

THE HIGH COURT OF SWAZILAND

JEROME KHOZA

Plaintiff

And

HLALAWATI SAVINGS AND CO-OPERATIVES SOCIETY

Defendant

Civil Case No. 3920/2004

Coram

S.B. MAPHALALA - J

For the Plaintiff/Applicant

MR. M. THWALA

For the Defendant/Respondent

MISS S. ZONDI

JUDGMENT

(26th August 2005)

[1] This is an opposed application for summary judgment where Plaintiff/Applicant seeks payment of the sum of E14, 400-00; interest thereon at the rate of 9% per annum *tempore morae* from the date of service of summons to date of final payment; and costs of suit on an attorney and client scale. The cause of action thereof is set out in the combined summons dated the 7th December 2004. The Plaintiff/Applicant alleges that on or about October 2003 at Bethany he received a verbal order by Phumzile Skosana and one officer, they were acting on behalf of Respondent, for certain office furniture. Plaintiff is a carpenter working for his own

account and as a supplier upon order of furniture and woodwork materials at Luve in the Manzini region. He avers further in paragraph 4 thereof that he finished assembling the products as *per* the oral agreement during the same month of October and Defendant accepted delivery at Bethany Army Headquarters where Defendant's offices are situated. He avers further that it was an express term of the agreement that payment was due upon acceptance of delivery, alternatively, within a reasonable time thereafter. Despite the numerous personal demand Defendant continues to refuse and/or fail and/or neglect to pay the sum under the oral contract.

[2] In his affidavit in support of the application for summary judgment he avers further that the Defendant does not have a good and *bona fide* defence to the Plaintiffs claim and that the Notice of Intention to Defend has been filed solely for the purpose of delay.

[3] The Defendant/Respondent has filed an affidavit resisting summary judgment where at paragraph 6 thereof a defence is advanced to the effect that (a) Defendant did not order the goods from the Plaintiff; (b) Defendant requested a quotation for purposes of comparing prices; and (c) the goods in question remain in Defendant's premises awaiting collection by the Plaintiff.

[4] When the matter came for arguments in the contested motion of the 12th August 2005, it became apparent to the court during submissions by *Miss Zondi* for the Defendant that in the circumstances of this case, there are material disputes of facts as to whether the goods delivered to the Defendant were in fact ordered by the Defendant and whether they were the type, quality, or even the value of what was required by the Defendant. Further, whether Defendant first required a quotation. In this regard I agree in *toto* with the submissions by *Miss Zondi* that all these facts are triable issues which ought to be decided in the trial. The Plaintiffs application is replete with disputes of fact which go to the crucial question of whether or not Defendant is liable as alleged in the Particulars of Claim.

[5] It has been stressed in innumerable decisions the fact that the remedy provided by Rule 32 is an extraordinary one which is "very stringent" in that it closes the door to the Defendant, and which will thus be accorded only to a Plaintiff who has, in effect, an unanswerable case (see *Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4th Edition*, at page 434 and the cases cited thereat).

[6] In the totality of the facts in the instant case, it cannot be said that Plaintiff has an unanswerable case.

[7] In the result, application for summary judgment is refused and the costs to follow the event. I further order that Defendant files its plea in the normal way.

S.B. MAPHALALA

JUDGE