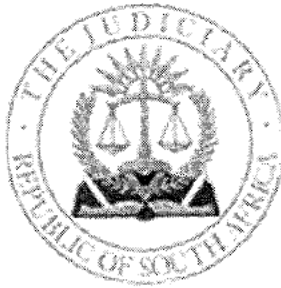


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2022/17378

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES
7 February 2025	
DATE	SIGNATURE

In the matter between:

BEACHAM CAPITAL MANAGEMENT (PTY) LTD

Applicant

and

ALLEYROADS CONSORTIUM (PTY) LTD

Respondent

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and released to SAFLII. The date and time for hand-down is deemed to be 10h00 on 7 February 2025.

JUDGMENT

MUDAU, J:

- [1] This is an application for a monetary judgment in the amount of R 527 750.00 together with interest and a declaratory order that the respondent,

Alleyroads Consortium (Pty) Ltd ("Alleyroads") is liable to the applicant, Beacham Capital Management (Pty) Ltd ("Beacham Capital") for certain further amounts of money due and owing in terms of an agreement concluded between the parties.

Background Facts

- [2] To secure a substantial loan in the amount of R 82 000 000.00, for the purposes of funding the purchase and development of a residential property located at Lebowa, the respondent approached the applicant to assist it in negotiating and securing this funding from an entity described as "Vantage Capital". This culminated in the parties concluding a written agreement on 15 November 2019, which forms the basis of the applicant's claim.
- [3] As recorded in the agreement, the respondent would make payment to the applicant of certain amounts. In terms of the agreement, should the negotiations be successfully concluded, the respondent would pay the applicant the following raising fees for professional services rendered within 14 days after presentation of the invoices:
- a. 1% of the value of the loan (including VAT) payable on the drawdown of the loan limited to R 820 000 00.00;
 - b. 0.5% of the value of the loan (plus VAT) payable two years after the drawdown of the loan limited to R 471 500.00.

It was further agreed that the R 820 000.00, representing 1% of the value of the loan, was to be paid in two tranches – R 570 000.00 and R250 000.00, respectively.

- [4] According to the applicant, the negotiations between the respondent and Vantage Capital were successful in that Vantage Capital lent the respondent the requisite amount of R 82 000 000.00 in early 2020. The applicant furnished the respondent with an invoice on 26 May 2020 resulting in the respondent paying the first drawn amount of R 570 000.00 in instalments between 26 June 2020 and 5 August 2020. The respondent also paid an amount of

R 50 000.00 which was a percentage of the first part of the second drawdown of the loan in the amount of R 5 000 000.00. The respondent, however, failed to pay an amount of R 200 000 00 as well as an amount of R 327 750 00.

- [5] On 21 January 2022, the applicant's attorney of record caused a demand to be sent to the respondent. The respondent's attorneys replied on 10 February 2022, as follows:

“Our client denies that your client is entitled to the amount claimed in your letter. Your client, who is in partnership with Qualiroad, breached their duty of good faith and non-disclosure by *inter alia* approaching various financial institutions and private equity companies on our client's behalf, regarding our client's private business. This was done without our client's consent of knowledge and has caused our client irreversible harm and damages. Given your client's various breaches and *male fide* conduct, our client rightfully terminated its mandate with your client. As a direct result of your client's conduct, two funding deals which were close to conclusion had to be changed, at the instance of the funder and resulted in our client having to spend a week attending high level meetings with the funder in Gauteng and Kwa Zulu Natal, in order to reverse the damage unnecessarily caused by our client. This also resulted in the funding being significantly delayed at the direct cost of our client”.

- [6] In the answering affidavit filed on behalf of the respondent, it is alleged that the applicant failed to comply with its obligations in terms of that agreement. As alleged by the respondent, there is no loan agreement between the respondent and Vantage Capital. Accordingly, no amount is owed by the respondent to the applicant by virtue of the agreement. The respondent also alleges that the applicant has failed to comply with the agreement by failing to present invoices to the respondent. Instead, the invoices are from a third-party company, Dygy Trading (Pty) Ltd. The respondent alleges that payments to the applicant were made *sine causa* in the reasonably but mistaken belief that such amounts were owed to the applicant, which it intends to recover.

