

SOUTH AFRICA / JUDGMENT

Penny v OMB Waste Logistics (Pty) Ltd (32116/13) [2013] ZAGPPHC 422 (6 December 2013) [2013] ZAGPPHC 422

COURT

North Gauteng High Court, Pretoria

BEFORE

E Swartz

CASE / FILE NUMBER

32116/13

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

GAUTENG HIGH COURT)

Case

No: 32116/2013

Date:

6 December 2013

In

the matter between:

HILTON

LESLIE

PENNY.....Applicant

and

OMB

WASTE LOGISTICS (PTY)

LTD.....Respondent

JUDGEMENT**SWARTZ AJ**

This is a money judgement application for payment of the sum of R 153 171.00 together with interest and costs.

Very little is in dispute in this matter.

The applicant is an erstwhile director of the respondent. The applicant resigned from the respondent's employ at the end of 2011 I beginning of 2012.

The parties were at all relevant times duly represented by their respective attorneys of record who engaged in correspondence detailing the issues in dispute I not in issue. I was referred extensively by both counsel appearing for the litigants to such correspondence, which correspondence forms part of the record. The applicant's attorney further attested to an affidavit, confirming the correctness of such correspondence.

The applicant originally claimed payment of an amount of R 253 171.00. Subsequent to a letter of demand sent by the applicant's

attorneys, an amount of R 100 000.00 was paid by way of two equal instalments of R 50 000.00.

On behalf of the respondent it is contended that the R 100 000.00 was paid as what is termed "good faith" payments, because there was no obligation on the respondents to make these payments. The applicant denies these payments as being done in "good faith" but avers that it was done in accordance with the Agreement reached between the parties.

The quantum is not in dispute.

The respondent contends that it is not indebted to the applicant because the applicant resigned as a director of the respondent and its associated companies and signed and submitted an affidavit as required of him, however he did not provide the respondent with signed documents, relating to a Memorandum of Agreement, Lease Agreement and Loan Agreement.

Counsel appearing for the applicant submitted that the only terms of the agreement reached by the parties were contained in the letter from respondent's attorney to plaintiffs attorney dated 5 December 2012, "LP4", wherein the only terms mentioned were the resignation as director from the respondent and its affiliated companies, and the signing of an affidavit. Both these conditions were met.

It was submitted that the forwarding of the signed documents, (referring to the Memorandum of Agreement, Loan Agreement and Agreement of Lease) were not terms of the agreement reached between the parties, but was merely a request for such documents to be forwarded. No obligation arose from the request.

The question is, have the outstanding documents now become part of the terms of the agreement before the balance becomes due and payable. The applicant submits not.

I agree with the submissions of Advocate De Beer for the applicant that, nowhere in the correspondence between the attorneys is there any indication that, to quote him “if you cannot give me these documents it is a deal breaker.”

In the letter of 25 January 2013, a request is made to the applicant to provide the respondent with the whereabouts of the documents so that it may be located. The response to this was merely that the applicant had no idea of the whereabouts of these documents.

I accept that these R 50 000.00 payments were instalment payments of the agreed quantum in terms of the agreement reached between the parties. It was not payments made in “good faith” without obligation. The only two conditions/terms reached were the resigning as director and signing of an affidavit. This was done. There was a meeting of the minds. A party to an agreement cannot unilaterally impose a further term to an agreement when there was already a meeting of the minds.

From the e-mail correspondence it is in any event clear that the applicant did not sign or read the relevant documents in question and did not have it in his possession. It is in any event improbable that the applicant would with-hold these documents if it would entitle the respondent to withhold payment.

As stated, there is very little in dispute in this matter and certainly no serious dispute of fact precluding me from making a finding on the affidavits before me. In this regard I was referred to test enunciated by Corbit JA in the often referred to decision of Plascon

- Evans Paints Limited v Van Riebeeck Paints (Pty) Ltd.

Adv Srnit, appearing for the respondent, contends that the LP 5 constitutes a counter offer which the applicant accepted. If he had accepted the counter offer, he must have accepted that payment would have been made upon production of the signed documentation. LP 4 is clear, “we will pay the amount once you have provided us with a signed document”. In other words, if the applicant had accepted the counter offer, he accepted that he will only receive payment on production of the documents. The very reason why the balance was withheld was on condition that the applicant produce the signed documents requested from him.

I accept there was compliance of the applicant with the terms of the agreement reached. I find this particularly in the wording of paginated page 61, paragraph 2 :

“Our client has advised us that all outstanding steps in relation to your client’s removal from our Namibian Corporations have been complied with and as such a further instalment of R 50 000.00 will be paid to your client during the course of next month.”

I find that there is no reason why the applicant would not hand over documents which were allegedly in his possession, as he will

obviously do everything necessary to receive payment. It is improbable that the respondent would have made two substantial payments amounting to R 100 000.00 if an agreement did not exist.

The probabilities favour the applicant and the contentions raised by the respondent are improbable and rejected.

Judgment

is granted in favour of the applicant for payment of the sum of R 153 171.00;

Interest on the aforesaid amount at a rate of 15.5% per annum a tempore morae;

Costs as between party and party on the Magistrate's Court Scale.

E SWARTZ

ACTING JUDGE OF THE HIGH COURT

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Prepared on 10 October 2026 · Esheria