

HIGH COURT OF NAMIBIA



MAIN DIVISION, WINDHOEK

**JUDGMENT**

Case no: I 977/2013

In the matter between:

**THE BUILDHARD SERVICES (PTY) LTD T/A**

**HARD-BUILD CENTRE**

**PLAINTIFF**

and

**JEPE CONSTRUCTION**

**DEFENDANT**

**Neutral citation:** *The Buildhard Services (Pty) Ltd t/a Hard-Build Centre v Jepe Construction* (I 977/2013) [2013] NAHCMD 270 (03 October 2013)

**Coram:** MILLER AJ

**Heard:** 23 July 2013

**Delivered:** 03 October 2013

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**ORDER**

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The application for summary judgment is refused. The defendant is granted leave to defend the action. Costs will be costs in the cause.

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**JUDGMENT**

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MILLER AJ :

[1] In this matter the plaintiff instituted action against the defendant by way of a simple summons.

[2] The plaintiff claims the following relief:

- a) Payment of the sum or balance of N\$136 949.94 for the supply and delivery of materials during the period of September 2010 until April 2011 by plaintiff to defendant at the defendant's special instance and request, which amount has now become due owing and payable, but the defendant, notwithstanding plaintiff's proper demand thereto fails and/or refuses to pay this amount to plaintiff.
- b) Interest a *tempore morae* on N\$136 949.94 at the legal rate of 20% per annum until date of final payment.
- c) Costs of suit (on an attorney and client scale).'

[3] The defendant thereupon filed a notice of its intention to defend the matter.

[4] In due course the plaintiff applied for summary judgment which became opposed.

[5] From the affidavit filed on behalf of the defendant in opposition to the application for summary judgment and deposed to by Mr. Eigowab a twofold defence is raised.

[6] Firstly the defendant alleges that it had paid in full for the purchases it made and consequently owes the plaintiff nothing.

[7] Secondly it is stated that someone else had made purchases on the defendants account, which were not authorized by the defendant.

[8] In respect of both the onus remains on the plaintiff.

[9] The plaintiff contends that the nature of the defence raised are sketchy and bare allegations and for that reason falls short of the requirement that defendant must fully disclose the nature and grounds to his defence.

[10] In ***Namibia Breweries v Serrao*** 2007 (1) NR 49, Parker J said the following:

‘The word “fully” connotes, in my view, that while the defendant need not deal extensively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the Court decide whether the affidavit discloses a *bona fide* defence.’

[11] This is not a case, however, where in the light of what was disclosed, I can with any certainty conclude that a *bona fide* defence does not exist. I also have regard to the fact that the details of the plaintiff’s claim is in itself sketchy.

[12] Given the nature of the remedy, I will in cases of doubt be inclined not to grant summary judgment, in the exercise of the courts discretion.

[13] In the result I make the following orders:

- 1) The application for summary judgment is refused.
- 2) The defendant is granted leave to defend the action.
- 3) Costs will be costs in the cause.

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P J MILLER  
Judge

APPEARANCES

PLAINTIFF: C SCHICKERLING  
Of Etzold-Duvenhage

DEFENDANT: T C PHATELA  
Instructed by Murorua & Associates