

SOUTH AFRICA / JUDGMENT

M-Quip Mining and Diesel CC and Another v Eskom Holdings Soc Limited and Another (49176/2017) [2017] ZAGPPHC 936 (2 November 2017) [2017] ZAGPPHC 936

COURT

North Gauteng High Court, Pretoria

BEFORE

T.S Madima

CASE / FILE NUMBER

49176/2017

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 49176/2017

2/11/2017

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

In the matter between

M-QUIP MINING AND DIESEL CC 1st

Plaintiff

TEMPLORE TRADING 69 (PTY) LTD 2nd

Plaintiff

And

ESKOM HOLDINGS SOC LIMITED 1st

Defendant

GOVAN MBEKI MUNICIPALITY 2nd

Defendant

JUDGMENT

MADIMA, AJ

- [1] The second Plaintiff and second Defendant entered into a written agreement in terms of which the second defendant would provide maintenance and engineering services in respect of Embalenhle Extension 7 (the township).
- [2] The first defendant provided the second defendant with a quotation for a new electricity supply point for the township. The terms of the service agreement and budget quotation were that:
- (a) the first and/or second defendant would provide electricity and the distribution thereof within the township as mutually agreed between the parties;
 - (b) the first defendant shall provide the second defendant with a quotation for the provision of the point of supply to the township;
 - (c) the first plaintiff, alternatively the second plaintiff upon receipt of the mentioned quotation, make up-front payments as required by the first defendant directly to the first defendant; and
 - (d) payments required shall be for:
 - i. up-front standard connection charge to the sum of R685 939.50 (Six Hundred and Eighty Five Thousand Nine Hundred and Thirty Nine Rand and Fifty Cents)
 - ii. a security deposit (cash or bank guarantee) to the sum of R919 900.00 (Nine Hundred and Nineteen Thousand Nine Hundred Rand) (hereinafter "the Security Deposit)
 - (e) the payment referred to in 8(d)(i) supra would be applied to the installation and provision of the electricity supply point as aforesaid;
 - (f) the amount referred to in 8(d)(ii) supra would be held as security by the first defendant for the due payment of the consumption of electricity and for the due payment of monthly electricity accounts;
 - (g) should there be no recorded consumption and/or should the development be cancelled, the amount paid as a security deposit would be re-funded to the first, alternatively the second plaintiff.
- [3] The plaintiffs aver that due to the fact that the township development had been cancelled, they were entitled to be refunded or repaid the amount of R919 900.00. This was a security deposit paid to the first defendant by the plaintiffs.

- [4] The first defendant failed to pay the deposit back to the second defendant.
- [5] The plaintiff issued a summons and claim against the defendants, jointly and severally, the one paying the other to be absolved
1. The amount of R919 900.00;
 2. Interest on the said amount;
 3. Cost of suit;
 4. Alternative relief.
- [6] The parties are before me on summary judgment. Before I could hear the matter, counsel for the plaintiff and second defendant informed me that the matter between them had become settled. The terms of the agreement are as follows, and encapsulated in a draft:
1. Second defendant is to pay the amount of R919 900.00 (Nine Hundred and Nineteen Thousand Nine Hundred Rand) to the Plaintiffs' attorney of record within 90 days from the date of this order.
 2. Second defendant shall further pay interest on the amount of R919 900.00 at the rate of 10.05%per annum, calculated from date of this or- der to ate of final payment.
 3. Second defendant shall further pay the plaintiffs taxed party and party costs.
- [7] I made the agreement an order of court.
- [8] Counsel for the plaintiff informed me that because of the agreement between the plaintiffs and the second defendant, there would be no point in pursuing the sum- mary judgment against the second defendant. This was a wise decision. All the plain- tiffs sought are costs against the first defendant.
- [9] For its part, the first defendant submitted that it has been dragged to court by the plaintiff when they were aware that it had a bona fide defense. The plaintiffs ought to pay its costs given the fact that the matter had been settled.
- [10] In its affidavit resisting summary judgment the first defendant avers that it has a bona fide defence. I agree. My preliminary view, which view I communicated to the parties before the commencement of proceedings was that I would grant leave to de- fend and reserve the costs. I invited the plaintiff's counsel to convince me otherwise.
- [11] The settlement agreement between the plaintiffs and the second defendant vindicated my preliminary view. Had the matter gone to trial, the first defendant would have been successful and thereby entitled to its costs.
- [12] It is a fundamental principle that, as a general rule, the party who succeeds should be awarded its costs. This rule should not be departed from except on good grounds. *Merber v Merber* 1948 (1) SA 446 (A) also *Pretorius v Herbert* 1966 (3) SA 298 T.

[13] I am of the view that the first defendant has been substantially successful, hence the agreement between the plaintiffs and the second defendant. This agreement does not include the first defendant and it settles the claim between all the parties.

[14] In the result I make the following order:

1. The cost claim against the first defendant is dismissed.
2. The plaintiffs to pay the costs of the first defendant jointly and severally, the one paying the other to be absolved.

T.S MADIMA

ACTING JUDGE OF THE HIGH COURT

On behalf of the Plaintiffs: Adv

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On behalf of the First Defendant: Adv

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012

04-0424

On behalf of the Second Defendant: Adv

L. Mmusi

Instructed by: JL

Raphiri

Brooklyn

087

236-6161

Date of Hearing:

31 October 2017

Date of

Judgment

02 November 2017

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