

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CRIMINAL CASE NO. 1610/2022

In the matter between:

P.G. GLASS SWAZILAND (PTY) LTD

Plaintiff

v

BACETH INVESTMENTS (PTY) LTD

Defendant

Neutral citation: P.G. Glass Swaziland (Pty) Ltd v. BACETH Investments (Pty) Ltd (1610/2022) SZHC 295 (20 October 2023)

CORAM: N.M. MASEKO – Judge

FOR THE PLAINTIFF: Attorney E. Shabangu

FOR THE DEFENDANT: Attorney G. Mhlanga

DATE HEARD: 31/03/2023

DATES DELIVERED: 20/10/2023

PREAMBLE

Civil law: Civil law – Civil Procedure – Summary Judgment – Legal requirements for the grant of Summary Judgment – Bona fide defence and triable issues discussed – Authorities on Summary Judgment discussed.

Held: Summary Judgment granted

JUDGMENT

MASEKO J

- [1] On the 23rd August 2022, the Plaintiff sued out a Simple Summons against the Defendant for payment of the sum of E83 417-60 (Emalangeneni Eighty Three Thousand, Four Hundred and Seventeen, Sixty cents) for goods sold and delivered at the Defendant's instance. The Summons was served by the Deputy Sheriff on the 24th August 2022 at 1416hours upon the Defendant's business premises at Luve area by leaving a copy thereof with Bongekile Msibi, an Accountant for the Defendant.
- [2] The Defendant duly filed a Notice to Defend on the 9th September 2022 and on the 4th October 2022, the Plaintiff filed its declaration. On the 26th October 2022, the Plaintiff launched an application for summary judgment wherein the Plaintiff's Sales Center Manager Mandla Dlamini deposed to an affidavit that the Defendant has filed a Notice to Defend solely to delay the proceedings since it does not have a *bona fide* defence.
- [3] The Defendant duly filed its affidavit resisting summary judgment deposed to by its director Mduduzi Bacede Mabuza wherein he states the following:-
- (i) that he is currently in custody pending the outcome of his case and that he had arranged with Mandla Dlamini the Plaintiff's Sales Center Manager that legal proceedings would be halted pending his judgment
 - (ii) that the credit account be suspended in the intervening period
 - (iii) that the parties' business shall be on cash basis

- (iv) that the parties' aforesaid agreement remains in place in the absence of breach or cancellation by either parties
 - (v) that the Plaintiff has not attached "**delivery notes**" to prove its case
 - (vi) that the Plaintiff has not annexed a **statement of account** reflecting monies paid by the Defendant
 - (vii) that there are disputes of fact concerning the above highlighted issues, which can only be addressed through oral evidence in due course, these being action proceedings, summary judgment therefore does not pass muster in the circumstances.
- [4] The Defendant states that it has a bona fide defence to the Plaintiff's claim and has not filed the Notice to Defend solely to delay the Plaintiff's claim.
- [5] In its Replying Affidavit, the Plaintiff states that the Defendant does not deny that it is indebted to the Plaintiff but only seeks a debatement on how the amounts have been arrived at. The Plaintiff states that in the circumstances the Defendant has not raised a triable issue and therefore no basis to deny the Plaintiff summary judgment. The Plaintiff states further that the purported defence by the Defendant does not demonstrate whether the defence goes to the whole or part of the Plaintiff's claim and neither are the allegations supported by any cogent evidence, instead the Defendant has made bare allegations which fall short of the required threshold to defeat an application for summary judgment.
- [6] The Plaintiff denies that there is or was an oral agreement entered into with the Defendant to halt the legal proceedings. The Plaintiff states that it has filed the requisite delivery notes

and the statements which are attached to its declaration. In the statement an amount of E10 000-00 was paid by the Defendant on the 29th April 2022.

[7] The Plaintiff filed a statement reflecting an amount due and owing by the Defendant of E83 417-60 (Emalangeneni Eighty Three Thousand, Four Hundred and Seventeen, Sixty cents), duly supported by the various tax invoices of the respective amounts which total the amounts reflected in the statement of account dated the 9th March 2023.

[8] Summary judgment is sanctioned by Rule 32 of the Rules of Court. In particular Rule 32 (2) provides as follows:-

“This rule applies to such claims in the summons as in only:-

- (a) On a liquid document;*
- (b) For a liquidated amount of money;*
- (c) For the delivery of specified movable property; or*
- (d) Ejectment*

Together with other claims for interests and costs.”

