

THE HIGH COURT OF SWAZILAND

METRO CASH & CARRY

Applicant

And

TIIANDI GININDZA T/A AQUARIUM RESTAURANT

Defendant

Civil Case No. 3411/2004

Coram: S.B. MAPHALALA - J

For the Applicant :MR. K. MOTSA

For the Defendant :MR. O. NDZIMA

JUDGEMENT

(04/03/2005)

[1] Serving before court is an opposed application for summary judgment for money owing in respect of goods sold and delivered by the Plaintiff to the Defendant for the sum of E20, 000-00 and costs.

[2] The Defendant filed an affidavit resisting summary judgment and stated that she disputes the amount of E20, 000-00 as owing by her. She stated that she paid

E15,000-00 and 'annexed receipts showing payments and tendered to pay the balance owing in the sum of E5,000-00. The said tendered amount was paid on the 10th December 2004, and a receipt to that effect was issued. In actual fact, so the argument goes, the sum of E5,000-00 was paid after summary judgment was granted against the Defendant in the said sum on the 3rd December 2004. Therefore, the matter was finalised on the 3 December 2004, when the summary judgment was granted.

[3] In argument before me it was contended on behalf of the Defendant that the Plaintiff has caused a replying affidavit to be filed on the 20th January 2005, and in the same affidavit annexed new documents and alleged new matters which are contentious and which in actual fact raises new causes of action which Defendant could not answer at this stage. The replying affidavit raises triable issues and the Plaintiff is not at liberty to raise same on a replying affidavit and hope to obtain summary judgment. The Defendant maintains that there is a *bona fide* defence in the matter.

[4] *Per contra* arguments are advanced for the Plaintiff that Defendant has no *bona fide* defence as required by Rule 32 of the High Court Rules.

[5] After assessing the facts for and against the present application for summary

judgment it is my considered view that Defendant has not disclosed a *bona fide* defence as required the rules. It is common cause that Defendant made purchases of goods for E35,000-00 as shown by annexure "M4" and "M5" (at page 26 to 27 of the paginated Book of Pleadings). These invoices reflect that Defendant paid by cheques which appear at page 27 and 29 of the paginated book. The said cheques were all dishoured by the bank.

[6] The Defendant credit analysis reflects the three payments Defendant paid E15,000-00 and a balance of E20,000-00. The payment reflected in the credit analysis are the same referred by the Defendant at page 17 of the paginated book (as made on the same dates) of the accompanying receipt and enclosed by the Defendant.

[7] For the afore-going reasons I find that the Defendant has not shown any *bona fide* defence and summary judgment ought to be granted as prayed.

[8] On the issue of costs it was contended on behalf of the Plaintiff that a special

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order as to costs ill;terms of Rule 34 (1) ought to be granted as Defendant had in writing tendered to pay on a "without prejudice" basis.

[9] Having considered all the facts of this mater it is my opinion that costs ought to be levied at the ordinary scale.

[10] In the result, for the afore-going reasons the application for summary judgment is granted with costs on the ordinary scale.

S.B. MAPHALALA

JUDGE