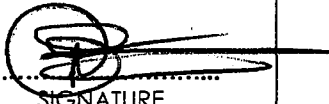


REPUBLIC OF SOUTH AFRICA



GAUTENG LOCAL DIVISION
JOHANNESBURG

CASE NO: 13491/16

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
<u>24/6/2016</u> DATE	
 SIGNATURE	

In the matter between:

CIOLLI READYMIX (PTY) LTD

Plaintiff

and

PC FLOORS SA (PTY) LTD

Defendant

JUDGEMENT

CARSTENSEN AJ:

1. The Plaintiff seeks summary judgement in the amount of R2 239 313.40 in respect of goods sold and delivered by the Plaintiff to the Defendant, being concrete.

2. The Defendant does not dispute the amount of the Plaintiff's claim, nor that the concrete was delivered.
3. The Defendant, however, raises a counterclaim contending that the concrete which was delivered, was installed as a floor at the site of the Defendant's client during June / July 2015 and was defective. The Defendant states, in a letter of the 8th April 2016 as read with its opposing affidavit, that when the 3 month inspection was carried out the Defendant found numerous pit marks caused by wood shavings in the concrete underneath the hardened layer.
4. The Defendant carried out remedial work, however, during the 6 month inspection it was again noticed that there were more pit marks which appeared due to wood shavings.
5. After the 6 month inspection, the deponent to the Defendant's affidavit, namely Lórandt Kapp, advised that he tried on numerous occasions to contact the Plaintiff's representatives telephonically, but that they did not answer their phones. It appears Kapp then did nothing for a number of months.
6. The Plaintiff, on the other hand, not having received payment, issued a letter of demand in terms of Section 129 and 130 of the National Credit Act on the 31st March 2016.
7. In response to this demand, the Defendant addressed the letter referred to above, dated 8th April 2016 contending that the concrete

was defective and that it would obtain the assistance of its concrete specialist, Mr Bruce Raath, to assure the Defendant and the Defendant's client that the floor defects will have no structural impact.

8. From the letter of the Plaintiff dated 3rd May 2016, attached to the affidavit opposing summary judgement, it appears that the Plaintiff immediately inspected the floor on the 9th April 2016 and found that remedial work had been effected to the floor by the Defendant, or perhaps the Defendant's contractor.

9. The Defendant thus opposed the application for summary judgement as it seeks an opportunity to institute a counterclaim for the defects.

10. I am not satisfied that the Defendant has established a *bona fide* defence for the following reasons:

10.1. despite the fact that the Defendant inspected the floor 3 months after installation and allegedly found defects, it did not draw the Plaintiff's attention to this fact;

10.2. it was only after the Defendant received the letter of demand that it addressed the letter dated 8th April 2016 to the Plaintiff;

10.3. the expert's report of Bruce Raath is not attached to the opposing affidavit and it does not even appear that such report has been obtained;

10.4. the Plaintiff was not afforded an opportunity to inspect or to remedy the defects because the Defendant itself, according to its version, had remediated the defects on two occasions after the 3 month and 6 month inspection, without advising the Plaintiff. This is despite the fact that the Plaintiff inspected the floor the day after it received the complaint;

10.5. in terms of the written agreement between the parties, the Defendant was obliged to draw the Plaintiff's attention to any defects within 3 months of date of supply. The Defendant did not dispute the provisions of the agreement. It is apparent that the Defendant did not even draw the Plaintiff's attention to the defects 3 months after it became aware of the defects;

10.6. it is clear that the Defendant became aware of the defects in approximately October 2015, but waited until April 2016 to address a letter of complaint to the Plaintiff.

11. Consequently, I am not satisfied that the Defendant has established a *bona fide* defence and am satisfied that summary judgement ought to be granted.

12. In the result, I make the following order:

12.1. Summary judgement is entered against the Defendant in

favour of the Plaintiff for:

- 12.1.1. payment of the sum of R2 239 313.42;
- 12.1.2. interest on the aforesaid amount at the rate of 10.25% from the 1st April 2016 to date of payment;
- 12.1.3. costs of suit on the party and party scale.



**P L CARSTENSEN
ACTING JUDGE OF THE
HIGH COURT**

HEARD: 14 JUNE 2016
DELIVERED: 24 JUNE 2016

COUNSEL FOR PLAINTIFF: M J COOKE
INSTRUCTED BY: VAN WYK VAN DEVENTER INC.

COUNSEL FOR DEFENDANT: H VAN BEEK
INSTRUCTED BY: HATTINGH MASSEY BENNETT INC.

(jmt.15.6.16)