



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

Case No: 132/2016

In the matter between:

NJENGEBANTFU INVESTMENTS (PTY) LTD

PLAINTIFF

and

INTERIOR SOLUTIONS (PTY) LTD

DEFENDANT

Neutral Citation : Njengebantfu Investments (Pty) Ltd vs. Interior Solutions
(Pty) Ltd (132/2016) [2016] SZHC 105 (30 JUNE 2016)

Coram : Q.M. MABUZA J

Heard : 29 APRIL 2016

Delivered : 30 JUNE 2016

SUMMARY

**PRACTICE – PLEADINGS – APPLICATION FOR SUMMARY JUDGMENT –
DEFENDANT RESISTING – PRINCIPLES FOR FOR RESISTING SUMMARY
JUDGMENT REINSTATED – DEFENDANT’S FAILURE TO COMPLY –
APPLICATION GRANTED WITH COSTS.**

JUDGMENT

MABUZA –J

- [1] This is a summary judgment application wherein the Plaintiff claims payment of the sum of E73,463.99 (Seventy three thousand four hundred and sixty three Emalangeneni ninety nine cents), interest thereon calculated at 9% per annum and costs of suit.
- [2] The defendant opposes the summary judgment application and to that end has filed its affidavit setting out its reasons for resisting same.
- [3] Prior to the application for summary judgment the Applicant had sued out a combined summons for the same reliefs. The Defendant also filed its notice of intention to defend.

[4] The Plaintiff set out the facts of its claim in the combined summons. In it the Plaintiff alleged that the Defendant was initially indebted to it in the sum of E91,549.50 (Ninety one thousand five hundred and forty nine Emalangeni and fifty cents) in respect of goods sold and delivered to the Defendant. After demand the parties are alleged to have met and drew up a deed acknowledging debt sometime during September 2015. The deed is not dated.

[5] After the execution of the acknowledgment of debt the Defendant paid the sum of E24,487.99 (Twenty four thousand four hundred and eighty seven Emalangeni ninety nine cents) on the 8th October 2015. This payment left an outstanding balance of E73,463.99 (Seventy three thousand four hundred and sixty three Emalangeni and ninety nine cents) for which the Plaintiff issued summons. The acknowledgment of debt is annexed to the application for summary judgment as Annexure “NJ3”).

[6] The affidavit resisting summary judgment is deposed to by one Bhekisisa Thembinkosi Mpanza.

- [7] In it Mr. Mpanza neither admits nor denies being indebted to the Plaintiff in the amount claimed. He further pleads that the Defendant has a counter claim against the Plaintiff in the sum of E95,944.05 (Ninety five thousand nine hundred and forty four Emalangeneni and five cents) which flows from work done in respect of the Manzini Library project.
- [8] He further disputes the knowledge of Annexure “NJ3 and denies having signed and initialed it as portrayed in the Defendant’s proxy. He also challenges the fact that the acknowledgement of debt does not indicate where it was entered into.
- [9] Mr. Mpanza after setting out the facts that I have set out in paragraph (7) and (8) above, concludes his affidavit by stating that it is certainly not true that the Defendant does not have a *bona fide* defence to the Plaintiff’s claim and that it has filed its notice of intention to defend solely for the purposes of delaying the final outcome of these proceedings as alleged by the Plaintiff.
- [10] It is settled in our jurisdiction that summary judgment is an extra-ordinary remedy that should be approached with caution because of its drastic and

stringent nature in that it permanently closes the door to a Defendant who would otherwise have a good defence to the action.

[11] It is now settled law (and procedure) that a Defendant who wishes to avoid summary judgment being granted against it must show that he has (a) a bona fide defence; and (b) that there is an issue or question in dispute which ought to be tried (see Rule 32 (4) of the Rules of the High Court).

[12] **In Maharaj v Barclays National Bank 1926 (1) SA 418 (A)** at 426 A – E, Corbett JA stated:

“Accordingly, one of the ways in which a defendant may successfully oppose a claim for summary judgment is by satisfying the court by affidavit that he has a *bona fide* defence to the claim. Where the defence is based upon facts, in the sense that material facts alleged by the Plaintiff in his summons, or combined summons, are disputed or new facts are alleged constituting a defence, the court does not attempt to decide these issues or to determine whether or not there is a balance of probabilities in favour of the one party or the other. All that the court enquires into is: (a) whether the defendant has fully disclosed the nature and ground of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to whether the whole or part of the claim, a defence which is both *bona fide* and good in law. If satisfied on these matters the court must refuse summary judgment, either wholly or in part, as the case may be. The word “fully” ... connotes in my view that while the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least, disclose his defence and the

material facts upon which it is based with sufficient particularity and completeness to enable the court to decide whether the affidavit discloses a bona fide defence.”

(my underlining)

[13] The affidavit deposed to by Mr. Mpanza does not raise any defence to the claim of E73,463.99. He neither admits nor denies the amount claimed against the Defendant. He has raised technical defences that appear *ex-facie* the acknowledgment of debt which would possibly arise in a provisional sentence summons but not in *casu*.

[14] The Defendant does not deny that after the acknowledgment of debt was recorded, it paid the sum of E24,487.99 (Twenty four thousand four hundred and eighty seven Emalangeni and ninety nine cents), but does not state what this sum was paid in lieu of.

[15] At paragraph 8 of the Defendant’s affidavit is stated as follows:

“... the upshot is that the Defendant has a counterclaim against the Plaintiff in the sum of E95,944.05 (Ninety five thousand nine hundred and forty four Emalangeni and five cents) which will more fully appear in its plea, and which flows from work done in respect of the Manzini Library project.”

[16] Except for a bald statement that the Defendant has a counterclaim of E95,944.05 (Ninety five thousand nine hundred and forty four Emalangeni and five cents). The Defendant has not in my view, disclosed his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a *bona fide* defence. It is not enough to say that the details of the counterclaim will fully appear in the plea, which was not filed. Even if the plea were filed the requirement is that the details must be pleaded in the affidavit resisting summary judgment.

[17] I agree that the Defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them but he has not only failed to disclose a *bona fide* defence even the facts surrounding the counterclaim are so scant that I can make no sense out of them.

[18] In the circumstances I find for the Applicant. It is not the end of the road for the Defendant who can still sue out a summons against the Applicant for the payment of the sum of E95,944.05 (Ninety five thousand nine hundred and forty four Emalangeni and five cents.) being the counterclaim.

[19] I agree with the Defendant's calculation that collection commission should be E3,788.75 instead of E6,402.18. With that adjustment the amount totals E70,850.56 (Seventy thousand eight hundred and fifty Emalangi and fifty six cents).

[20] I order as follows:

- (a) Summary judgment is granted for the payment of E70,850.56 (Seventy thousand eight hundred and fifty Emalangi and fifty six cents).
- (b) Interest thereon at the rate of 9% per annum from the date of service of summons.
- (c) Costs of suit.

JUDGE Q.M. MABUZA
JUDGE OF THE HIGH COURT

For the Plaintiff : Mr. D. Dlamini

For the Defendant : Mr. Mhlanga