

**IN THE HIGH COURT OF SOUTH AFRICA**

**EASTERN CAPE DIVISION, BHISHO**

**CASE NO: 411/21**

In the matter between:

**MARISWE (PTY) LTD**

**Applicant/Plaintiff**

and

**THE MEC FOR ROADS AND PUBLIC WORKS    Respondent/Defendant**

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**JUDGMENT**

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**STRETCH J.:**

[1] This is an opposed application for summary judgment for payment of the sum of R334 799,92 in respect of a written agreement in terms of which the plaintiff rendered engineering services to the defendant.

[2] Despite having admitted indebtedness to the plaintiff in the aforesaid amount, the defendant alleges that he has a bona fide defence to the plaintiff's action, and opposes the application on the following grounds:

- a. that the plaintiff's claim has prescribed;
- b. that the plaintiff has failed to comply with National Treasury Note 3 of 2016/17, and is therefore not entitled to payment of the entire claim.

[3] The plaintiff first made demand for payment of the amount claimed on 20 April 2016, followed by a letter of demand dated 10 August 2016, a final notice dated 10 October 2016 and a notice that legal action was anticipated dated 25 January 2017. On 30 January 2017 the defendant forwarded a memo to the plaintiff, the upshot of which was that the defendant would only be able to settle outstanding payments due to consultants and contractors during the financial year commencing April 2017. Summons was issued on 28 July 2020.

[4] In terms of s 11(d) of the Prescription Act 68 of 1969, the plaintiff's claim prescribes after three years. Section 2(1) provides that prescription commences to run as soon as the debt arises. It is common cause that this was on 20 April 2016. By virtue of the provisions of s 14, the running of prescription is interrupted by the debtor's express or tacit acknowledgment of the debt, and once interrupted, shall commence to run afresh from the date of interruption.

[5] Even if the defendant's memorandum of 30 January 2017 is deemed to have interrupted prescription, the summons was still issued out of time. The plaintiff, in its affidavit in support of the summary judgment application, refers to acknowledgment of liability made by way of correspondence on 9 September 2019. Unfortunately the deponent to the affidavit has omitted to annex the alleged correspondence. I am accordingly constrained to refuse the application on this ground of opposition alone, and do not deem it necessary, for purposes of this application, to address the second ground of opposition.

[6] The defendant seeks attorney and client costs, together with an order that the action be stayed until such costs have been paid. I am not inclined to grant such an order. It seems to me that the failure to annex proof of a later admission of the debt, particularly when the debt has been admitted on the pleadings, may well have been a mere oversight on the plaintiff's part. In the circumstances I see no reason why the usual order, refusing summary judgment should not follow.

**ORDER:**

- a. Summary judgment is refused.
- b. The defendant is granted leave to defend.

c. The costs of this application shall be in the cause.

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**I.T. STRETCH**  
**JUDGE OF THE HIGH COURT**

*For the applicant/plaintiff: Mr D. Pitt*

*Instructed by Stirk Yazbek Attorneys*

*Care of Squire Smith & Laurie Inc.*

*KING WILLIAMS TOWN*

*Tel. 043 642 3430*

*Ref. Ms Friderichs/SQ/MAT55666*

*Email [candidateattorneykwt1@squires.co.za](mailto:candidateattorneykwt1@squires.co.za)*

*For the respondent/defendant: Mr S. Mpakane*

*Instructed by the State Attorney*

*Care of Office of the Premier*

*KING WILLIAMS TOWN*

*Ref. 573/20 – P15 (Ms Gabula)*

*Date heard: 15 December 2020*

*Date handed down by way of electronic mail to the local attorneys: 15 February 2021*