


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO:99026/2015

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
	
SIGNATURE	DATE
	21/12/2016

21/12/2016

In the matter between:

BRIDGESTONE SOUTH AFRICA COMMERCIAL (PTY) LTD Plaintiff

and

VR CARGO (PTY) LTD Defendant
(REGISTRATION NUMBER: 2003/092303/23)

J U D G M E N T

MPHAHLELE J:

[1] This is an application for summary judgement. The plaintiff claims payment in the amount of R535 325-24 from the defendant for goods sold and delivered.

[2] During or about 3 August 2010 the defendant lodged a written application for credit facilities from the plaintiff. In terms of the written application for credit facilities, the defendant applied to purchase goods on credit from the plaintiff on the following terms and conditions;-

[2.1] the defendant shall be bound by the standard terms and conditions as contained in annexure C in all translations for the purchase of goods;

[2.2] payment in respect of goods shall fall due 30 days from the date of statement;

[2.3] in the event of any delay in payment, the purchaser shall pay the plaintiff a late payment charge of 2% per month calculated from the date payment became due to date of actual payment;

[2.4] in the event of late payment, all trade discounts allowed on invoice will be reversed.

[3] The plaintiff alleges that on or about 10 August 2010 it accepted the defendant's application and that during the period October 2013 up until August 2015 it sold goods to the defendant on an open account for which the defendant made payments from time to time. The plaintiff alleges that it rendered a statement of the amount owing on the account on a monthly basis and from time to time passed credit notes on the account as and when the defendant was entitled to a credit note for whatsoever reason.

[4] The plaintiff alleges that the defendant breached the agreement in that it failed to pay the amounts due and owing within 30 days of the date of statement. Due to the defendant's alleged breach the plaintiff reversed the trade discount passed on the account from time to time.

[5] As at 1 November 2015 the defendant was indebted to the plaintiff for an amount of R535 325-24 calculated as follows;-

[5.1] Capital debt	: R484 565-50
[5.2] Trade discount reversal	: R169 702-11
[5.3] Subtotal	: R654 267-61
[5.4] Interest	: R 51 333-45
[5.6] Subtotal	: R705 601-06
[5.7] Minus payments	: <u>R170 275-82</u>
[5.8] Total	: <u>R535 325-00</u>

[6] The defendant admits that the parties entered into a credit agreement in terms of which the plaintiff would sell goods on credit to the defendant, however maintains that the parties expressly limited the total credit allowed to the sum of R160 000-00. The defendant submitted that regard being had to the balance of R535 325-24 owing as claimed by the plaintiff, the only goods lawfully sold to the defendant on credit in terms of the agreement were for the first three sums of R60 812.14 (on 5 January 2015), R10 545.35 (on 6 January 2015) and R62 933.27 (on 7 January 2015).

[7] The defendant contends that the balance of the amounts claimed on the account were all beyond the limits permitted by, and therefore, *ultra vires* the agreement and payment thereof cannot be claimed in terms of the agreement. Consequently, the alleged trade discounts and interest levied are likewise unenforceable. In the result, the defendant maintains that by having paid the total sum of R170 275-82 it overpaid the plaintiff by R10 275-82, in the *bona fide* and reasonable but mistaken belief that it was owed and is entitled to claim repayment thereof from the plaintiff, who has been unjustly enriched of such sum.

[8] The credit agreement expressly provides that payment shall be made within 30 days from the date of statement. The defendant submitted that the plaintiff is not entitled to payment of trade discount reversals and interest as it never provided the defendant with any trade discounts and also failed to provide the defendant with statements of account indicating the amounts outstanding and when they became due. The defendant alleges that it repeatedly requested the plaintiff to provide it with such statements. The

defendant alleges that the plaintiff levied interest for the period during which it had failed to provide the defendant with a statement, barring which the defendant could not have made earlier payments.

[9] The defendant contends that any amount claimed in excess of R160,000-00 by the plaintiff is *ultra vires* the agreement. This issue turns on the proper construction of the agreement itself. In terms of the agreement the defendant requested a credit limit of R160 000-00. There is no provision in the agreement precluding provision of credit in excess of R160 000-00. Therefore the contention by the defendant that the plaintiff cannot claim any amount in excess of R160 000-00 is misconceived.

[10] The plaintiff also submitted that the discount reversals and interest are severable and comprise of R169 702-11 and R51 333-45 respectively of the total amount claimed by the plaintiff.

[11] I find that the defendant *has bona fide* defences regarding the claims for trade discount reversals and interest. These claims are severable from the aggregate claim. If these claims are severed there remains a claim of R314 289-58 for capital in respect of which the defendant has not satisfied this court that it has a *bona fide* defence or raised an issue to be tried. It is in the circumstances appropriate for this court to grant summary judgement for the amount of R314 289-58.

In the result, I make the following order;-

[11.1] Summary judgment is granted for the amount of R314 289-68 with costs;

[11.2] The defendant is granted leave to defend the matter in relation to the trade discounts reversals and interest claimed by the plaintiff.



MPHAHLELE J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Counsel for the Applicant/ Plaintiff: Adv P1 Oosthuizen

Instructed by: Pierre Krynauw Attorneys

Counsel for the Respondent/ Defendant: Adv EJJ Nel

Instructed by: Rose-Innes, du Preez Inc.

Date of Judgment: ²¹
15 December 2016