

SOUTH AFRICA / JUDGMENT

Centrafin (Pty) Ltd Street Talk Trading 131 CC t.a Royal Food and Another (14976/2017) [2018] ZAGPJHC 19 (8 February 2018) [2018] ZAGPJHC 19

COURT

South Gauteng High Court, Johannesburg

BEFORE

Twala

CASE / FILE NUMBER

14976/2017

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANN

CASE: 14976/2017

8/2/2018

Not reportable

Not of interest to other judges

Revised.

In the matter between:

CENTRAFIN (PTY) LTD PLAINTIFF

AND

STREET TALK TRADING 131 CC

t/a ROYAL FOOD FIRST DEFENDANT

GEORGE VAN HEERDEN SECOND DEFENDANT

TWALA J

[1] The plaintiff brought this application for summary judgment against the defendants for an order in the following terms:

- a) Payment of the sum of R111 949.69
 - b) Interest on the aforesaid amount at the prevailing prime lending rate calculated from 22 March 2017 to date of final payment, (prime is currently at 10.25%), both days inclusive, as per Annexure “B”
 - c) Costs of suit on attorney and client scale, as per paragraph 15.1 of Annexure “A” to the particulars of claim.
- [2] It is common cause that on the 19th January 2016 the plaintiff and the first defendant concluded a written Master Rental Agreement whereby the plaintiff rented a pabx telephone system to the defendant. The rental period was for 60 months and the rental amount was R1 351.46 (excluding vat) per month. It is further undisputed that on the 19th of January 2016 the second defendant entered into a guarantee in terms of which the second defendant bound himself as a guarantor

and co-principal debtor in solidum with the first defendant in favour of the plaintiff. It is further common cause that the plaintiff performed in terms of the master rental agreement by delivering the equipment to the first defendant.

- [3] Counsel for the plaintiff contended that the defendant is in breach of the agreement since it has failed to pay the monthly rental amount and the present arrear amount is the sum of R6 931.04. It is further argued on behalf of the plaintiff that the first defendant has been paying the rental amount until October 2016. It is contended by counsel for the plaintiff that the defendants did not inform the plaintiff that the equipment was destroyed by lightning and that it was completely replaced by the supplier with different equipment in size. There is no merit in this contention, so goes the argument, since the defendants did not inform the plaintiff as provided for in the master rental agreement. The plaintiff is not aware that the equipment was destroyed by lightning and that it was replaced by the supplier.
- [4] It is contended by counsel for the defendants that the equipment was destroyed by lightning and new and more expensive equipment was provided by the supplier replacing the one which is the subject of the master rental agreement. There is no agreement between the first defendant and the plaintiff on the new equipment nor was any rental amount discussed and agreed upon between the parties. The master rental agreement which was concluded between the plaintiff and the first defendant was terminated when the equipment was replaced.
- [5] It is trite that for a defendant to successfully resist an application for summary judgment, it must satisfy the Court that it has a bona fide defence by disclosing fully the nature of the grounds of the defence and the material facts relied upon for such defence. The defendant needs not detail its defence to the same extent as in the plea, but must furnish sufficient particularity which would sustain a defence at the trial that may ensue.

- [6] I am satisfied that the defendants have raised a bona fide defence which is in my view good in law. The plaintiff is suing the defendants based on a master rental agreement for specific equipment which has been identified by its serial number. It is uncontroverted evidence that the said equipment does not exist since it has been destroyed by lighting and was replaced by new and more expensive equipment by the supplier.
- [7] I am of the respectful view therefore that the defendants succeeded in showing that there is a triable issue between the parties. It is my considered view therefore that summary judgment falls to be dismissed under the circumstances.
- [8] In the circumstances, I make the following order:
- 1) The application for summary judgment is dismissed;
 - 2) Costs of the application to be costs in the course.

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of hearing: 30 January 2018

Date of Judgment: 8 February 2018

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For the Respondent: Advocate: W WANNENBURG

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