

SOUTH AFRICA / JUDGMENT

Smanda Security Services Pty (Ltd) v Free State Development Corporation (1589/2020) [2020] ZAFSHC 203 (12 November 2020)

[2020] ZAFSHC 203

COURT

Free State High Court, Bloemfontein

BEFORE

MBHELE

CASE / FILE NUMBER

1589/2020

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Case Number: 1589/2020

In the matter between:

SMADA SECURITY SERVICES PTY (LTD) Appellant

And

FREE STATE DEVELOPMENT CORPORATION Respondent

HEARD ON:

20 AUGUST 2020

CORAM:

MBHELE J

DELIVERED ON: 12 NOVEMBER 2020

INTRODUCTION

[1] The applicant approached this court on an urgent basis seeking an order directing the respondent to comply with its payment obligations

in terms of an agreement signed between the applicant and the respondent on 12 December 2018 (contract), and in particular to make payment of the sums of:

1. R 9 5 98 341. 74 (forthwith);
2. R 1 805 556 .55 by 30 May 2020;

And costs of suit.

The matter was removed from the roll and parties referred the matter for mediation. During mediation proceedings the respondent agreed to pay the applicant an amount of R 4 403 898.00. The matter came before me on the normal course after papers were exchanged and issues were fully ventilated.

[2] On 12 December 2018 the applicant and the respondent entered into a contract in terms of which the applicant would provide security

services to the respondent . The contrat was for the duration of 3 years .

[3] Paragraphs 7 and 8 of the Contract read as follows:

7. SCOPE OF WORK

The following have been identified as among others services required the Service Provider: To:

7.1 protect the personnel and property of FDC.

7.2 prevent the loss or damage by theft, burglary, arson and vandalism of FDC property.

7.3 respond to any emergency at FDC properties.

7.4 ensure security of properties and assets of FDC.

7.5 control the parking area and guide visitors and clients effectively to the desired location within the FDC premises.

7.6 verify incoming visitors.

7.7 patrol the buildings during the day and night to ensure safety and security of FDC assets.

7.8 man the reception area during and after hours.

7.9 provide armed response for emergency situations.

7.10 monitor the CCTV cameras.

7.11 always perform in terms of section 3.4 of the specifications a copy of which is attached and marked as Annexure "A"

7.12 ensure that the Service Provider's personnel are always in full security uniform and is supervised.

8 ALLOCATION OF FEES

8.1 The parties agree that the Service Provider shall only be entitled to R65 000 000.00 (sixty-five million rand) only including VAT only over the period of three years (= R1 805 555.56 per month only).

8.2 FDC shall not incur any additional costs and no escalation whatsoever over and above amount stipulated in clause 8.1 above.

8.3 Monthly payments of R 1 805 555.56 shall not be made later than the last day of the month on conditions that the Service Provider submitted invoices and is tax compliant.

8.4 The invoice shall indicate the site description, number of security guards, grade of security guards and the amount charged for each site.

8.5 Should FDC decide to add or reduce the number of sites in Annexure “A”, the parties shall review the fee allocation stipulated in clause 8.1.

[4] The applicant invoiced the respondent for the services alleged to have been rendered between April 2019 until April 2020. Respondent made sporadic payments in respect of the said invoices.

[5] On 07 August 2019 the Chief Financial Officer of the respondent wrote a letter with the following contents to the applicant:

“We hereby confirm that we are indebted to Smada Security in the amount of R5 0 16 667. 30 (Five Million and Sixteen Thousand Six Hundred and Sixty-seven Rand and Thirty cents), for security services rendered for the periods April to June 2019.

We further confirm that we are awaiting funds from DESTEA which is expected to be paid to us no later than 30 November 2019 and

undertake to settle the total outstanding liability immediately upon receipt of these funds. We undertake to pay and keep the current

account up to date going forward.”

[6] As a result of non-payment the applicant has failed to pay salaries to the guards deployed at the identified sites of the respondent and has been unable to honour its rental obligations to its landlord

[7] The respondent resists the applicant’s claim on the basis that there were some monies that were paid to the applicant after the aforementioned, letter written by its erstwhile CFO and further that there were times when the applicant failed to post guards at some of the agreed sites. In its quest to prove that payments were made, respondent attached documents showing that monies were transferred into the applicant’s account as payment of various invoices. Below is the schedule of payments made from August 2019:

PAYMENT DATE PAYMENT AMOUNT 01/08/2019 R 500,000.00 03/09/2019 R 1,805,555.97
01/11/2019 R 505,555.56 01/11/2019 R 394,444.44 04/11/2019 R 350,000.00 04/12/2019 R 1,300,000.00
04/12/2019 R 505,555.56 04/12/2019 R 300,000.00 17/01/2020 R 1,800,000.00 31/01/2020 R
1,300,000.00 13/02/2020 R 505,555.97 28/02/2020 R 1,000,000.00 04/03/2020 R 400,000.00 09/03/2020
R 300,000.00 10/03/2020 R 41,004.59 23/03/2020 R 100,000.00 23/03/2020 R 100,000.00 TOTAL PAID
R11,207,672.09

[8] Mr. Rampai, on behalf of the respondent, submitted that the application procedure was the wrong vehicle chosen to bring this

matter before court because there are serious dispute of facts. He supports this argument by illustrating that the respondent suffered

damages which are estimated at R 7 000 000. 00 (Seven Million Rands) because of the applicant's failure to post

guards at several sites of the respondent as agreed in the contract.

[9] Mr. Alli, on behalf of the applicant, conceded to the reduction of an amount of R828 457. 46 from the outstanding amount after the amount was disputed by the respondent.

[10] It is well established under Plascon Evans rule that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order can be granted only if the facts averred in the applicant's affidavit, which have been admitted by the respondent, together with the facts alleged by the latter, justify such order. (See Plascon Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd

[1984] ZASCA 51; 1984 (3) SA 623 A) and National Director of Public Prosecutions v Zuma [2009] ZASCA 1; 2009 (2) SA 277 SCA.

[11] The documents attached by the respondent in its answering affidavit show that the respondent failed on several occasions to pay the amounts claimed on invoices even after the letter acknowledging the respondent's indebtedness to the applicant. It is clear from the above that the respondent's indebtedness to the applicant remains. There is no genuine dispute of fact from the papers. The respondent's bald denial does not constitute genuine dispute of fact.

[12] Mr. Rampai correctly conceded that the issue of damages suffered by the respondent as a result of the applicant's failure to keep its end of the bargain does not belong in these proceedings. The application must succeed for the payment of an amount of R 6 171 542. 65 made up as follows:

Outstanding balance: R9

598 341.75

Amount due for the month of May 2020: R1 805 556.55

Less: Agreed to be paid per mediation: R4 403 898.00

Less: Disputed Amount:

R 828 457.46

R 6 171 542. 65

There is no reason why costs should not follow the event.

[13] Therefore, the following order is made:

ORDER

1. The application for the payment of the sum of R 6 171 542.65 is granted.
2. Respondent is directed to pay the above amount to the applicant within 30 days from the date of this order.
3. Respondent is ordered to pay applicant's costs which were incurred in the application, these costs to include costs of counsel.

NM MBHELE, J

On behalf of the appellant: Adv Alli

Instructed by:

Thokan Attorneys

BLOEMFONTEIN

On behalf of the respondent: Mr N Rampai

Rampai Attorneys

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Prepared on 12 October 2026 · Esheria