:-

**UNIVERSAL PULSE TRADING 355 (PTY) LTD**

Plaintiff

and

**MATJHABENG LOCAL MUNICIPALITY**

Defendant

**HEARD ON:** 11 NOVEMBER 2010

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**JUDGMENT BY:** MATLAPENG, AJ

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**DELIVERED ON:** 25 NOVEMBER 2010

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[1] This is a claim by the plaintiff against the defendant for payment of the amount R 614 412-70 being the balance of the original amount of R1 114 412-70. The claim is based on two written agreements named "Service Level Agreement" which were entered into by the parties. As required by rule 18(6) of the Uniform Rules of Court the said agreements as well as an invoice were attached to the plaintiff's summons.

[2] After receipt of a summons the defendant entered appearance to defend and the plaintiff as it was entitled to, launched an application for summary judgment claiming that the defendant has no *bona fide* defence and appearance has been entered solely for

the purpose of delay.

- [3] The defendant is resisting this application. It has filed an affidavit in support of its claim that it has a *bona fide* defence. In this respect the defendant states that the agreements relied upon by the plaintiff which are annexed to the summons are illegible and for that reason the contents thereof are denied. Furthermore, in its particulars of claim, the plaintiff states that the agreement was entered into on 30 May 2010 whereas in the last page of the agreement it is evident that the correct date is 8 May 2008 and thus it is denied that the agreement attached to the particulars of claim is the same one the plaintiff is alleging.
- [4] Lastly, the plaintiff alleges that the service, level agreement was entered into for a period of 25 years and an agreement for such a period is unlawful in terms of s33 of the Municipal Finance Management Act 56 of 2003. In oral submissions the defendant did not persist with this defence and it is not necessary for me to decide on it.
- [5] In order to successfully resist an application for summary judgment, the defendant may satisfy the court by an affidavit that

he has a *bona fide* defence to the claim. The defence must be a defence in law and the facts set out in the affidavit must support such a defence. There must also be a full disclosure in the affidavit with regard to the nature and grounds of defence as well as the material facts relied upon. **CENTRAL NEWS AGENCY LTD v CILLIERS** 1971 (4) SA 351 (NC).

- [6] In this matter, the defendant is raising a technical objection namely, that the annexures to the particulars of claim are illegible and as a result liability is denied. In essence, the contention is that plaintiff's pleading are not technically correct. In support of this contention, the defendant relies on the decision of this court in **GULF STEEL (PTY) LTD v RACK-RITE BOP (PTY) LTD AND ANOTHER 1998 (1) SA 679 (O)** where it was stated that even where the defendant has failed to raise a *bona fide* defence, there are two basic requirements that the plaintiff has to meet namely a clear claim and pleadings that are technically correct. If either of these requirements is not met, the court is obliged to refuse summary judgment.

- [7] I do not agree with the submission by the defendant. The facts in this case are distinguishable from the facts in the **GULF STEEL-**

case. Firstly the documents before me are legible more in particular the annexures the defendant is complaining about namely the two service level agreements and the invoice. Lawyers are perceived and known to be gentlemen. This perception permeate even in the Rules of Court which are in essence rules of combat in legal skirmishes by providing for full disclosure of ammunition in one's possession so as not to take an opponent by surprise. If, as appears to be the case herein, the copies provided to the defendant were not legible, it behove the defendant to have brought this to the attention of the plaintiff in a non litigious manner either by a letter or a telephone. No prejudice would have ensued. See **DE KLERK v DE KLERK** 1986 (4) SA 424 (W). Sadly it failed to do neither and tenaciously took the point against the plaintiff.

- [8] Secondly it is clear that the issue of dates referred to above namely 30 May 2010 instead of 8 May 2008 was a typographical error which is capable of being corrected and is not prejudicial to the defendant. It is also self evident that the defendant is aware of the plaintiff's case against it. I agree with the sentiments expressed in **STANDARD BANK OF SOUTH AFRICA LTD v ROESTOF** 2004 (2) SA 492 (W) where it was stated that it is difficult to justify an approach that refuses application for summary

judgment where the papers are not technically correct due to obvious and manifest error which causes no prejudice especially when it is clear that the defendant knows and appreciates plaintiff claim against it.

[9] It seems clear to me that other than the technical objections raised by the defendant, it has no answer to the plaintiff's claim. One also has to bear in mind that part payment of the original invoice of R1 114 412-00 in the amount of R 500 000-00 has already been made with no hassles.

[10] It was submitted that because of the conduct of the defendant, I should saddle it with an order for costs on attorney and client basis. It is indeed true that a court may impose a punitive costs order as a show of disapproval towards a litigant's conduct of the proceedings. The defendant is aware that there is a balance outstanding due to the plaintiff. It raises no defence if any, other than a technical defence to the plaintiff's claim which had no merit. It was merely delaying the plaintiff. I am of the view that it has to be saddled with a punitive costs order.

## **ORDER**

[11] In the circumstances the following order is made.

1. Summary judgment is granted in the amount of R 614 412-70 together with costs on attorney and client basis.
2. Interest thereon at the rate of 15.5% *a tempora morae* from 13 July 2010.

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**D.I. MATLAPENG, AJ**

On behalf of Plaintiff:

Adv. C. Ploos van Amstel SC  
Instructed by:  
Qwelane, Theron & Van Niekerk  
BLOEMFONTEIN

On behalf of Defendant:

Adv. P.J.J. Zietsman  
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