



**IN THE HIGH COURT OF SWAZILAND**  
**JUDGMENT**

Case No: 1137/11

In the matter between:

**APPOLLO SERVICES (PROPRIETARY) LTD**

**PLAINTIFF**

and

**DULUX PRINTERS (PTY) LTD**

**DEFENDANT**

**Neutral citation** : Apollo Services and Deulux Printers (Pty) Ltd (1137/11) [2012]  
SZHC 237 (12 OCTOBER 2012)

**Coram** : MABUZA J

**Heard** : 9 FEBRUARY 2012, 8 AUGUST 2012

**Delivered** : 12 OCTOBER 2012

**Summary** : **Practice – Application for summary judgment – Summary judgment opposed on grounds that cause of action does not comply with Rule 18 (6) – Cause of action based on a liquidated amount – Failure of Defendant to disclose *bona fide* defence – Summary judgment granted.**

- [1] The Plaintiff herein issued summons wherein it sought payment of the sum of E94,481.49 in respect of certain printing materials and stationery it sold and delivered to the Defendant between 5<sup>th</sup> August 2006 and 25<sup>th</sup> June 2007; interest thereon at 9%; and costs.
- [2] After summons were served the Defendant entered a notice of intention to defend on the 8<sup>th</sup> April 2011 and on the same date filed a notice in terms of rule 7 (1) where it requested a power of attorney and resolution from the Plaintiff. These were supplied on the 19<sup>th</sup> April 2011.
- [3] On the 28<sup>th</sup> April 2011 at 3:50 p.m. the Defendant's attorneys caused a notice to remove a cause of complaint to be served upon the Plaintiff's attorneys. On the same date that is the 28<sup>th</sup> April 2011 at 15:16 p.m. the Plaintiff's attorneys caused to be served upon the Defendant's attorneys a notice of application for summary judgment which was destined to be heard on the 13<sup>th</sup> May 2011.
- [4] For some reason not apparent on the Court file, the summary judgment application was not heard on the 13<sup>th</sup> May 2011. A notice of set down for hearing of same on the 17<sup>th</sup> June 2011 was filed and served on the

Defendant's attorneys on the 8<sup>th</sup> June 2011. The Defendant's attorneys filed an affidavit resisting summary judgment and served it on the 15<sup>th</sup> June 2011 on the Plaintiff's attorneys.

[5] The matter came before me on the 9<sup>th</sup> February 2012 and I heard arguments on the matter from both attorneys. The first argument advanced was which notice was served first, the notice to remove the cause of complaint or the notice to apply for summary judgment. The answer is simple, the notice to apply for summary judgment came first at 15:16p.m. and the notice to remove a cause of complaint came second at 15:50 p.m. Procedurally and in the ordinary course of events I would have had to ignore the latter notice but subsequently the Defendant raised it as a point of law in its affidavit resisting summary judgment.

[6] As stated above the Defendants' affidavit resisting summary judgment incorporates the cause of complaint raised earlier in the pleadings. But it is now raised as a point of law and as such I must consider it.

[7] Before I examine the defence raised by the Defendant to see whether or not it meets the necessary requirements I must deal with the cause of complaint

raised as a point of law in the affidavit resisting the grant of summary judgment. Mr. Ndlovu argued that before the Plaintiff can approach the Court for summary judgment it must first prove that its papers are in technical order and that it has established its claim clearly on the papers in this instance being either a liquid claim or one based on a liquid document.

[8] Mr. Ndlovu also argued that while the Plaintiff seeks to rely on an alleged contract of sale it has not pleaded it in terms of Rule 18 (6) which states that:

“A party who in his pleadings relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or the part relied on in the pleading shall be annexed to the pleading.”

[9] Mr. Maziya’s reply thereto is that the claim is not based on a contract but on a statement for printing materials and stationery (Annexure “A”).

[10] In other words the claim is for a liquidated amount of money. Let us examine what this entails. Rule 32 states:

- “(1) Where in an action to which this rule applies and a combined summons has been served on a Defendant ... and that Defendant has delivered notice of intention to defend, the Plaintiff may; on the ground that the Defendant has no defence to a claim included in the summons ... apply to the court for summary judgment against that Defendant.
- (2) This rule applies to such claims in the summons as is only
- (a) ...
  - (b) for a liquidated amount in money”.
- (3) (c) The notice of application, a copy of the affidavit in support and any annexures thereto shall be delivered to the Defendant not less than ten court days before the date of the hearing.

[11] A liquidated amount in money is an amount which is either agreed upon or which is capable of speedy and prompt ascertainment per Erasmus: Superior Court Practice B 1 – 210 and Harms: Civil Procedure in the Supreme Court p. 315. For further discussion of liquidated amount see **Lester Investments (Pty) Ltd v Narshi** 1951 (2) SA 464 (C) and **Leymac Distributors Ltd v Hoosen and Another** 1974 (4) 524 (D).

[12] I turn now to the question whether the claim is for “a liquidated amount of money”, within the meaning of that expression used in Rule 32 (2) (b).

[13] The notice of application, a copy of the affidavit in support thereto deposed to by Mandla Elias Mncina, together with a Statement of Credits and Debits (Annexure “A”) and a letter dated 25<sup>th</sup> June 2007 (Annexure “B”) were served on the Defendant. A close examination of the statement of Credits & Debits which was issued by the Plaintiff on the 30<sup>th</sup> March 2011 shows details of dates when orders were made and invoice numbers of amounts of each invoice. The last column shows the balances outstanding each time an order is placed. The credit columns show the amounts paid. As on the 13<sup>th</sup> April 2007 the balance owing is reflected as E94,491.49.

[14] On the 25<sup>th</sup> June 2007, the Defendant Desiree Makama and Dickson Mukunda (as trustees of the Defendant) wrote a letter of comfort to the Plaintiff and in it acknowledged that “all has not gone well in the management of the Company”. They further requested the Defendant to allow them to enter into an arrangement for the payment of what the Company (the Defendant) owed.

[15] Some payments were then made beginning with the amount of E10,000.00 on the 17<sup>th</sup> October 2007. Other subsequent payments were made thereafter (one reversal) culminating in a **balance of E69,794.13** at the end of the month namely 30<sup>th</sup> June 2009.

[16] The calculation of the amount *ex facie* the statement was capable of speedy and prompt ascertainment. Because of the ease with which the amount is capable of calculation there is no doubt in my mind that the claim is based on a liquidated amount. The Defendant's point *in limine* must fail as it does. The evidence before me reflects the balance outstanding to be the amount of E69,794.13 and not E94,481.49 as payments were made after 25<sup>th</sup> June 2007.

[17] Having held that the claim is based on a liquidated amount it is not necessary for me to discuss whether or not the Plaintiff's papers are in technical order. In my view the Plaintiff has a good cause of action and has made out a good case for the grant of summary judgment.

[18] I agree with Mr. Maziya that the Plaintiff's defence of having made full payment is a bare denial and without proof of payment must also fail as it does.

[19] I accordingly find for the Plaintiff and summary judgment is hereby entered as follows:

- (a) Payment of the sum of E69,794.13 to the Plaintiff is hereby ordered;
- (b) Interest thereon at the rate of 9% per annum a *tempora morae* from the date of service of summons to date of payment; and
- (c) Costs of suit.

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**Q.M. MABUZA**  
**JUDGE OF THE HIGH COURT**

For the Plaintiff : Mr. E. Maziya

For the Defendant : Mr. Ndlovu