IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not reportable

Case no: 5385/2024

In the matter between:

RAZZMATAZZ CIVIL PROPRIETARY LIMITED **APPLICANT**
[Registration No. 2006/006525/07]

and

VAAL CENTRAL WATER **RESPONDENT**

Neutral citation: *Razzmatazz Civil Proprietary Limited v Vaal Central Water* (5385/2024) [2026] ZAFSHC 313 (25 May 2026)

Coram: VAN ZYL J

Heard: 29 MAY 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The time and date for hand-down is deemed to be 12h45 on 25 May 2026. The order in this matter was handed down on 15 May 2026 at 10h30.

Summary: Application procedure – construction payment certificate – alleged withdrawal thereof – question whether interim or final payment certificate – foreseen *bona fide* and material factual disputes – application dismissed – alternatively, when adjudicated on the merits, also dismissed – special costs order.

ORDER

1 The application is dismissed.

2 The applicant shall pay the costs of the application on an attorney and client scale.

JUDGMENT

Van Zyl J

[1] In this application the applicant is seeking an order that the respondent is to pay the applicant the amount of R4 403 752.30, with interest, and that the applicant also be ordered to pay the costs of the application.

The applicant`s case in the founding affidavit

[2] During 2014 the respondent, previously known as 'Bloemwater', invited tenders it termed to be Tender BW178/RF/12: New Ductile Iron Pipeline – Rustfontein Plant to Lesaka Reservoirs in the Free State Province ('the tender'). On 28 October 2014 the applicant was appointed as service provider by the respondent in respect of the said tender.

[3] In compliance with the appointment, a written agreement was concluded between the parties during or about February 2015. The agreement further consisted of the tender documents submitted and the *General Conditions of Contract for Construction Works* (Second Edition), 2010, prepared by the South African Institution of Civil Engineering ('the GCC'). A complete copy of the GCC is attached to the founding affidavit as annexure 'RWP6'.

[4] The respondent appointed Babereki Consulting Engineers CC ('the engineer') as its engineer and agent to fulfil the functions of the engineer in terms of the GCC.

[5] On 27 November 2014, and after the site handover meeting took place, the applicant established on site and commenced with the work.

[6] As determined in the GCC, the applicant submitted monthly statements to the engineer. The engineer, after measuring the work and determining the value, issued a payment certificate. An invoice was then issued by the applicant on the strength of such a certificate, and it was presented to the respondent for payment. Payment of such certificate, once received by the respondent and signed by the engineer, was to be made within 28 days, failing which agreed interest was payable.

[7] On 8 May 2024 a payment certificate, no. 32, was approved by the engineer certifying that the amount claimed in this application, R4 403 752.30, was due to the applicant. A copy of this payment certificate is attached to the founding papers as annexure 'RWP10'. A covering letter of the engineer, also dated 8 May 2024, addressed to the respondent, is attached to the founding papers as annexure 'RWP11'. This letter stated the following with reference to the relevant tender:
'We have pleasure in submitting for your approval Payment Certificate No. 32, which is dated 8 May 2024. The amount of R4, 403, 752-30 (including VAT) is now due for payment to the Contractor, Razzmatazz Civil (Pty) Ltd. This is the final payment certificate for this Contract, which includes the release of retention money and the payment for all outstanding claims in terms of the Engineer's rulings.'

[8] On the same date, 8 May 2024, the applicant issued an invoice, addressed to the respondent, on the strength of the said payment certificate no. 32. A copy of this invoice is attached to the founding papers as annexure 'RWP9'.

[9] According to the applicant the claim was payable by no later than 6 June 2024. The parties are *ad idem* that no payment was forthcoming from the respondent in favour of the applicant in respect of payment certificate no. 32.

[10] On 15 July 2024 the Contracts Director of the applicant, Mr Stewart Fletcher, sent an e-mail to Ms Baatjies of the respondent, the subject line of which e-mail reflects 'RE: BW178/RF/12: Final Approval Certificate'. It reads as follows:
'Good Day Colette,

I would like to request a meeting with Vaal Central Water to discuss a few matters:

- Non-payment of outstanding payment certificate;
- Final approval certificate;
- Final statement of Claim.

I am available the 16 or 17 or 23 July 2024.'

