

**IN THE HIGH COURT OF SWAZILAND**

**SWAZI OXYGEN (PTY) LTD**

**Plaintiff**

And

**GENERAL SALES AND DISTRIBUTIONS(PTY) LTD**

**Defendant**

**Civil Case No. 1022 /2007**

Coram

**SB. MAPHALALA - J**

For the Plaintiff

MR. S. SEMELANE

For the Defendant

MISS G. REID

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**JUDGMENT**

**13th JULY 2007**

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[1] **Before court is an** opposed application for summary judgment where **Plaintiff seeks for judgment against: the Defendant** for payment **of the sum of**

EI, 089 119-45 and interest on the aforesaid amount at the rate of 9% a *tempore morae* from date of summons, to date of final payment. Plaintiff also seeks for costs of suit.

[2] The Plaintiff's claim for summary judgment is founded on two letters between the parties and for the sake of clarity I proceed to reproduce them in this judgment thusly:

**GIGIA. REED ATTORNEYS**  
**16 Tenbergen Street**  
**P. O. Box 7298**  
**MANZINI**  
**Swaziland**

**12\* March**

- **BY FAX**

**Swazox**

**P. O. Box 792**

**MATSAPHA**

**ATT: S. VAN WYK CMRS)**

**Customer Asset Manager**

**Dear Madam**

**RE: YOURSELF/GENERAL SALES AM) DISTRIBUTION**

- 1. We act herein for the above-mentioned, our client.**
- 2. We refer to your correspondence for client's attention dated 8th March 2007 marked "FINAL DEMAND**
- 3. Chair advises that he has not at anytime refused to pay what is due and owing to yourselves, however he has numerous occasions requested mat the figure on the amount owing be justified interms of invoices and delivery notes as mere is a huge discrepancy between the figure owing yourselves yourselves and that client believes is owed.**

**3.1 Your correspondence sets the amount owing by our client as E1, 104 577-48 (One Million One Hundred and Four Thousand Five Hundred and Seventy Seven Emalangenzi Fourty eight Cents), whereas client advises that he owes E797 712 - 43 (Seven Hundred and Ninety-Seven Seven Hundred and Twelve Emalangenzi Fourty-Three Cents).**

**3.2 In the circumstances we request that an urgent reconciliation on the amount be carried out and all relevant invoices and delivery notes be annexed.**

**4. Your soonest attention will be highly appreciated.**

**Yours faithfully**

**GIGI A. RETT)  
ATTORNEYS (Signed)**

[3] In reply to the above-cited letter the Customer Asset Manager of the - plaintiff replied in the following terms:

**SWAZI OXYGEN (PTY) LTD  
King Sobhuza II Avenue,  
Industrial Sites Matsapha  
P. O. Box 792  
MATSAPHA  
Tel: (09268) 5185244/5**

**13 March 2007**

**Your Ref: GRMC004**

**Gigi A. Reid Attorneys**

**P. O. Box 7298**

**MANZINI**

**Swaziland**

**Dear Sirs**

**RE: GENERAL SALES AND DISTRIBUTION**

**We acknowledge receipt of your letter dated 12 March 2007 and have noted the contents without**

**We will prepare the documentation for the difference, however, in the meantime, we look forward to your client's payment of E797,712-43 (Seven Hundred and ninety Seven Thousand Seven Hundred and Twelve Emalangi and Fourty Three Cents). Interest at prime plus 5% will accrue on the above amount as per our terms and conditions, signed by your client**

**Yours faithfully for and on behalf of  
SWAZILAND OXYGEN (PTY) LTD**

**SALOME VAN WYK  
CUSTOMER ASSET MANAGER  
(Signed)**

[4] The Defendant has filed an affidavit resisting summary judgment where Defendant alleges that it has a *bona fide* defence to the claim by the Plaintiff and intended to file a counter-claim against the Plaintiff in respect of an amount of E835. 973-59 calculated as follows:

<b>Erroneous charges between Septembe2006andjanuary2007</b>	<b>E162, 888-35</b>
<b>2.5% settlement discount up to and including December E147 980-24</b>	
<b>Refund of transport charges at .20cents per kg upfited</b>	
<b>(including January and February 2007</b>	<b>-E225 105-00</b>
<b>Claim for damages as embodied in paragraph 6L</b>	<b>- E300 000-00</b>

[5] In arguments before me both Counsel filed very comprehensive Heads of Arguments and they attached to their Heads the relevant legal authorities and I am grateful to Counsel for their high professionalism in dealing with this matter.

[6] The remedy of summary judgment is an extra-ordinary remedy and a very stringent one in that it permits a judgment to be given without a trial. It closes the door of the court to the Defendant. That can only be done if there is no doubt that the Plaintiff has an unanswerable case (see *Nathan, Barnett and Brink, Uniforms Rules of Court, 2<sup>nd</sup> Edition*, page 14).

[7] It is also trite law that a *bona fide* defence should be set out in detail (see *Chambers vs Jonker 1952 (4) S.A. 635 (C)*). In determining a *bona fide* defence the learned author *Erasmus, Superior Court Practice at Bl - 223* puts it this way:

**"... all that the court enquires, in deciding whether the Defendant has set out a *bona fide* defence is (a) whether the Defendant has disclosed the nature and grounds of his or her defence, and (b) whether on the facts so disclosed the Defendant appears to have, as to either the whole or part of the claim, a defence which is *bona fide* and good in law".**

[8] In my assessment of the parties' arguments and affidavits I have come to the considered view that the opposing affidavit of the Defendant discloses a triable issue and therefore Defendant must be granted leave to proceed to trial in this matter. In this regard I refer to pages 139 to 145 of the Book of Pleadings where the Respondent's affidavit is canvassed.

[9] In the result, for the afore-going reasons the application for summary judgment is refused with costs to follow the event.



S.B. MAPHALALA