



The defendant admits that it entered into a written contract with the plaintiff in terms whereof the latter undertook to carry out what is referred to as "sub contract works". The terms and conditions of the contract are contained in a document referred to as the "subcontract". The subcontract is to be read in

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connection with the agreement between the contractor and the employer which is referred to as the principal contract.

In terms of the principal contract, the employer nominated Cons Com, a firm of architects, as its duly appointed agent and architect.

It is a condition of the subcontract that payments in respect of the subcontract works or any authorised variation thereon only becomes due and payable to the plaintiff by the defendant once this has been duly certified by the agent to be due from the employer to the defendant.

The defendant says that it has paid for all such works as had been in accordance with the contract save for a short fall of some E33.60.

The plaintiff with the leave of the court filed a replying affidavit and claims that the firm of Quantity Surveyors, Murdoch Green & Partners have prepared and issued a further certificate in terms of which the amount of E41, 802.64 is certified for payment by the Surveyor.

The plaintiff further alleges that the firm of architects called Cons Com ceased to operate and that the Murdoch Green Partnership was appointed to act as the nominated agent on behalf of the defendant.

If this is so, and if the document which has been referred to as a certificate is indeed such then the plaintiff would be entitled to judgment.

There is much to be said for the allegation by the plaintiff that Mike Vincent of Murdoch Green Partnership has stepped into the shoes Peter Noble. It also is clear that the defendant itself regarded the document issued by

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Vincent as a certificate authorising payment. The certificate itself however, does not purport to be one issued in terms of the agreement and is only a recommendation for the issue of the certificate. In view of this, in exercise of my discretion in the matter, I am not prepared to grant a summary judgment.

It does however appear to me that there is only a very circumscribed area of dispute and it would be wrong for any further delay in the matter to take place as the affidavits which have been filed clearly define the issues between the parties.

In giving the defendant leave to defend the action in terms of Rule 32(5)(c) I direct that it is not necessary for any further pleadings to be filed and the affidavits are to stand as pleadings. The pleadings shall be deemed to have closed with the filing of the plaintiff's affidavit on the 13th June 1996.

The parties may now act in terms of those rules providing for discovery and the other preparations for trial and the plaintiff may approach the Registrar for the allocation of the date for the hearing of the trial as soon as it is convenient.

The costs in respect of this application will be costs in the cause.

S.W. SAPIRE

ACTING CHIEF JUSTICE