[11] According to the applicant no response was forthcoming from the aforesaid email.

[12] On 12 August 2024 the applicant's attorney of record addressed a letter of demand to the respondent, calling for payment in terms of payment certificate no. 32. No response was received from the respondent in reply to this correspondence.

The respondent's case in the answering affidavit

[13] According to the respondent payment certificate no. 32, which the applicant relies on for payment of its invoice, was withdrawn by the engineer. In support of this notion, a letter dated 4 July 2024, which was received by the respondent from the engineer, is attached to the answering affidavit as annexure 'OP1'. A copy thereof was also sent to Mr Fletcher of the applicant. The heading of the letter refers to the tender and further reads as follows:

'Ms Colette Baatjies' e-mail of 10 June 2024, wherein she requested the Final Completion (*sic*) Certificate and Close Out Report, refers.

After careful consideration, the Engineer has determined that he cannot at this stage issue the Final Approval Certificate, as contemplated in clause 5.16.1 of GCC 2010, for the simple reason that the pipeline has not been pressure tested.

Some work has been done on the Close Out Report, but until the pipeline has been successfully pressure tested and commissioned, the Close Out Report cannot be issued.'

[14] As is evident from the aforesaid, the said letter from the engineer was in response to an e-mail from Ms Colette Baajies of the respondent, dated 10 June 2024, addressed to the engineer, wherein she requested that the Final Completion Certificate and Close Out Report be submitted. A copy of this e-mail is attached to the answering affidavit as annexure 'OP2'.

[15] The respondent further stated, *inter alia,* as follows in its answering affidavit:

'30. I purposefully pause and state that it was previously agreed between all parties concerned that the Certificate of Completion will be issued after the Hydrostatic Pressure Testing between SV5240 and SV14172 is done before the end of the defects liability period and when the remedial works are completed.

31. As per the letter/notice from the engineer the remedial works are not completed and the pipeline has not been pressure tested by the applicant.

32. On a point of clarity, the applicant is responsible for the pressure testing of the pipeline.

. . .

33. In the absence of the above, the defects liability period has been automatically extended.

34. As a further result of the above, a Certificate of Completion and the Final Approval Certificate cannot be issued, and is the respondent accordingly entitled to withhold the retention monies which forms the basis of the current application.

37. In the premises, the application is premature and stands to be dismissed with costs on a punitive scale.

70. The retention monies will only become due and payable after the works have been completed. The respondent is entitled to withhold the monies until such stage is reached.'

[16] The respondent furthermore stated that a meeting was held with the applicant on 22 May 2024 to discuss the non-payment of its invoice based on payment certificate no 32. During the said meeting the applicant was represented by Mr Stewart, whilst the respondent was represented by Mr Mnyaka and Ms Baatjies. Their confirmatory affidavits are attached to the answering affidavit. According to the respondent 'the matter could, however, not be resolved'.

The applicant's replying affidavit

[17] The applicant referred to annexure 'OP1' to the answering affidavit on which the respondent relies for its contention that payment certificate no. 32 has been withdrawn and points out that there is nothing mentioned in the said letter regarding payment certificate no. 32 and the invoice that was sent on the strength thereof.

[18] In paragraph 6.5 of the replying affidavit, the applicant stated as follows:

'And the court need not look further than the simple fact that by 4 July 2024, payment of the payment certificate and the invoice had already been overdue. The entire contractual substratum caters for a squaring up exercise once the stage of a Final Approval Certificate is reached and certified. That may even result in a negative certificate concerning payment

in a completion statement. The whole idea is to certify interim payments for work done as the works progress, which means – in law – that the certificate for payment must be paid. It does no [interim payment certificates] finally deal with what is owing inter se. We are not there yet.'

[19] With reference to the averment in the respondent's answering affidavit that it was previously agreed that the certificate of completion will be issued only after compliance of certain conditions, the applicant stated as follows in its replying affidavit:

'6.7 There are many problems with this statement:

6.7.1 Firstly, and I append Mr Stewart Fletcher's confirmatory affidavit as "RWP1", there was no such an agreement reached concerning payment of certificate 32.

6.7.2 Secondly, the paucity of information and evidence tendered as to the date, time and place of the conclusion of this apparent agreement is to be marked.

