

SOUTH AFRICA / JUDGMENT

Connecto Fasteners (Pty) Ltd v Bidvest Bank Limited; Jacobs Capital (Pty) Ltd v Bidvest Bank Limited (1000/18; 999/18) [2019] ZASCA 110 (13 September 2019)

[2019] ZASCA 110

COURT

Supreme Court of Appeal

BEFORE

Saldulker, Van der Merwe, Tsoka

CASE / FILE NUMBER

1000/18; 999/18

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not reportable

Case No: 1000/18 and 999/18

In the matters between:

CONNECTO FASTENERS (PTY) LTD APPELLANT

and

BIDVEST BANK LIMITED RESPONDENT

JACOBS CAPITAL (PTY) LTD APPELLANT

Neutral Citation: Connecto Fasteners (Pty) Ltd v Bidvest Bank Ltd (1000/18) and Jacobs Capital (Pty) Ltd v Bidvest Bank (999/18) [2019] ZASCA 110 (13 September 2019)

Coram: Saldulker and Van der Merwe JJA and Tsoka AJA

Heard: 2 September 2019

Delivered: 13 September 2019

Summary: Practice – judgments and orders – summary judgment – opposing affidavit of deponent does not disclose a bona fide defence – judicial discretion properly exercised – summary judgment correctly granted.

ORDER

On appeal from: The KwaZulu-Natal Local Division High Court, Durban (Gorven J sitting as court of first instance):

Both appeals are dismissed with costs including costs of two counsel.

Tsoka AJA (Saldulker and Van der Merwe JJA concurring):

[1] The issue in this appeal is whether the court below (Gorven J) correctly granted summary judgment against the appellants.

[2] This appeal, with the leave of the court below, relates to two matters that were heard together. The appellants are Connecto

Fasteners (Pty) Ltd (Connecto) and Jacobs Capital (Pty) Ltd (Jacobs Capital). The issues in the two matters are identical and the

respondent in both matters is Bidvest Bank Limited (Bidvest). The result is that only one judgment would suffice for the two matters.

For convenience, I shall refer to both appellants as the appellant.

[3] Three written agreements are relevant to the appeal. The first agreement was concluded between Tradeflow (Pty) Limited (Tradeflow)

and the appellant. This is referred to as the Trading Agreement. The second was concluded between the respondent and Tradeflow and is described as the Receivables Purchase Agreement. The third was concluded between the respondent and the appellant and is described as the Customer Agreement. The latter is the agreement upon which the respondent's claim is founded and the summary judgment was sought and granted in relation thereto. It is common cause that the contractual relationship amongst the above named entities was governed by these three agreements.

[4] Briefly, the essence of the Trading Agreement was that Tradeflow would make payment on behalf of the appellant to the suppliers

nominated by the latter. The appellant would then reimburse Tradeflow for those amounts along with an agreed commission and charges. In terms of the Receivables Purchase Agreement, the respondent would purchase and take transfer of certain of Tradeflow's claims against the appellant. Tradeflow also ceded its entire right, title and interest in its claims against the appellant, insofar as transfer in terms of the Receivables Purchase agreement was in any respect not fully effective and valid. In terms of the Customer Agreement, the appellant would open a designated account with the respondent and could post on a secure platform information concerning amounts to be paid in respect of claims for reimbursements to the respondent.

- [5] Despite posting payment assurances on the platform, the appellant failed to make payment to the respondent. The latter then instituted an action in the KwaZulu-Natal Local Division of the High Court, Durban against the appellant for payment of the moneys due, interest and costs. The appellant filed a notice to defend the action. As the respondent's claim was for a liquidated amount, it applied for summary judgment in terms of rule 32 of the Uniform Rules. The appellant filed an affidavit in terms of rule 32(3)(b) resisting the granting of summary judgment. The defence persisted with on appeal can be summarised as follows:
- (a) The enforceability of its obligation to pay in terms of clause 3.2 of the Customer Agreement depended on a valid and enforceable account receivable owed by the appellant to Tradeflow. There being no enforceable account receivable payable by the appellant to Tradeflow, the respondent was not entitled to any payment. The contention being that as Tradeflow ceded all its rights, title and interest in the account receivable to the respondent, the latter could not have more rights than Tradeflow had;
 - (b) The respondent's right to claim payment was governed also by clause 2 of the Trading Agreement which requires the appellant to draw a bill of exchange and thereafter have it delivered to Tradeflow. Bills of exchange not having been drawn, so contended the appellant, there was no obligation on it to pay the respondent.
- [6] The appellant's defence requires an interpretation of clause 3.2 of the Customer Agreement which reads:

