

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2023/011581

Date of Judgment?	08 November 2023
Reportable?	No
Of interest to other judges?	No

In the matter between:

MIX TELEMATICS ENTERPRISE SA (PTY) LTD Applicant

and

LOGIC LOGISTICS GROUP (PTY) LTD Respondent

JUDGMENT

GREEN AJ:

Ian Green AJ

- 1 The Plaintiff commenced an action against the Defendant to recover amounts which it alleges are owing pursuant to a written Agreement concluded between the parties.
- 2 In terms of the Agreement the Plaintiff provided vehicle tracking services to the Defendant, and an agreed monthly fee was to be paid.
- 3 The plaintiff's claim consists of two amounts, both of which are rooted in the agreement. The first amount relates to amounts which are due by the defendant in respect of services provided by the plaintiff in the past ("the past amounts"). The second amount relates to an amount that is alleged to be payable arising out of the defendant's cancellation of the agreement ("the future amounts")
- 4 On 31 May 2022 Mr Le Grange sent an email to the Plaintiff's representative. This email records the following:

Good afternoon Gregory.

Please advise whether Mix telematics has a specific cancellations department I need to contact?

Alternatively, we would like to give one month notice of termination to Mix Telematics and would not be needing Mix' services from 30 June 2022.

Please acknowledge receipt of this e-mail?

Thank you

- 5 The Plaintiff claims that the email sent by the Defendant on 31 May 2022 is a notice to cancel the Agreement. Following on that the Plaintiff alleges that the cancellation of the Agreement activates the provisions of clause 19.3 of the Agreement which provides:

“In the event that the Customer terminates the Agreement Mix Telematics shall be entitled to claim immediate performance by the Customer of all its obligations outstanding under this Agreement, which shall include but not limit all service fees that would otherwise have become due and payable during the term of this Agreement.”

- 6 On 21 June 2022 the Plaintiff sent a letter to the Defendant. This letter acknowledges *“receipt of your cancellation request”* and provides a *“settlement amount”* of R1,357,075.03. The balance of this letter records:

Kindly note that the above settlement amount excludes any outstanding payments on the account.

The above settlement amounts are valid for 14 days. If you settle after this date, you will be required to request a new settlement figure by contacting our Client Retentions team.

Please note that the above settlement values do not include any unpaid subscriptions on your account and outstanding balances are therefore still payable.

Kindly find our contact details below for future correspondence should you require assistance anytime in the future.

- 7 In its plea, and affidavit opposing summary judgement, the Defendant denies that the letter of 31 May 2022 was a letter of cancellation.
- 8 Mr Smit, who appeared for the Plaintiff, urged on me that the final paragraph of the letter of 31 May 2022 is an unequivocal cancellation of the Agreement. He made the point that the Defendant unequivocally stated that it would not require the Plaintiff’s services from the end of June 2022, and that is consistent only with a cancellation of the Agreement. Whilst this point is not without some force, it is a point built on a paragraph which is said to be in the alternative.

- 9 The Plaintiff's response to the letter of 31 May 2022, which is embodied in its letter of 21 June 2022, is somewhat equivocal on whether the Agreement has been cancelled. The Plaintiff's letter of 21 June 2022 provides a settlement amount, but records that if the settlement is not paid within the specified time, then a further settlement amount should be requested. This suggests that the Plaintiff did not understand that the Defendant had cancelled the Agreement, because if the Agreement had been cancelled the amount that would be owing in respect of service fees for the balance of the Agreement beyond the date of cancellation would be fixed, and would not be subject to revision as the Plaintiff suggests in its letter.
- 10 A further point of relevance is that the letter of 21 June 2022 invites the Defendant to contact the Plaintiff in future. If the Agreement had been cancelled there would be no reason for the Defendant to again contact the Plaintiff.
- 11 In my view, and given that this is a summary judgement application, the Defendant's defence on the cancellation of the Agreement which gives rise to the Plaintiff's claim for the future amounts cannot be said to be a defence that is not raised *bona fide* or raised solely for the purpose of delay.
- 12 During the argument, Mr Bruwer, who appeared for the Defendant, correctly, in my view, accepted that the Defendant has not raised any defence for the past amounts in respect of the services provided by the Plaintiff. It follows that the Plaintiff is entitled to judgment against the Defendant for the past amounts. Mr Bruwer agreed, again correctly in my view, that the claim for past amounts is a claim for R663,669.49

13 In neither the summons nor the application for summary judgement does the Plaintiff include a claim for interest on amounts that are owing. For that reason the order that I will give does not reflect that interest is payable.

14 As to costs, the Plaintiff has been successful in obtaining a not insubstantial judgement against the Defendant. No defence to the claim for the past amounts was raised, and instead the Defendant persisted in its denial of being liable to pay those amounts until the application was argued.

15 I have considered whether the costs of the summary judgement application ought in some way to be apportioned given that judgement will only be granted for the past amounts. That would in my view, not be an appropriate way to consider costs because substantially the same costs would have been incurred if the Plaintiff had only proceeded for summary judgement only in respect of the past amounts. Therefore in the exercise of my discretion in respect of costs, I will order that the Defendant is to pay the costs of this summary judgement application. The agreement provides for costs to be paid on the attorney and client scale and that is scale on which costs are claimed in the summons and the application for summary judgment.

16 I accordingly order that:

1. The Defendant is to pay to the Plaintiff R663,669.49.
2. The Defendant is granted leave to defend the Plaintiff's claim in the amount of R1,423,551.51.
3. The Defendant is to pay the Plaintiff's costs of this summary judgement application on the attorney and client scale.

Ian Green
Acting Judge of the High Court
8 November 2023

On behalf of the Applicant:

Adv. M. Smit

Instructed by:

Cliffe Dekker Hofmeyr Inc.

On behalf of the Respondent:

Adv. J Van Rooyen

Instructed by:

Donn E Bruwer Attorneys.