6.7.3 [The applicant is no longer relying on the contention previously made in this sub-paragraph].

6.7.4 Fourthly and lastly on this, the evidence tendered is somewhat inconsistent with what is elsewhere contended. To what completion certificate does the deponent exactly refer? Practical or final? If it is the practical completion certificate, this makes absolutely no sense. And I have already explained the relevance of this concerning certificate 32 and the Waterboard's payment obligation that flow from it.'

[20] According to the applicant there exists no dispute of fact and the attempt at creating one has failed.

[21] With regard to the averment in the answering affidavit that as per the letter from the engineer, the remedial works are not completed and the pipeline has not been pressure tested by the applicant, the applicant responded as follows in its replying affidavit:

'This isn't really relevant, but I do answer briefly as follows. There were design defects identified by an independent appointed expert employed by the Waterboard. These design defects had to be remedied, and has caused a delay on the pressure testing. This caused the delay in the execution of the works and additional remedial measures. The Waterboard had to attend to those by the end of November 2023. Once this is done it will enable Razzmatazz to do the pressure testing at the end of the defects liability period. After that is

done the final completion certificate will be issued (if the pipeline passes the test). But I stress that this is for informative purposes only. It has nothing to do with the present claim.'

[22] According to the applicant nothing in the GCC entitles an engineer to 'withdraw' a certificate after it already has become due for payment.

[23] In respect of the averment regarding the meeting between the parties, the applicant stated as follows:
'Mr Fletcher admits this. And he admits that all that could not be truly satisfied at that stage was that the Waterboard would pay what it was owing. Nothing else could be unfortunately resolved.'

Evaluation of the application

[24] The applicant's claim is one in contract and is premised on payment certificate no. 32 and the applicant's tax invoice issued on the strength thereof.

[25] The first material and *bona fide* factual dispute between the parties relates to the nature of the relevant payment certificate.

[26] It is the applicant's case that payment certificate no. 32 is an interim payment certificate. The applicant holds this stance even in its replying affidavit.

[27] On the other hand, it is the respondent's case that payment certificate no. 32 is a final payment certificate, as expressly stated by the engineer in its letter of 8 May 2024, annexure 'OP1' to the answering affidavit, wherein it was pertinently stated that the said payment certificate is the '*final payment certificate for this Contract, which includes the release of retention money and the payment for all outstanding claims in terms of the Engineer's rulings*'.

[28] The question whether payment certificate no. 32 is an interim payment certificate or a final payment certificate is essential to the adjudication of this application, since the GCC contains different terms and conditions in relation to the respective types of payment certificates. Interim payments are regulated by, *inter alia*, clauses 6.10.1 to 6.10.4 of the GCC, whilst payments in terms of a final payment certificate are regulated by, *inter alia*, clause 6.10.9.

[29] The further material factual dispute between the parties is whether payment certificate no. 32 had been withdrawn and if so, whether it was validly done.

Disputes of fact

[30] Already in the founding affidavit, the applicant stated, '*there is no conceivable or viable factual or legal basis for the refusal [of payment]*' and '*there really can be no factual disputes between the parties*'. As submitted on behalf of the respondent the aforesaid gives the distinct impression that the applicant, from the onset, anticipated that a dispute of fact will arise on the papers,

[31] In the well-known matter of *Room Hire Co (Pty) Ltd v Jeppe Street Mansions (Pty) Ltd* 1949 (3) SA 1155 at 1163 it was held, *inter alia,* as follows at 1162:

'Or the application may even be dismissed with costs, particularly when the applicant should have realised when launching his application that a serious dispute of fact was bound to develop. It is certainly not proper that an applicant should commence proceedings by motion with knowledge of the probability of a protracted enquiry into disputed facts not capable of easy ascertainment, but in the hope of inducing the Court to apply Rule 9 to what is essentially the subject of an ordinary trial action.'

[32] As evident from what was set out earlier in the judgment, the application papers are fraught with disputes of fact. The parties are *ad idem* that they convened a meeting for 22 May 2024 where the representatives of both parties were present. During the said meeting the respondent indicated that it was not inclined to make payment in respect of payment certificate no. 32. By virtue of the discussions which ensued at this meeting, the applicant must have become aware of the contentions of the respondent regarding the non-payment. The bare denial of the existence of disputes of fact by the applicant in its replying affidavit is also unhelpful. As at date of the meeting, the *bona fide* disputes of fact between the parties, therefore, came to the knowledge of the applicant. Despite this, the applicant elected to follow application procedure instead of action procedure.

