

SOUTH AFRICA / JUDGMENT

Siyaya DB Consulting Engineers (Pty) Ltd v Passanger Rail Agency of South Africa (7394/2015) [2015] ZAGPPHC 961 (1 December 2015) [2015] ZAGPPHC 961

COURT

North Gauteng High Court, Pretoria

BEFORE

NP Mali

CASE / FILE NUMBER

7394/2015

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

In the matter between:

SIYAYA DB CONSULTING ENGINEERS (PTY) LTD APPLICANT

And

PASSANGER RAIL AGENCY OF SOUTH AFRICA RESPONDENT

J U D G M E N T

MALI AJ

1. The plaintiff applies for summary judgment against the defendants for payment of the amount of R7 098 481.66. The payment of the said amount should be together with interest of 9% per annum on the amount of :-

1.1. R883 500.00 from 23 April 2015 to date of payment.

1.2. On the amount of R1 270 196.00 from 23 April 2015 to date of payment.

1.3. On the amount of R1 007 056.05 from 23 April 2015 to date of payment.

1.4. On the amount of R343 101.55 from 23

April 2015 to date of payment.

1.5. On the amount of R410 400.00 from 30

July 2015 to date of payment.

1.6. On the amount of R883 500.00 from 30 July 2015 to date of payment.

1.7. On the amount of R792 072.00 from 30 July 2015 to date of payment.

1.8. On the amount of R1 007 056.05 from 30 July 2015 to date of payment.

1.9. On the amount of R501 600.00 from 30 July 2015 to date of payment.

2. In terms of rule 32(3), a defendant may either furnish security for any judgment that may be given or satisfy the court by affidavit or with the leave of the court, by oral evidence given by himself or by any other person who can swear positively to the facts that he shall disclose fully the nature and grounds of the defence and the material facts relied upon by him.
3. The approach of the court in deciding an opposition to a summary judgment application is set out by CORBETT JA in *Maharaj v Barclays National Bank* 1976 (1) SA 418

"Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the court by affidavit that he has a bona fide defence to that claim.

Where the defence is based upon facts, in the sense that material facts alleged by the plaintiff in his summons, or combined summons are disputed or new facts are alleged constituting a defence, the court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. All that the court enquires into is: (a) whether the defendant has 'fully' disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both bona fide and good in law. If satisfied on these matters the court must refuse summary judgment, either wholly or in part, as the case may be. The word 'fully' as used in the context of the Rule (and its predecessors), has been the cause of some judicial controversy in the past. It connotes, in my view, that while the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the court to decide whether the affidavit discloses a bona fide defence."

4. In *Maharaj* at 4268 it was further held, that in determining whether a respondent in a summary judgment application should succeed -

"Alf that the Court enquires into is ... whether on the facts so disclosed the defendant appears (my underlining) to have, as to either the whole or part of the claim, a defence which is bona fide and good in law. If satisfied on these matters the Court must refuse summary judgment, either wholly or in part ..."

5. What is apparent from Maharaj is that a respondent does not have to prove a defence. All that is required is that a respondent must only advance facts from which it must appear that the respondent has a defence to the claim. It is at the trial where the defence must be proved.
6. In opposing the summary the respondent's argument is that it has an answer to the applicant's case because it has a bona fide defence and a triable case. One of the respondent's defences is that the invoices upon which the applicant relies on do not correspond with the payment schedule as contemplated in the consultancy agreement. The respondent further stated that the applicant/ plaintiff's particulars of claim do not disclose a cause of action, alternatively that they are vague and embarrassing; and further that the applicant should have referred the matter to arbitration as per the agreement between the parties.
7. The plaintiff concedes that the defendant raised a triable issue. This is in respect of the morae interest claimed from the respective dates specified in the summons, and grants the defendant leave to defend on the issue of interest, but only insofar as such interest precedes the date of service of summons.
8. On behalf of the applicant it was contended it had pleaded with sufficient particularity in that every single invoice correlates with the amended payment schedule. Counsel for the applicant went into great effort demonstrating to the court the process to be followed in reconciling a certain claim to a particular invoice.
9. The applicant's Counsel further submitted that if the defendant would take a calculator and add percentages referred to in the annexures the defendant would be in a position to plead. The applicant expects the court to follow mathematical formulas and calculations to arrive at the total amount claimed and grant a summary decision. In casu the calculations suggested by the applicant are not mere mathematical calculations.
10. It is trite that the drastic procedure of summary judgment providing the plaintiff with a quick remedy should be granted if the claim is liquidated. In OOS RANDSE BANTOSAKE ADMINISTRATISIE V SANTAM (1978)(1) page 164 ("OOS RANDSE") at page 168 G it was stated "A money claim is liquidated if the amount thereof has been fixed by agreement or by the judgment of a Court". In the present matter it appears to me that the agreement intended to fix the money claim requires interpretation in the trial court.
11. Having regard to the above my view is that the dispute over the payment structure of the claim goes to the heart of the defence. I find that a bona fide defence exists.
12. The following order is therefore made:
 1. The defendant is hereby granted leave to defend the action instituted by the plaintiff.
 2. Costs are to be in the cause of action.

NP MALI

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant:T MATHOPO

Instructed by: MATHOPO ATTORNEYS

C/O PHATSHWANE ATTORNEYS

For the Respondent:M MARITZ SC

Instructed by:DIALE MOGASHOA ATTORNEYS

Date of hearing: 20 November 2015

Date of judgment: 1 December 2015

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Prepared on 11 October 2026 · Esheria