

SOUTH AFRICA / JUDGMENT

Brandenburg Horse (Pty) Ltd t/a Brandenburg Stud v Meyer (54941/2007) [2008] ZAGPHC 368 (18 July 2008) [2008] ZAGPHC 368

COURT

High Courts - Gauteng

BEFORE

Potterill

CASE / FILE NUMBER

54941/2007

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IN THE HIGH
OF SOUTH AFRICA
(TRANSVAAL
PROVINCIAL DIVISION)

Case

number: 54941/2007

In

the matter between:

BRANDENBURG
HORSE
APPLICANT(PTY)LTD T/A BRANDENBURG STUD
And
MANIE
MEYER RESPONDENT

JUDGMENT

Delivered: 18/7/2008

POTTERILL AJ

1 This is an application for summary judgment wherein the plaintiff sues the defendant for an amount of R187 768.96 as fees and

disbursements for the period 1 January 2005 to 1 November 2007. These fees and disbursements are payable pursuant to an oral agreement

concluded between the parties at the end of 1998. The terms of the contract were that the plaintiff would stable and take care of the defendant's horses for an unspecified period of time. This would be done at plaintiff's usual rate and for disbursements incurred and paid to third parties by Plaintiff. The defendant would be entitled to set off against the fees charged by the defendant for legal services rendered by the defendant to the plaintiff and for which the defendant would provide an account from time to time to the plaintiff. The accounts for the legal services were to be set off at the end of each year. In the event of the defendant intending to use the horses to breed with the off-spring, the off-spring would be subject to the same terms as set out above as well as the fees for each successful service of a stallion by the Plaintiff.

In this period no accounts for legal services were received by the plaintiff from the defendant. The defendant wrote only two letters

for the plaintiff in that period.

2 The defendant filed an opposing affidavit and was also granted leave by the court to file a supplementary affidavit to incorporate a statement of case filed at the Labour Court essentially setting out his defence against the claim. His defence can be summarized as follows:

"My verweer teen die aksie spruit voort uit die versuim van Frank Dittman wat die eiser beheer om in die eis te openbaar dat daar reeds 'n hangende geding tussen ons is in die Arbeidshof waarin ek R4,5 miljoen rand van horn, sy vennoot Thomas Matern en die groep maatskappye waarin hy die beherende belang hou eis. Ek sal deurlopend na die eiser as Dittman verwys aangesien hy die eiser en beheerder van die eiser is en alle moontlike ooreenkomste en reelings het tussen horn en my plaasgevind.{paragraphs 4 and 5 of the opposing affidavit}

"Daar was nooit in die konteks van ons samewerking enige sprake dat ek hom sou betaal vir die versorging van die perde nie. Dit was 'n voordeel en 'n guns wat hy aan my aangebied het vir die kwaliteit hulp en ondersteuning wat ek aan hom verleen het aan etlike fronte.

Hy het gereeld dispute met ander perde-eienaars gehad. Ek het hom gehelp om sy ooreenkomste te hersien 'n konstitusie en gedragskode vir die perde-eienaars en sy kliente opgestel en horn van advise bedien oor sy dispute o.a die uitgereikte dispuut met ene Philip Tucker

Al wat ek betaal het was direkte uitgawes soos die veearts se rekening".{paragraphs 15, 16 and 17 of the opposing affidavit}.

In his supplementary affidavit he avers that the invoices attached to the summons do not reflect the names of the director on the registration.

number and therefore Dittman is personally responsible and he accordingly has a counterclaim against Dittman personally.