[33] In the circumstances where a *bona fide* and material dispute of fact was anticipated by the applicant or, at the very least, should have been anticipated by the applicant, the application stands to be dismissed.

The merits of the application

[34] In the alternative, and should I have erred in my finding regarding the foreseeability of *bona fide* and material factual disputes by the applicant, the merits of the application is to be considered.

[35] It is trite that when disputes of fact have arisen on the affidavits in application proceedings, a final order may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order, unless where the allegations or denials of the respondent are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers. See *Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A).

Payment of retention money

[36] In paragraph 34 of the answering affidavit, the respondent stated as follows:

'34. As a result of the above, a Certificate of Completion and the Final Approval Certificate cannot be issued, and is the respondent accordingly entitled to withhold the retention monies which forms the basis of the current application.'

[37] The applicant did not make any positive or assertive allegation in its replying affidavit that the payment of payment certificate no. 32 relates to the payment of money other than retention money.

[38] Clause 5.14.5 of the GCC determines, *inter alia,* as follows:

'5.14.5 Upon the issue of a Certificate of Completion, unless otherwise provided in the Contract;

5.14.5.1 . . .

5.14.5.2 The Defects Liability Period shall commence,

5.14.5.3 The retention shall be reduced to half in terms of Clause 6.10.5.'

[39] In respect of the payment of retention money, clause 6.10.5 of the GCC provides as follows:

'6.10.5 Save to the extent otherwise provided in clause 6.6.6, when a Defects Liability Period is specified, one half of the retention money shall become due and shall be paid to the Contractor when the engineer has issued a Certificate of Completion in terms of Clause

5.14.4. The other half shall become due and shall be paid to the Contractor within fourteen days of the expiration of the Defects Liability Period, which may be extended in terms of clauses 5.14.4 or 7.8.1, if necessary;

Provided that:

6.10.5.1 If the Defects Liability Period is extended in terms of clauses 5.14.4 or 7.8.1 or if the expiration of the original Defects Liability Period there remains to be executed by the Contractor any works ordered during such period in terms of clauses 7.7 and 7.8, the Employer shall be entitled to withhold payment until the completion of the work concerned, of so much of the second half of the retention money as shall represent the cost of such work;

6.10.5.2 In the event of different Defects Liability Periods having become applicable to different parts of the Works pursuant to Clause 5.14, the expression "retention money" shall be deemed to mean such proportion of the total retention money as is applicable to each completed part of the Works; and

6.10.5.3 If a Defects Liability Period is not specified, the whole amount of the retention money shall become due and shall be paid to the Contractor when the Contractor has become entitled, in terms of clause 5.16.1, to receive a final Approval Certificate.'

[40] From the aforesaid, it is evident that when a defects liability period is specified, upon the issue of a certificate of completion the defects liability period commences, and the first half of the retention money becomes payable, whilst the second half becomes payable depending on the specified defects liability period, with an entitlement of the employer to withhold payment in certain circumscribed circumstances. If a defects liability period is not specified, the whole amount of the retention money becomes due and shall be payable to the contractor when the contractor has become entitled, in terms of clause 5.16.1. to receive a final approval certificate.

[41] According to the respondent, a certificate of completion has not yet been issued by the engineer, nor has the defects liability period expired with all outstanding works having been done. A final approval certificate has also not yet been issued by the engineer, and it is not the applicant`s case that it has become entitled to receive such a final approval certificate. These allegations are not denied by the applicant.

[42] It was submitted on behalf of the applicant that the proviso to clause 5.16.1 of the GCC, which deals with the issuing of the final approval certificate, constitutes a

full and complete defence to the respondent`s case. I cannot agree with this contention. The said proviso reads as follows:

'Provided that the issue of the Final Approval Certificate shall not be a condition precedent to the payment to the Contractor of the second half of the retention money in accordance with Clauses 6.10.5.1 and 6.10.5.2.'

