


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 11984/2018

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
13 Dec. 2018	
DATE	CHJ BADENHORST AJ

In the matter between:

**DELEVEX 679 CC**

**Applicant**

and

**AIRPORTS COMPANY OF SOUTH AFRICA LIMITED**

**Respondent**

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**J U D G M E N T**

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**BADENHORST AJ:**

[1] The applicant applies for summary judgment against respondent for payment of the sum of R 3 696 263.48 and ancillary relief arising from the alleged non payment by the respondent of certain CPI – related escalations due under a written contract originally concluded on 1 April 2010.

[2] Numerous defences have been raised by the respondent, including a challenge to the authority of applicant's attorney, a technical defence based on an alleged failure to provide the required notice in terms of Institution of Legal Proceedings against certain Organs of State Act, 2002 and many more.

[3] The principle which applies in proceedings of the present kind is expressed as follows in *First National Bank of SA Ltd v Myburgh* 2002 (4) SA 176 (C):

*"[9] Because of the drastic nature of the relief sought, the Court has, in terms of Rule 32(5), a discretion to grant the defendant leave to defend the action even where he has failed to comply with Rule 32(3)(b). **The Court will grant summary judgment where plaintiff has an unanswerable case. If the Court has the slightest doubt, the Court will not grant summary judgment.** (Fourlamel (Pty) Ltd v Maddison 1977 (1) SA 333 (A) at 347H; Gilinski v Superb Launderers And Dry Cleaners (Pty) Ltd 1978 (3) SA 807 (C) at 811E - H.)"* [emphasis added]

[4] There is one defence which, in my view, creates sufficient doubt in my mind at this early stage of the proceedings that precludes me from shutting the door of the Court on the respondent – and that is the defence of prescription raised in the opposing affidavit.

[5] Applicant attached its letter of demand to respondent dated 4 December 2015 to the particulars of claim. Paragraph 2 thereof reads as follows:

*"You have been in breach since 1 April 2011 and for the years 2012, 2013 and 2014 up to March 2015, where CPI related increases should have been paid as per clause 4, "Professional fees", of the agreement between Delevex 679 and ACSA."*

[6] A further attachment relied on by applicant is "D" to the claim in which the claim is computed – it appears from that document that the amounts claimed arose during the financial years 2011 – 2015.

[7] The summons was issued on 23 March 2018. It follows that unless there was an interruption of the running of prescription or an acknowledgement of liability, all

debts which became due before 23 March 2015 may well have become extinguished by prescription.

[8] In response to the defence of prescription, applicant relies on the events at a meeting held between representatives of the parties on 22 July 2015 (see paragraph 9 of the claim). Based on the meeting, counsel for the applicant contends that *"there was an acknowledgment ... where (respondent) admitted that the money was not paid due to a technical oversight"*. The pleading (paragraph 9.2) adds that respondents' representatives said that the oversight *"would be 'looked into'."* The two emails referenced in that paragraph do not take the issue any further.

[9] Section 14 of the Prescription Act 68 of 1969 provides as follows:

*"14 Interruption of prescription by acknowledgement of liability*

*(1) The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor.*

*(2)...."*

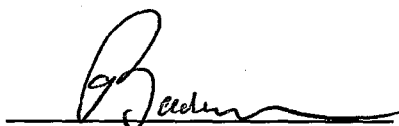
[10] The statements attributed to respondents' representatives who attended the meeting do not, in my view, amount to "an ... acknowledgement of liability" by respondent.

[11] It follows that summary judgment cannot be granted.

[12] I accordingly make the following order:

(a) The application for summary judgment is refused and the respondent (second defendant) is granted leave to defend the main action.

(b) The costs of the summary judgment proceedings will be costs in the cause.



**CHJ BADENHORST AJ**

**Acting Judge of the High Court of South Africa,  
Gauteng Local Division**

*APPEARANCES*

*For the applicant:*        *Mr B Beilings*  
*Instructed by:*        *MATT LARKINS ATTORNEYS*  
*For the respondent:*    *A E Ayayee*  
*Instructed by:*        *NKADIMENG ATTORNEYS*  
*Date of hearing:*       *13 December 2018*  
*Date of judgment:*    *13 December 2018*