

IN THE HIGH COURT OF SWAZILAND

Civil case no. 3418/97

In the matter between:

H2O DRILLING (PTY) LTD PLAINTIFF

Vs

VUSI K. SHONGWE DEFENDANT

CORAM : MATSEBULA J

FOR THE PLAINTIFF FOR THE DEFENDANT

JUDGEMENT

12/03/99

By summons bearing the Registrar's date stamp of 1st December 1997 Plaintiff issued summons against the Defendant for the following relief:

1. Payment of the sum of E6, 306.00 being in respect of goods sold and delivered, services rendered being drilling of a bore-hole by the Plaintiff to the Defendant at the latter's special instance and request which amount is now due owing and payable but despite demand the Defendant fails, neglects and/or refuses to pay.
2. Interest on the said sum of E6, 306,00 at the rate of 9% per annum a tempore morae to date of final payment.
3. Costs of suit.
4. Further and/or alternative relief.

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On 21st January 1998 Defendant entered a notice of intention to defend and on 27th January 1998 Plaintiff filed its declaration to the summons and on 29th April 1998 applied for summary judgement.

The summary judgement was resisted in a notice filed by defendant accompanied by an affidavit of Vusi Shongwe who is the Applicant and resisting summary judgement. In its declaration Plaintiff states that during the month of April/May 1997 and at Manzini, Plaintiff and Defendant entered into a written contract - a copy of which is annexed and marked "A" - the agreement and reads as follows:

MR. V.K. SHONGWE and H2O DRILLING CONTRACTORS (PTY) LTD: H2O Drilling Contractors, agrees to go and drill a second borehole for Mr. Shongwe on the following conditions:

1. Peg to be shown by Mr. Shongwe;
2. Borehole will be drilled to a depth of 50m.
3. If the bore-hole delivers more than 600 litres per hour the costs of borehole hold no.2 will be for H2O Drilling's account but Mr. Shongwe will pay the outstanding amount for borehole no. 1."

Mr. V.K. Shongwe, agrees that if borehole no.2 delivers less than 600 litres/hour, to pay H2O Drilling the current drilling rate for the 50m drilled, cash within 7 days: (the following is set-out underneath):

Drilling.....0-80m.....E70.00 per metre
165 steel casing.....E70.00 per metre
140mm PVC casing, where necessary..... .E38.00 per metre

Travelling will be charged @ E8.00 per km from the last site, if distance is further than 20km from last

site.

Mr. Shongwe must be present during the drilling operation to monitor the depth drilled and the capacity, as no disputes or queries will be entertained after completion of job.

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If Mr. Shongwe requires H2O Drilling to drill deeper than 50m, but to a maximum depth of 80m the extra metres must be cash paid up front."

The Respondent and Plaintiff and two witnesses signed exhibit "A" that is the agreement. The Defendant resisted the summary judgement application and he has filed an affidavit resisting the application. It has raised a point in limine, which reads as follows: Plaintiff is not entitled to summary judgement because there is need for it to justify by evidence:

1.1. Where the water drilling machinery was parked at the time I hired it in order to be able to come up with the figure of E706.00 in travelling costs.

1.2. How the figure of E5, 600.00 is computed in particular because Plaintiff alleges that I owed it E4, 490.00 on the previous hole, a fact which is denied by the defence and Defendant alleging that that amount had been paid.

1.3. How much of the steel casing was consumed in the operation.

1.4. How much of the PVC was utilised.

I humbly submit that the Plaintiff's claim is on the basis of the foregoing, it is not a liquid claim and Plaintiff's application for summary judgement should be dismissed with costs.

Annexure "A" the agreement entered into by the parties, annexure "A" does not set out how the amount of E4, 490.00 is made up of, which according to him remained unpaid for the borehole no.1 nor does it the annexure reflects how much remain unpaid and therefore the outstanding amount. This is not contained in the agreement.

The summary judgement being a procedure designed to enable a Plaintiff whose claim falls within certain defined categories to obtain judgment without the necessity of going through the trial in spite of the fact that Defendant has intimated by entering a notice of intention to defend and raising a defence.

Before summary judgement can be granted Plaintiff must at least show the following:

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- (a) A clear case to obtain a swift enforcement of his claim against a Defendant who has no real defence for the claim,
- (b) Plaintiff's claim must in effect be an unanswerable case against the Defendant. Defendant's conduct in giving notice of intention to defend should be equivalent to an abuse of the court process (See EDWARDS VS MENEZES 1973(1) SA299 NC).

None of the above could be shown by the Plaintiff in this particular application for summary judgement and I am unable to find that Plaintiff has an unanswerable claim, Defendant has raised a defence that can only be dealt with if Defendant is granted leave to defend. I accordingly grant leave to defend to the Plaintiff to defend this matter and I further order that Plaintiff pays the costs of this application.

J.M. MATSEBULA

JUDGE

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