

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case no: HC-MD-CIV-ACT-CON-2017/00049

In the matter between:

BARGAIN BUILDING SUPPLIES CLOSE CORPORATION

1ST PLAINTIFF

GRAEME WELLS

2ND PLAINTIFF

and

JOHAN VAN ZYL

DEFENDANT

Neutral citation: *Bargain Building Supplies CC v Van Zyl* (HC-MD-CIV-ACT-CON-2017/00049) [2018] NAHCMD 40 (26 February 2018)

Coram: OOSTHUIZEN J
Heard: 7 - 9 February 2018
Oral Submissions: 21 February 2018
Delivered: 26 February 2018

Flynote: Agreement to manufacture and erect a shed with material supplied by plaintiff.

Summary: Parties entered into partly written and partly oral agreement. Plaintiff to supply material. Defendant to manufacture and erect shed. Erecting of shed agreed to

be on premises of plaintiff. Defendant manufactured the shed but did not erect same. Remuneration of defendant in the amount of N\$60 000.00 agreed. Defendant did not comply with agreement and plaintiff cancelled same.

ORDER

Having heard counsel for the plaintiffs and counsel for the defendant –

IT IS ORDERED THAT:

1. Defendant shall pay the value of the material delivered to it in the sum of N\$203 339.73.
2. Defendant shall pay interest on the above amount from 24 January 2017 at 20% per annum a tempore morae to date of final payment.
3. Defendant shall pay the costs of suit of the plaintiffs, including the cost of one instructing and one instructed counsel.

RULING

OOSTHUIZEN J:

[1] Plaintiffs and defendant agreed on the construction and erection of a shed on Erf 85, Gobabis.

[2] Plaintiffs had to supply the materials and defendant would manufacture, construct and erect the shed.

[3] Plaintiffs would be liable to pay N\$60 000 to the defendant for the labour component, i.e. manufacture, construction and erecting.

[4] The parties' dispute centred around who was liable to get the approval of the Municipality of Gobabis. Plaintiff say it was the responsibility of defendant and defendant say it was the owner's responsibility, i.e. the plaintiffs'.

[5] It is common cause that the municipality did not approve the building plans. On the evidence presented the defendant undertook to obtain municipal permission for the erection of the shed, and did not.

[6] Plaintiff claims the money (value) it has expended in supplying the material to defendant.

[7] Defendant counterclaims (on the pleadings) the sum of N\$75 000 as damages for the work he did.

[8] Defendant during evidence changed (reduced) the above amount in damages to N\$51 000, being N\$40 000 for the construction and manufacturing, N\$5 000 paid to the architect and N\$6 000 for the baseplates.

[9] Defendant assured the court that he still have the manufactured shed under his control.

[10] Defendant further agreed to the value of the material delivered to him and used in the construction of the shed.

[11] The value amounts to N\$203 339.73.

[12] Defendant failed to prove the amount he claimed for damages in that there is no expert valuation of the work done in the manufacturing of the shed and no proof of the amount paid to the architect nor an invoice for the base plates.

[13] Defendant however has possession of the structure, which was never tendered in the pleadings. Defendant also should have possession of any remaining material supplied and the base plates he allegedly bought.

[14] In the circumstances the court is entitled to accept that the completed but unassembled and un-erected shed has monetary value far exceeding the failed damages claim of defendant.

[15] Plaintiffs' case is that the contract was not completed and it is not liable to pay anything to defendant. Furthermore the defendant was placed in mora and the contract was duly cancelled by plaintiff.

[16] On the evidence presented, the Court agree with plaintiff.

[17] In the result the following order is made –

17.1 Defendant shall pay the value of the material delivered to it in the sum of N\$203 339.73.

17.2 Defendant shall pay interest on the above amount from 24 January 2017 at 20% per annum a tempore morae to date of final payment.

17.3 Defendant shall pay the costs of suit of the plaintiffs, including the cost of one instructing and one instructed counsel.

GH Oosthuizen
Judge