- [7] In its reply, the applicant points out that the fact of a loan pursuant to a loan agreement is indisputable. This is demonstrated by the media statement issued by Vantage Capital during or about 23 July 2020 wherein the following is recorded:

"Vantage Capital, Africa's largest mezzanine fund manager, announced today that it has provided R 82 million of mezzanine funding for the development of Kayalane Heights, a first-of-its kind affordable housing development located in Lebokwakgomo, Limpopo. The promoter of the transaction is the Alleyroads Group, a leading South Africa black owned property development company led by Ivan Pretorius."

- [8] The applicant also points out that the shareholders of Dygy Trading (Pty) Ltd are the same shareholders as the applicant and share a common director. A CIPRO search in relation to Dygy Trading (Pty) Ltd as well as the applicant were added to the papers in reply.
- [9] It is trite that disputes of fact on motion must be resolved using the test set forth in *Plascon-Evans*.¹ A real, genuine and *bona fide* dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has, in his affidavit, seriously and unambiguously addressed the fact said to be disputed. The SCA stated in *National Director of Public Prosecutions v Zuma*² that the general rule may not apply "if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers". This is such a case.
- [10] The respondent has failed to set out any genuine disputes of fact and its denials, especially in relation to the applicant complying with the terms of the agreement, are tantamount to a bare denial. The respondent's conduct by paying certain of the invoices is totally inconsistent with the allegations that no loan agreement was concluded between itself and Vantage Capital. If the respondent's defence in this regard was genuine, one would have expected that this would have been the very first issue which was canvassed in its reply to the applicant's letter of demand.
- [11] The purported "defence" in response to the letter of demand related instead to some alleged breach of an unparticularised duty of good faith and non-disclosure and not to the agreement itself. The omission of the respondent in dealing with such purported defence is striking and no doubt, reveals the

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634H-635C.

² [2009] ZASCA 1; 2009 (2) 277 SCA at para 26.

respondent's *male fide* denial. There is no explanation by the respondent as to why it paid the invoices if the said invoices were not payable. In addition, why did it not raise the "problem" before, either when the invoices were received, or when its attorney wrote letters in response to the letter of demand. The opposition by the respondent to this application stands to be rejected and is accordingly dismissed in that no material dispute of fact exists. The amounts claimed by the applicant are unequivocally due and payable by the respondent, entitling the applicant to an order in terms of the draft order.

[12] Order

1. The respondent is to make payment to the applicant in the capital amount of R 667 750.00 which is comprised as follows: -
 - 1.1. An amount of R 200 000.00 which fell due on 27 December 2021;
 - 1.2. An amount of R 327 500.00 which fell due on 03 May 2022;
 - 1.3. An amount of R 28 750.00 which fell due on 06 April 2023; and
 - 1.4. An amount of R 111 500 00 which fell due on 05 December 2023.
2. Interest on the aforesaid amounts of R 200 000.00 and R 327 500.00 at the rate of 11.5% per annum *a tempora morae*.
3. Interest on the aforesaid amount of R 28 750.00 at the rate of 11.5% per annum from 06 April 2023 until the date of payment.
4. Interest on the aforesaid amounts of R 111 500.00 at the rate of 11.5% per annum from 05 December 2023 until the date of payment.
5. The respondent is to pay the costs of the application on a Scale B.


MUDAU J
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

Counsel for the Applicant:

Adv. T. Lipshitz

Instructed by:

Stan Fanaroff & Associates

Counsel for the Respondent:

No Appearance

Instructed by:

Withdrawn

Date of Hearing:

27 January 2025

Date of Judgment:

7 February 2025