

SOUTH AFRICA / JUDGMENT

Lishwa Constructions CC v Hard Property Development Group [2005] ZAGPHC 371; 92/05/01 (17 August 2005)

[2005] ZAGPHC 371

COURT

High Courts - Gauteng

BEFORE

Willis

CASE / FILE NUMBER

4092/05

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NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO: 4092/05

DATE:2005-08-17

In the matter between

LISHWA CONSTRUCTIONS CC..... Plaintiff

and

HARD PROPERTY DEVELOPMENT GROUP..... Respondent

JUDGMENT

WILLIS, J: The plaintiff claims provisional sentence against the first defendant in the sum of R263 000,00 together with interest and costs and against the second defendant in the sum of R100 000,00 together with interests and costs.

The claim is based on cheques which, it is common cause, the first defendant and the second defendant issued to the plaintiff. Four of the original cheques have been produced to court this afternoon in respect of all but two of the claims. There is an affidavit attaching a copy of the relevant cheques and also the appropriate indemnity.

There is no dispute that these cheques were signed and delivered to the plaintiff. There is no dispute that the cheques have been dishonoured upon being presented for payment. The defendants raise certain points in limine which have since been abandoned. It has been vaguely contended however that there is still a *lis pendens* which would affect the matter. The fact of the matter is that if provisional sentence is granted, it would remove the issue in respect of which provisional sentence is granted from the *lis*. (see no merit that defence. Essentially the defendants rely on the following defences: -

- (i) An over-payment.
- (ii) There is an accounting dispute of some R30 334,00 relating to certain invoices and
- (iii) The plaintiff did not complete the work it claims for which it should have been paid.

When one examines the probabilities, this is the essential difficulty which the defendants face: why then did they issue the cheques? If they issued the cheques, they must, on the probabilities have been satisfied that the amounts in respect of which they wrote the cheques, were indeed owing.

On this very simple test it seems to me that the claim for provisional sentence must succeed. The claim for a provisional sentence has been set out as claims A, B, C, D, E and F at the end of the summons dated 21 February 2005. An order is accordingly made in terms of prayers 1, 2 and 3 of each of claims A, Br C, D, E and F on the summons dated 21 February 2005.

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