[9] **Herbstein and Van Winsen** in their book titled *THE CIVIL PRACTICE OF THE HIGH COURTS OF SOUTH AFRICA 5th Edition, Vol. I, 2012 Edition*, Juta state as follows at pages 519-520 when they define a liquidated amount in money as:-

“A claim cannot be regarded as one for a liquidated amount in money unless it is based on an obligation to pay an agreed sum of money or is so expressed that the ascertainment of the amount is a matter of mere calculation.”

[10] It is common cause that the Plaintiff sold and delivered to the Defendant goods on specified dates during the month of March 2009, and these are clearly articulated in the statement of

account together with tax invoices that is found in Annexure MD 1 at pages 45-60 of the Book of Pleadings.

- [11] It is also common cause that the parties had entered a credit facility agreement on the 13th December 2019 wherein the Plaintiff was to supply goods on credit to the Defendant payable within a period of thirty (30) days from date of delivery thereof.
- [12] The credit facility agreement compliments the Plaintiff's claim based on the statement of account and the tax invoices. The credit facility agreement is found at pages 11-12 of the Book. It is common cause that the maximum credit in any given moment for goods supplied and delivered is the sum of E100 000-00 (Emalangeneni One Hundred Thousand). In my considered view the Plaintiff has proved an unassailable case, because even if summary judgment were to be denied, the same documents which prove the liquidated amount in money would still be used to prove the Plaintiff's claim against the Defendant in a full blown trial
- [13] There are no triable issues in this matter, because it is based on clear and uncontroverted documentary evidence of the statement of account and the tax invoices accompanied by the delivery notes. In my view the Defendant cannot be said to have advanced a bona fide defence by its mere and bare allegations against the plaintiff's strong documentary evidence as observed above. It cannot be said therefore that the door of justice is closed to the Defendant since summary judgment is a stringent remedy, definitely not in this case where credible and authentic documentary evidence prove the transactions of the delivery of the goods by the Plaintiff to the Defendant during the month of March 2022. These transactions leading to these action proceedings was or is in accordance with the credit facility

agreement entered into between the parties herein referred to above.

- [14] I take note that *in casu* there is a positive overlap between the **“liquid document scenario”** and the **“liquidated amount in money scenario”** because at page 518, the learned Authors **Herbstein and Van Winsen** whilst dealing with a liquid document state as follows:-

“A liquid document is one sounding in money and if the obligation to which the debtor has bound himself is something other than the payment of money, the claim is liquid.”

*To constitute a liquid document, **the document must speak for itself**. If it does not and extrinsic evidence is necessary to prove the defendant’s indebtedness, the document is normally not regarded as liquid.”*

- [15] *In casu* the statement of account, the tax invoice and delivery notes and the credit facility agreement speak for themselves, there is no extrinsic evidence needed to prove the liquidity of the Plaintiff’s claim, it is for that reason why I say there is an overlap between the two scenarios which are positive or compliment the Plaintiff’s claim.

- [16] In the case of **Dulux Printers (Pty) Ltd v Appollo Services (Pty) Ltd (72/12) [2013] SZSC... (31 May 2013)**, His Lordship M.C.B. Maphalala JA (As he then was) stated the position of the law as regards summary judgment in a matter that is similar with the matter *in casu*. His Lordship stated the following at paragraphs 2, 10, 11, 12, 14, 17 as follows:-

“[2] The facts in this matter are common cause. The respondent sold and delivered to the appellant certain printing materials and stationery to the appellant pursuant to an oral contract between the parties. This took place between the 5th August 2006 and 25th June 2007. The purchase price of the goods was

E94 481-49. A statement of account was annexed to the summons detailing the goods delivered, the dates of delivery as well as the purchase price of each consignment. The purchase price of each consignment was payable within thirty days of delivery.

