

IN THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 104/99

In the matter between

MIKE STORM (PTY) LTD

PLAINTIFF

VS

PHANGOTHI INVESTMENTS

DEFENDANT

Coram

S. B. MAPHALALA - J

For the Plaintiff

MR. Z. JELE

For the Defendant

MR T. SIMELANE

JUDGEMENT

(21/05/99)

This is an application for summary judgement.

The defendant raised two points in limine in its answering affidavit as follows:

1. The plaintiffs particulars of claim are defective in that they fail to disclose a cause of action.
2. Paragraph 6 of Simon Storm should be struck out as it endeavours to introduce a cause of action which was not raised in the particulars of claim

The points were argued on the contested motion of the 23rd April 1999, where Mr. Simelane contended that paragraph 3 of the plaintiff's Amended Particulars of Claim do not disclose a cause of action. It is not alleged in the papers that the defendant was in mora. He further argued on the second point that paragraph 6 of the plaintiff's affidavit discloses a cause of action which is not contained in plaintiff's particulars of claim. He urged the court to dismiss the application for summary judgement with costs.

Mr. Jele on the other hand submitted that paragraph 3 of the plaintiff's particulars of claim should be read with paragraph 4 and 5 and these establishes a breach and thus clearly establishes a cause of action. There is no denial of the agreement.

These are the two points for determination. I agree in toto with the submissions made by Mr. Jele that there is no substance in the points in limine. Paragraph 3 should be read together with paragraph 4 and 5 to show fault on the part of the defendant and

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should not be read in isolation. Clearly, in this case the plaintiff has proved a cause of action. In view of the foregoing, the objections in limine must fail. The matter to proceed in the normal way and defendant pay wasted costs.

S. B. MAPHALALA

JUDGE