‘When and each time Customer [Connecto/Jacobs Capital] posts a Payment Assurance, Customer [Connecto/Jacobs Capital] creates and assumes, in respect of the Account Receivable to which such Payment Assurance relates, an independent, irrevocable, unconditional, legal, valid, transferable and binding obligation in favour of the Supplier [Tradeflow] (or in the event of a Transfer, in favour of the Supplier's transferee) [Bidvest] to pay to the relevant Designated Account on the relevant Maturity Date an amount equal to and in the same currency as the relevant Certified Amount without deduction or counterclaim and without exercising any right of set-off under the Underlying Relationship to which such Payment Assurance relates or otherwise, and such amount shall be due and payable by Customer [Connecto/Jacobs Capital] on the Maturity Date.’

- [7] Prior to embarking on the correct interpretation of clause 3.2 of the Customer Agreement, it is apt to restate what this court said in *Endumeni Municipality*[1] with regards to interpretation of agreements. This court said:

‘... Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory

instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration

must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document . . . the “inevitable point of departure is the language of the provision itself”, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.’

- [8] Ex facie clause 3.2 it is apparent that the clause regulates the relationship between the appellant and the respondent. From the clause, it is apparent that Tradeflow is not a party to the Customer Agreement and that the parties to the said agreement are the appellant and the respondent.
- [9] Clause 3.2 must be interpreted in the context of the entire Customer Agreement and in particular the whole of clause 3 which confirms that the respondent’s claim is incontestable and that it was entitled to apply for and be granted summary judgment against the appellant. The heading of clause 3.2 reads ‘The Payment Obligation’. The appellant’s payment obligation to the respondent only arises when the former posts a payment assurance which is defined as ‘. . . details of supplier, invoice number, the amount denominated in the relevant currency, the issue date and the maturity date’ of each account receivable.
- [10] In terms of clause 3.1 the appellant is not obliged to post any payment assurance. It is at liberty to post or not to post a payment assurance. But once a payment assurance is posted, the appellant creates and assumes, in respect of account receivable, a payment obligation which is ‘an independent, irrevocable, unconditional, legal, valid, transferable and binding obligation in favour of the supplier (or in the event of a transfer, such as in the present, in favour of the supplier’s transferee)’. In addition payment by the appellant is to be made ‘without deduction or counterclaim and without exercising any right of set-off’.
- [11] Thus, clause 3.2 of the Customer Agreement provided for an unconditional undertaking by the appellant to make payment which is irrevocable, legal, valid and binding entitling the respondent to an independent and incontestable claim against the appellant for payment. The clause, unlike clause 2 of the Trading Agreement which requires the drawing of bills of exchange, does not require such an act. In terms of clause 3.2 a payment obligation arises upon the mere posting of the payment assurance. The appellant’s affidavit resisting the summary judgment disclosed no bona fide defence worthy of consideration by a trial court in due course. The court below was thus correct to grant the summary judgment against the appellant.
- [12] In the result the respondent’s claims in terms of the Customer Agreement and in particular clause 3.2 thereof, are incontestable.

The respondent was entitled to summary judgment. Furthermore, I can find nothing wrong in the judgment of the court below indicating that the learned judge exercised his discretion wrongly. The defences raised by the appellant do not disclose a bona fide defence worthy of consideration by a trial court in due course. Accordingly, the appeals must fail.

[13] In the result the following order is made:

Both appeals are dismissed with costs including the costs of two counsel.

M Tsoka

Acting Judge of Appeal

APPEARANCES:

For appellant: M R Hellens SC

S K Dayal SC

Instructed by:

Maharaj Attorneys, La Lucia Ridge

Claude Reid Attorneys, Bloemfontein

For respondent: L N Harris SC

D Ramdhani

Norton Rose Fulbright South Africa Inc, Sandton

Webbers, Bloemfontein

[1] Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) para 18.

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Prepared on 10 October 2026 · Esheria