

SOUTH AFRICA / JUDGMENT

Bay Drive Trading 151 (Pty) Ltd v Sakhisizwe Local Municipality (545/2016) [2016] ZAECHGHC 108 (24 October 2016) [2016] ZAECHGHC 108

COURT

Eastern Cape High Court, Grahamstown

BEFORE

N G Beshe

CASE / FILE NUMBER

545/2016

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IN THE HIGH

COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, GRAHAMSTOWN)

CASE

NO.: 545/2016

In

the matter between:

BAY
DRIVE TRADING 151 (PTY) LTD
Applicant/Plaintiff
And
SAKHISIZWE
LOCAL MUNICIPALITY
Respondent/Defendant

JUDGMENT

BESHE J:

[1] This is an application for summary judgment against the respondent for payment of:

1. The sum of R1 351 512.00.
2. Interest on the said sum at the rate of 9.5% per annum calculated from the 30 June 2014.
3. Payment of the sum of R505 818.00.

4. Interest thereon at the rate of 9.5% per annum from 30 June 2014.
5. Costs of suit.
- [2] Plaintiff is a company with limited liability duly registered in terms of the laws of the Republic of South Africa.
- [3] Defendant is a local municipality duly constituted as such with its administrative office at 15 Maclear Road, Elliot, Eastern Cape.
- [4] It is common cause between the parties that defendant appointed plaintiff to provide it with 2 stage Mobile Aggregate Crusher, establish a crushing unit, amongst other services.
- [5] It is also common cause that plaintiff commenced providing the required services during January 2014.
- [6] Plaintiff issued six payment certificates in respect of services provided by it. Defendant paid an amount of R4 566 875.01 in respect of payment certificates 1 – 4.
- [7] However a dispute arose between the parties as regards payment certificates 5 – 6. It appears to be common cause that this is the amount claimed in these certificates that is the subject of the action instituted against the defendant in this matter.
- [8] I was advised that the parties have reached an agreement that plaintiff will not be proceeding with claim 1 (payment certificate 5) for now. That is the claim for R1 351 512.00 and interest thereon.
- [9] The granting of the application for summary judgment in respect of payment certificate number 6 which is for R505 818.00 is opposed by the defendant. The basis for opposing this claim is that the defendant has a bona fide defence against the claim. The claim is in respect of “standing time”. Defendant contends that there is no provision or a service titled “standing time” in any part of the agreement that was concluded between the parties. The service level agreement that was concluded by the parties is annexed to the papers by the plaintiff.
- [10] Counsel for the plaintiff Mr Knott, conceded that in terms of the original agreement, there is no provision for “standing time”, but contended that there was a subsequent agreement between the parties in terms of which the defendant agreed to pay this amount.
- [11] This contention appears to be based on a letter that was addressed to the plaintiff on behalf of the defendant dated 30 June 2016. The letter records an acknowledgement of receipt of payment certificates 4, 5 and 6. The letter further states that the defendant remains committed to settling all the invoices.

- [12] It is trite that to successfully resist summary judgment, the defendant is required to fully disclose the nature and grounds of his defence and the material facts upon which he / she relies, and such facts must show that the defendant has a bona fide defence.[1]
- [13] In my view, if it can be proved during the trial that the parties did not agree or provide for payment in respect of “standing time”, that will constitute a defence to plaintiff’s claim. Accordingly I am satisfied that the facts disclosed by the defendant, if accepted by the trial court, will constitute a defence to the plaintiff claim.
- [14] Accordingly the following order will issue:
1. The determination of claim 1 and the claim for interest thereon is postponed sine die.
 2. Summary judgment application in respect of claim 2 and the claim for interest thereon is dismissed with costs.
 3. Defendant is granted leave to defend plaintiff’s claim in respect of claim 2.

N G BESHE

JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant/Plaintiff

:

Adv: Knott

Instructed by

: WHEELDON RUSHMERE & COLE

119 High Street

GRAHAMSTOWN

Ref.: M van der Veen/Milla/S18915

Tel.: 046 – 622 7005

For the Respondent/Defendant :

Adv: Zietsman

Instructed by

: WHITESIDES ATTORNEYS

59 African Street

Ref.: Mr Barrow

Tel.: 046 – 622 7117

Date Heard

: 7 June 2016

Date Reserved

: 7 June 2016

Date Delivered

: 24 October 2016

[1] Maharaj v Barclays National Bank 1976 (1) SA 418 A at 426.

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