

SOUTH AFRICA / JUDGMENT

Brent v Sic-Skagen Innovation Centre (CA137/2014) [2015] ZAE CGHC 107 (19 October 2015) [2015] ZAE CGHC 107

COURT

Eastern Cape High Court, Grahamstown

BEFORE

C Plasket, N G Beshe

CASE / FILE NUMBER

CA137/2014

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IN

THE HIGH COURT OF SOUTH AFRICA

EASTERN

CAPE, GRAHAMSTOWN

CASE

NO: CA137/2014

DATE

HEARD: 16/10/2015

DATE

DELIVERED: 19/10/2015

NOT

REPORTABLE

In

the matter between:

NEIL

BRENT

APPELLANT

and

SIC-SKAGEN

INNOVATION

CENTRE

RESPONDENT

JUDGMENT

PLASKET J

- [1] The appellant, Mr Neil Brent, instituted an action against the respondent, the Sic-Skagen Innovation Centre (Sic-Skagen), in the Magistrate's Court, Humansdorp. The action involved four claims for unpaid commission of R102 204.33 (of which R2 204.33 was abandoned), payment of R3 000 for services rendered, R3 699.54 in respect of certain other services rendered and R7 190.52 in respect of the costs of repairing a quad motor cycle belonging to Sic-Skagen.
- [2] All four claims were dismissed with costs by the court below. Brent now appeals against the dismissal of claims 1, 2 and 3.
- [3] In his particulars of claim, Brent pleaded in respect of claim 1 that he and Sic-Skagen entered into an agreement in terms of which it would pay him commission on the value of a contract between Sic-Skagen and the Kouga Municipality; and that it would pay him R10 000 per month for 23 months and a final payment of R1 814.65. He pleaded further that Sic-Skagen made 13 payments, amounting to R129 609.69 but that a balance of R102 204.33 remained. He claimed the amount of R100 000, abandoning the amount of R2 204.33 for jurisdiction purposes.
- [4] In respect of claim 2, he pleaded that Sic-Skagen had agreed to pay him R1 000 per month for the rendering of certain services but had failed to do so for the three months of March, April and May 2013.
- [5] In respect of claim 3, he pleaded that he had rendered services to Sic-Skagen between September 2012 and January 2013 and had been short-paid in the amount of R3 699.54.
- [6] In Sic-Skagen's plea, it denied the agreement that claim 1 was based upon and pleaded that the payments made 'were gifts to the Plaintiff and not payments of a lump sum'. In respect of claims 2, Sic-Skagen pleaded that it never requested services to be rendered by Brent and, in respect of claim 3, it pleaded a lack of knowledge and a denial that 'the payments was for services rendered' and that 'no money is payable to the Plaintiff'.
- [7] Brent testified that Sic-Skagen had been engaged by the Kouga Municipality to remedy 'a problem with the beach at St Francis Bay'. His entitlement to be paid a commission was confirmed in an e-mail dated 12 April 2008 from Sic-Skagen which stated:

'Your handling of the project is very professional, and we appreciate it very much, and will pay you our normal agent provision at 5% for this job.'

- [8] Because of the municipality failing to pay what was due, its obligations were re-negotiated to payments of R200 000 per month. It was then agreed that Brent would be paid R10 000 per month, this being five percent of the municipality's monthly payment. Brent testified that certain payments were made but the amount claimed was still outstanding.
- [9] Mr Paul Jacobson, a member of Sic-Skagen, testified that he made 'a gentleman's agreement' with Brent to pay him the commission, stating that 'I sent Mr Brent 5% of the income as a gift'. By this, it would appear, he tried to create the impression that no enforceable agreement existed but that was contradicted by the e-mail of 12 April 2008, as well as by a statement he made at the commencement of his evidence, namely that there was 'a contract of (sic) Mr Brent in April 2008'. He also said of the 'gentleman's agreement' that he had said to Brent concerning the 5% commission that 'when we are paid, we pay you and you take care of the contract to the municipality.'
- [10] In the light of the above, the magistrate's dismissal of claim 1 is clearly erroneous. The evidence of Jacobson establishes the agreement to pay Brent and the idea that it was a gift is so improbable that it can be rejected. Brent's evidence establishes the agreement and the short-payment. Claim 1 ought to have succeeded.
- [11] Claims 2 and 3 relate to payments due for work done by Brent. In the e-mail of 12 April 2008, Sic-Skagen undertook to pay Brent, additional to the commission, 'for inspection at the beach, when the project start up'. At first, Brent submitted invoices but later it was agreed that he would be paid R1 000 per month for monitoring the beach. Various payments were made but Brent established with reference to invoices that he had been short-paid in the amount of R3 699.54 for the period September 2012 to January 2013 and had not been paid R1000 per month for the months of March, April and May 2013.
- [12] Sic-Skagen's defence to these claims appears to be that on 26 March 2013, Brent was dismissed. There are two fundamental problems with this defence. First, it was never pleaded and secondly, it was not put to Brent. It could not, in any event, avail Sic-Skagen in respect of the short payments totalling R3 699.54, which predated the alleged dismissal, or the fixed sum of R1000 for March
2013. But, never having been pleaded or put, the alleged dismissal cannot be relied on. That being so, the magistrate ought to have found that Brent proved claims 2 and 3.
- [13] The result is that the appeal must succeed and the order that ought to have been made must now be made.
- [14] The following order is made:
- (a) The appeal succeeds with costs.
- (b) The order of the court below is set aside and replaced with the following order.

The defendant is directed to pay to the plaintiff:

- (i) R100 000 in respect of claim 1;
- (ii) R3 000 in respect of claim 2;
- (iii) R3 699.54 in respect of claim 3;
- (iv) interest on the above amounts at the legal rate *a tempore morae*;
- (v) costs of suit.

C. PLASKET

JUDGE OF THE HIGH COURT

I agree:

N G BESHE

APPEARANCES:

For the appellant: J Bester instructed by NN Dullabh and Co, Grahamstown.

For the respondent: P Jacobson in person.

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