He also submits the plaintiff's claim is not a liquidated amount

3.1 Upon a careful reading of the papers the main defence of the defendant is his averred counterclaim in the Labour Court. This

counterclaim is however against Dittman in his personal capacity, not Brandenburg Horse Breeders (Pty)(Ltd). There are 10 other respondents cited. This claim has absolutely no connection whatsoever with stabling of horses or legal work connected thereto. In a nutshell it has to do with the defendant concluding an agreement to be appointed as the executive deputy chair of the ISC group for three years and receiving remuneration of R100 000.00 per month and this agreement going sour. As relief he is claiming "re-instatement to the position of deputy chair governance of the 1st to 7th respondents and compliance with terms of written agreements "A" and "B" by the respondents jointly and

severally, alternatively compensation. This counterclaim can never be set-off as defence to the plaintiffs claim. It is true that even an unliquidated counterclaim can prevent summary judgment from being granted, but in casu there is no nexus between the claim and the parties. On his own papers he admits that Brandenburg, not Dittman, paid the disbursements for his horses and he had to in turn reimburse Brandenburg: "buiten dat ek gevra is om Brandenburg Stoetery [my emphasis] te vergoed vir sporadiese uitbetalings wat hul gemaak het {paragraph 20 of the opposing affidavit}. "He furthermore states "ek sal deurlopend na die eiser as Dittman verwys aangesien hy die eiser en beheerder van die eiser is en alle moontlike ooreenkomste en reelings het tussen hom en my plaasgevind." {Paragraphs 4 and 5 of the opposing affidavit} There can be no other interpretation but that the defendant knew that Dittman was acting on behalf of Brandenburg Horse Breeders (Pty) Ltd t/a Brandenburg Stud. It must be mentioned that the defendant is a practising advocate and drafting is a required skill. It would have been so simple to state that he never had any dealings with the plaintiff, but had dealings with Dittman personally, yet he drafts that Dittman is the plaintiff, which he is not, and Dittman is the "beheerder van die eiser" clearly indicating that Dittman acted on the plaintiff's behalf. The counterclaim can therefore not be a defence against the claim as the plaintiff is not a defendant in the counterclaim; set-off can not take place.

3.2 The argument that the plaintiff must be substituted with Dittman personally as the invoices does not reflect the directors and

registration number is inept. A Director can be held liable for a company's debt, but here the company is the claimant. This argument

is only sustainable if a claimant requires a director to be personally liable under specified circumstances: it can not confer

locus standi of a plaintiff who is dominus litis. Accordingly there is no bona fide counterclaim.

The argument that the claim is unliquidated is rejected. Usual rate, or fair and reasonable remuneration, in these circumstances would be made on some well-known basis, to the stabling trade, anyhow. It has not been argued that the amounts claimed are not capable of speedy and easy ascertainment or are not the usual rates; in fact the amounts claimed have never been disputed only the nature thereof has been put in dispute. The amounts claimed fall within the ambit of Rule 32(1)(b); See *Quality Machine v M I Thermocouples Ltd* 1982(4)WLD 593 on p596B.

The defendant also, it must be noted very much as an afterthought, disputed the agreement as set out in the particulars of claim. It is however common cause that:

5.1 In 1998 an agreement was reached that the defendant would stable his horses at Brandenburg for an unspecified time:

5.2 He would be liable for disbursements made by the plaintiff to third parties;

5.3 Set-off would take place between the legal services rendered by

the defendant to the plaintiff and the stabling of the horses: 5.4 In 1995 a dispute between the parties arose.

He never disputes the fact that set-off would take place at the end of each year. He never disputes that four foals were born and also stabled in this time. He never places in dispute the amount claimed, only that it is an unliquidated claim.

He admits that there would be set-off; stabling versus "hulp en ondersteuning". but that he would never have to pay in terms of the set-off due to his quality help. In 1995 a dispute over his quality help ensued. He then received statements for the stabling, there's nothing sinister herein, as there was no more service and "guns" to set-off. Accordingly there is no bona fide defence to the claim.

5 I accordingly make the following order;

Summary judgement granted in the amount of R187 768.96 Interest on the amount of 15,5% per annum a tempore mora.

Costs of the application The defendant, as he tendered, to pay the wasted costs of 2 June 2008

S Potterill

Acting Judge of the High Court

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