[43] From the aforesaid it is, in my view, evident that the prohibition contained in the proviso only relates to the payment of the second half of the retention money in accordance with clauses 6.10.5.1 and 6.10.5.2. The respondent`s reliance upon the contention that the said retention money is not yet payable, is the extension of the defects liability period and unfinished works, as provided for in clause 6.10.5.1, and not the absence of the final approval certificate.

[44] Therefore, I agree with the submission on behalf of the respondent that no part of the retention money has yet become due and payable by the respondent to the applicant.

Final payment certificate

[45] Clause 6.10.9 of the GCC determines as follows in respect of a final payment certificate:

'6.10.9 Within 14 days of the date of final approval as stated in the Final Approval Certificate, the Contractor shall deliver to the Engineer a final statement claiming final settlement of all monies due to him (save in respect of matters in dispute, in terms of clauses 10.3 to 10.11, and not yet resolved). The Engineer shall within 14 days issue to the Employer and the Contractor a Final Payment Certificate, the amount of which shall be paid to the Contractor within 28 days of the date of such certificate, after which no further payment shall be due to the Contractor (save in respect of matters in dispute, in terms of Clauses 10.3 to 10.11 and not yet resolved).'

[46] The parties appear to be *ad idem* that a final approval certificate has not yet been issued by the engineer. The engineer could therefore not have issued a valid final payment certificate.

[47] It, however, is evident from the engineer`s cover letter, annexure 'RWP10' to the founding papers, that the engineer intended payment certificate no. 32 to have

been a final certificate of payment. If it was an interim payment certificate as contended by the applicant, the (unanswered) question arises why the applicant itself in the email of Mr Fletcher, annexure 'RPW12' requested that the final approval certificated and the final statement of claim be discussed at the proposed meeting between the parties.

Conclusion

[48] From the preceding paragraphs it is evident that the retention money was not yet due and payable to the applicant and, in addition, in the absence of a final approval certificate, the engineer could not have issued a valid final payment certificate.

[49] From the correspondence attached to the founding affidavit, annexures 'OP1' and 'OP2', read together and in context, it is evident that, according to the engineer, the final completion certificate and the final approval certificate could not be issued at that stage, because the pipeline has not yet been pressure tested. On the applicant`s own version in reply, it is the applicant`s responsibility to execute the said pressure testing. Although the applicant stated that it gave this explanation for mere informative purposes, it is, in my view, relevant to the dispute between the parties.

[50] In the circumstances the issuing of the final payment certificate no. 32 was premature and consequently the respondent`s version that payment certificate no. 32 was withdrawn, is to be accepted.

Costs

[51] The respondent is seeking a punitive costs order against the applicant.

[52] It is trite that special considerations arising from the circumstances of the matter or from the conduct of the losing, must be present before an order of attorney and client costs is made. In the well-known case of *Nel v Landbouwers Ko-Operatiewe Vereeniging* 1946 AD 597 at 607 the following was stated:

'The true explanation of awards of attorney and client costs not expressly authorised by Statute seems to be that, by reason of special considerations arising either from the circumstances which give rise to the action or from the conduct of the losing party,

the court in a particular case considers it just, by means of such an order, to ensure more effectually than it can do by means of a judgment for party and party costs that the successful party will not be out of pocket in respect of the expense caused to him by the litigation.'

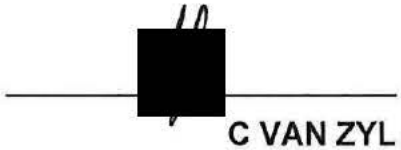
[53] *In casu*, I agree with the submissions of behalf of the respondent that the applicant has abused the court process by having launched this application when it was pre-mature to have done so and furthermore, in the face of clear and *bona fide* disputes of fact regarding the applicant`s entitlement to payment. The applicant`s unwarranted application will leave the respondent out of pocket as a result of litigation that it should not have endured and that should not have seen the light of day.

Order

[54] The following order is made:

1 The application is dismissed.

2 The applicant shall pay the costs of the application on an attorney and client scale.



C VAN ZYL

JUDGE OF THE HIGH COURT

Appearances:

For the Applicant:	S Grobler SC
Instructed by:	Graham Attorneys, Bloemfontein
For the Respondent:	DR Thompson
Instructed by:	Mhlokonya Attorneys, Bloemfontein