

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CIVIL CASE NO. 1789/2019

In the matter between:

NEGOTIATED BENEFIT CONSULTANTS (PTY) LTD

PLAINTIFF

And

LULA ENTERPRISES (PTY) LTD

DEFENDANT

Neutral Citation: *Negotiated Benefit Consultants (Pty) Ltd and Lula Enterprises (Pty) Ltd (1789/2019) [2020] SZHC 216 (26 October 2020)*

CORAM: Q.M. MABUZA PJ

DATE HEARD: 25TH MAY 2020

DATE DELIVERED: 26TH OCTOBER 2020

SUMMARY

Civil Procedure: Application for summary judgment – Bona Fide Defence raised – Triable issues apparent – Application dismissed – Costs in the course.

JUDGMENT

- [1] Before me is an application for summary judgment for:
- a) Payment of the sum of E33, 336.00 (Emalangeni Thirty Three Thousand, Three Hundred and Thirty Six;
 - b) Costs of suit;
 - c) Further and or alternative relief.
- [2] Prior to the application being filed the Plaintiff had issued a summons for the aforesaid amount during October 2019.
- [3] The cause of action in the summons is couched in the following manner:
4. During the period of April 2014 to December 2018, the Plaintiff and Defendant were using a joint electricity meter which was located at the Plaintiff's business office.
 5. On or about the 17th October and after various discussions between the Plaintiff and Defendant, the Defendant acknowledged that a debt had accrued to it as a result of the shared electricity meter between the parties to the value of **E33,336-90 (Thirty Three Thousand Three Hundred and Thirty Six Emalangeni)**
 6. The Defendant further agreed to reimburse the said amount to the Defendant, and further undertook to liquidate the said amount in monthly instalments for thirteen (13) consecutive months. As at the 30th of October 2019, the Defendant was indebted to the Plaintiff to the sum of **E33, 336-90 (Thirty Three Thousand Three Hundred and Thirty Six Emalangeni)**.

7. The Defendant despite constant demand failed, refused and/or neglected to pay or reimburse to Plaintiff the outstanding amount of **E33, 336-90 (Thirty Three Thousand Three Hundred and Thirty Six Emalangeni).**

[4] Annexure “**NBC1**” is reproduced hereunder:-

“17 October 2018

Mr Bonginkhosi Dlamini

The CEO

NBC

Ground Floor Embassy House

Msakato Street

Mbabane H100

Eswatini

Dear Bonginkhosi,

RE: REIMBURSEMENT OF OFFICE ELECTRICITY BILL

We acknowledge the circumstances we find ourselves in as a result of the lack of a separate metre for both our companies. This has resulted in a debt accruing to LULA Enterprises to the value of thirty-three thousand three hundred and ninety cents [E33 336.90]

As discussed in a meeting with our Finance and Administration Officer on the 17 October 2018 morning, we confirm our commitment to reimburse NBC through instalments of Two thousand five hundred per month for a period of thirteen [13] months on or before the 31st of each month with the first payment being 31st October 2018 until the debt is paid in full set as follows. This will enable us to suitably manage our cash flow.

<i>Date</i>	<i>Amount</i>
<i>31st October 2018</i>	<i>2 500,00</i>
<i>30th November 2018</i>	<i>2 500,00</i>
<i>31st December 2018</i>	<i>2 500,00</i>
<i>31st January 2019</i>	<i>2 500,00</i>
<i>31st February 2019</i>	<i>2 500,00</i>
<i>31st March 2019</i>	<i>2 500,00</i>
<i>31st April 2019</i>	<i>2 500,00</i>
<i>31st May 2019</i>	<i>2 500,00</i>
<i>31st June 2019</i>	<i>2 500,00</i>
<i>31st July 2019</i>	<i>2 500,00</i>
<i>31st August 2019</i>	<i>2 500,00</i>
<i>30th September 2019</i>	<i>2 500,00</i>
<i>31st October 2019</i>	<i>2 500,00</i>
	<i>33 336,90</i>

We thank you for your patience and understanding.

Kindly provide us with your banking details.

Kind Regards,

Ms Lomkhosi Magagula

Chief Executive Officer

- [5] The Plaintiff has proffered Annexure **“NBC1”** as a liquid document upon which its claim is based and argues that the Defendant has no *bona fide* defence to the claim and that it has filed a notice of intention to defend merely for the purpose of delay. The Respondent (Defendant) denies this and pleads that his defence is *bona fides*. Respondent also pleads that there are triable issues herein which can only be resolved by oral evidence. In particular in respect of the

nature of the claim, the manner in which the acknowledgment was signed and subsequent developments after the signing of the acknowledgment.

[6] This is what the Respondent says as its defence:

3.

“From the outset, may I state that the Defendant and the Plaintiff has not used a joint electricity meter. I am saying so because an electrician, one Mr Masava duly instructed by the landlord Embassy House who is an expert in the electrical field has confirmed that the electricity meter was not shared. He was accompanied by one Mr Sibusiso Maseko, the landlord maintenance officer. This was done in the presence of our employee Fikile Mamba our receptionist. He discovered that, in my presence that there was no power sharing between the Plaintiff and the Defendant. He demonstrated by tripping or switching off the main switch wherein it was found that tripping only affect the Plaintiff’s lights not the Defendant’s lighting system.”

7.

“It is worth mentioning that on about October 2018, the Defendant acknowledged the debt on the electricity sharing because at that time the landlord electrician had not inspected the meter box and find that there was no power sharing. From the layman point of view, it had appeared there was sharing. Furthermore when it transpired after the evacuation of the Plaintiff from the premises that the Defendant still had electricity even after the Plaintiff disconnected in December 2018, the agreement was already signed. Signing the agreement under a wrongful belief does not render the Defendant defenceless

wherein the correct and expert opinion is at variance with what was acknowledged.”

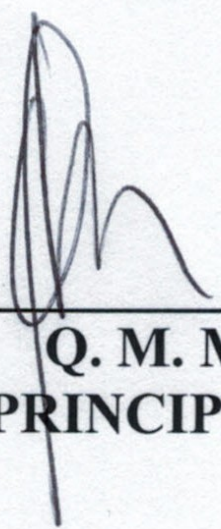
9.

“I submit that the nature of the claim needs an expert opinion firstly on the issue of the power sharing, secondly on the issue of the quantum of power usage in kilowatts in the event if it found that there was power sharing though such findings are so unlikely. These clearly demonstrate that the Defendant has a bona fide defence and there are triable issues. Even the lease agreement that was signed by the Defendant does not say anything about electricity sharing so the issue of electricity sharing comes from the air. It needs a full blown trial for the Court to appreciate all the circumstances of the matter.”

- [7] Miss Fikile Mamba, an employee of the Defendant has submitted a Confirmatory Affidavit with regard to the inspection of the metre box and discovering that there was no electricity sharing with the Plaintiff.
- [8] Even though the Plaintiff denies all the averments made by the Respondent and Miss Mamba, the Plaintiff does challenge them to strictly prove their averments. What better way to do that than to lead oral evidence.
- [9] I must therefore agree with the Respondent that ex-facie the papers before me triable issues are screaming to be heard. And a *bona fide* defence is clearly apparent.
- [10] I accordingly dismiss the application. Costs to be in the course.

BANE

Crim. Case



Q. M. MABUZA
PRINCIPAL JUDGE

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For the Applicant: Mr Dlamini with Miss Mahlangu
For the Respondent: Mr Magagula