

**IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

Date: 9/5/2006
Case no: 14891/05

UNREPORTABLE

In the matter between:

GROUP FIVE CONSTRUCTION (PTY) LTD Applicant

and

**ROSCHER COETZEE NORTJE
MAMPEULE INC** First Respondent

TERTIUS ADRIAAN ROSCHER Second Respondent

JUDGEMENT

- 1] In this matter, the applicant claims from the first respondent the following relief:
 1. Payment of the sum of R1 581 206,75;
 2. Interest on this amount at the rate of 15,5% per annum as from 26 April 2005 to date of payment; and
 3. Costs of the application.

- 2] The respondents have pleaded that there is a substantial counterclaim against the applicant pertaining to the question of referral commission and request that the application be dismissed with costs. The question of set-off is also germane to the application and during argument, Mr Smit, on behalf of the

respondents, submitted that the Court should exercise its discretion and grant a postponement of the matter pending the counterclaim to be instituted on behalf of the respondents.

- 3] Mr Horwitz submitted that the facts surrounding the calculation of the alleged counterclaim are so poorly set out and the counterclaim itself not properly quantified and that, as a result, it is not a proper defence as it is too vague and embarrassing.
- 4] I do not intend dealing with the facts as set out in the papers in light of the order I propose to make which is set out hereunder.
- 5] When the matter was originally argued before me I reserved judgement in order to consider the facts of this matter properly as well as the question of the claim and intended counterclaim. In light is certain concessions made during argument insofar as a portion of the applicant's claim is concerned, as well as the fact that the facts upon which the claim and purported counterclaim are based are so inextricably interwoven, I am of the opinion that it would serve no purpose to entertain the matter at this stage as there may be substantial and material prejudice to either one of the parties were I to do so.
- 6] I am, however, of the view that to refer the matter to oral evidence would serve no purpose as the issues need to be properly defined.

ORDER

- 7] Accordingly, I make the following order:
 - 7.1 This matter is referred to trial.

- 7.2 The Notice of Motion shall stand as a simple summons.
- 7.3 The Notice of Intention to Oppose shall stand as a Notice of Intention to Defend.
- 7.4 The applicant is to file a declaration within 20 days of date of this order.
- 7.5 Thereafter the Uniform Rules of the High Court shall apply insofar as the filing of pleadings and the conduct of the trial is concerned.
- 7.6 The costs of the application are reserved for determination by the trial court

NEUKIRCHER (AJ)
7 May 2006