- [10] From the foregoing it is clear that the summons does disclose a cause of action. In addition the claim is for a liquidated amount of money as envisaged by Rule 32 (2) (b). A liquidated amount in money is an amount which is either agreed upon or which is capable of speedy and prompt ascertainment: Superior Court Practice B1-210; **Harms: CIVIL PROCEDURE IN THE SUPREME COURT** p. 315. **Herbstein and Van Winsen; THE CIVIL PRACTICE OF THE SUPREME COURT OF SOUTH AFRICA**, 4th Edition, Van Winsen et al, Juta Publishers, 1997 at pp 435-436 defines a liquidated amount as an amount based on an obligation to pay an agreed sum of money or is so expressed that the ascertainment of the amount is a matter of mere calculation. There is no doubt that the calculation of the amount in Annexure "A" is capable of speedy and prompt ascertainment. The next question for consideration is whether the appellant has a bona fide defence to the action
- [11] The purpose of summary judgment procedure is to enable a plaintiff who has a clear case to obtain swift enforcement of his claim against a defendant who has no real defence to that claim. See: **Herbstein and Van Winsen** at pages 435-436. This is understandable because the remedy is final in nature and closes the door to the defendant without trial. Ramodibedi JA, as he then was, in the case of **Zanele Zwane v Lewis Stores (Pty) Ltd t/a Best Electric, Civil Appeal No. 22/2007** stated the following:-

"[8] It is well-recognised that summary judgment is an extra-ordinary remedy. It is a very stringent one for that matter. This is so because it closes the door to the defendant without trial. It has the potential to become a weapon of injustice unless properly handled. It is for these reasons that the Courts have over the years stressed that the remedy must be confined to the clearest of cases where the defendant has no bona fide defence and where the appearance to defend has been made solely for the purpose of delay. The true import of

the remedy lies in the fact that it is designed to provide a speedy and inexpensive enforcement of a plaintiff's claim against a defendant to which there is clearly no valid defence: see for example **Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)**, **David Chester v Central Bank of Swaziland CA 50/03**. Each case must obviously be judged in the light of its own merits, bearing in mind always that the Court has a judicial discretion whether or not to grant summary judgment. Such a discretion must be exercised upon a consideration of all the relevant factors. It is as such not an arbitrary discretion.

- [12] It is apparent from the Affidavit Resisting Summary Judgment that the appellant doesn't deny concluding the contract with the respondent. The appellant doesn't deny receiving the goods but claims to have paid the purchase price in full. However, no documentary evidence is annexed to the affidavit proving payment of the purchase price.
- [14] The affidavit clearly does not raise any triable issue to warrant the refusal of summary judgment.
- [17] Dunn AJ, as he then was, in the case of the **Bank of Credit and Commerce International (Swaziland) Ltd. v Swaziland Consolidated Investment Corporation Ltd and Another 1982-1986 SLR 406 (HC) at p. 407** stated:-

"It is not enough for a defendant simply to allege that he had a bona fide defence to the plaintiff's action. He must allege the facts upon which he relies to establish his defence. When this has been done, it is for the Court to decide whether such facts, if proved would in law constitute a defence to the plaintiff's claim and also whether they satisfy the Court that he defendant is alleging such facts acting bona fide."

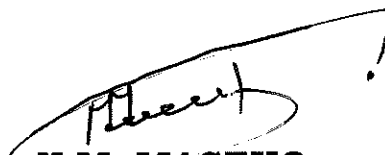
See also: **Maharaj v Barclays National Bank 1976 (1) SA 418 (A) at 426 A-E.**

[17] It is my considered view *in casu* that the Plaintiff's case as contained in the Plaintiff's declaration and supported by the Replying Affidavit, the statement of account, the tax invoices and the delivery notes is the clearest of cases and that the Defendant has no bona fide defence, and certainly no triable issue or issues have been raised in the affidavit resisting summary judgment. This is a case where the Plaintiff deserve to obtain a swift enforcement of its claim against the Defendant which has no real defence to that claim. There is in my view, no injustice that would be occasioned on the Defendant in the event this Court grants summary judgment.

[18] In the circumstances it is my considered view, as I have observed above herein, that the Plaintiff's claim is based on a proven liquidated amount in money as envisaged by Rule 32 (2) (b) of the Rules of Court. The amount in the Plaintiff's claim is an amount which was agreed upon and therefore the Plaintiff's claim is capable of speedy and prompt ascertainment because of the statement of account and invoices annexed to that claim which prove the Defendant's liability to the Plaintiff in the amount proven through the documentary evidence.

Consequently I hand down the following order:-

1. Summary Judgment is hereby granted with costs.


N.M. MASEKO
JUDGE