

SOUTH AFRICA / JUDGMENT

Stocks Building Gauteng (Pty) Ltd v Federated Insurance Guarantee Brokers (Pty) Ltd (10406/2006) [2009] ZAKZDHC 7 (3 April 2009) [2009] ZAKZDHC 7

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Van der Reyden

CASE / FILE NUMBER

10406/2006

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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DURBAN

Case No: 10406/2006

In the matter between:

STOCKS BUILDING GAUTENG (PTY) LIMITED

Applicant

and

FEDERATED INSURANCE GUARANTEE BROKERS

(PTY) LIMITED

Respondent

J U D G M E N T

VAN DER REYDEN J:

Judgment in this case was kept in abeyance pending the judgment of the KwaZulu-Natal Full Bench in Federated Insurance Guarantee Brokers (Pty) Ltd v Johannesburg Development Agency (Pty) Ltd.

After the Full Bench judgment was handed down I called for supplementary heads of argument dealing with the question whether the present matter is distinguishable from the matter before the Full Bench.

I was not favoured with the requested heads. Instead I was requested to deliver the judgment which is succinctly set out hereunder.

The Applicant in its capacity as a construction company concluded a contract with Megohm Engineering CC a sub-contractor for the installation of electrical work to the Splice Apartments at Killarney, Johannesburg.

The terms of the contract were the standard terms contained in the JBCC Series 2000 Nominated/ Selected Subcontract Agreement

In terms of this agreement Megohm Engineering CC provided the Applicant with a written construction guarantee issued by the Respondent in respect of the contract concluded between the Applicant and Megohm Engineering CC.

The guarantee was a variable guarantee limited to diminishing amounts over a specified period of time.

The Applicant contends that in terms of clause 5 of the Guarantee, the Respondent's liability become due and payable within seven days of the receipt of a written demand, certifying that the subcontract had been cancelled by the Applicant due to Megohm Engineering CC's default.

The only difference between the present dispute and the case on appeal before the Full Bench is that the present dispute involved a construction company and a sub-contractor whereas the case before the Full Bench involved a development company (employer) and a construction company.

In the light of the Full Bench Judgment and Mr Kemp's concession, during argument before me, on behalf of the Respondent, that the judgment of Niles-Dunér, J in the court a quo favoured the Applicant's interpretation in the present matter, it would be an exercise in futility to consider Mr Kemp's submissions which did not find favour with the Full Bench (supra). Furthermore the defence raised by the Respondent, concerning the non-compliance with the cancellation of the sub-contract and notices, was not persisted in during argument before me.

I am bound by the Full Bench judgment.

In the result the Respondent is ordered to make payment to the Applicant of:

1. The sum of R338,237-23.
2. Interest on the aforesaid amount calculated at 15,5 % a tempore morae.
3. Costs of the application.

DATE OF HEARING: 22/4/08

DATE OF DELIVERY: 3/4/09

(Pending receipt of Full Bench judgment on 10/3/09)

APPLICANT'S COUNSEL: Adv. PHJ VAN VUUREN

APPLICANT'S ATTORNEYS:Tiefenthaler Inc.

Ref. df/ma/8116

RESPONDENT'S COUNSEL: Adv. KJ KEMP SC

RESPONDENT'S ATTORNEYS: COX YEATS

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Ref.: Mr A I Hay/TJM

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