

CHIZUNGU GROUP OF MBERENGWA

Plaintiff

and

GEORGE SHONIWA t/a GREENWICH ELECTRICAL

Defendant

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 11 JANUARY & 15 AUGUST 2002

C P Moyo for applicant
S Mazibisa for the respondent

Opposed Matter

CHIWESHEJ: The plaintiff sued the defendant for damages in the sum of \$1 392 242,00 arising out of defendant's failure to perform its obligations in terms of a contract entered into in January 1999. In terms of that contract defendant was obliged to electrify six homesteads belonging to plaintiff's members. Apparently plaintiff is a partnership comprising five partners.

The defendant, George Shoniwa raised a plea in bar in which he states that he is a director of a company known as Greenwich Electrical Contractors (Pvt) Ltd. He further states that he does not trade as Greenwich Electrical and that there is at law no entity known as George Shoniwa trading as Greenwich Electrical. He insists that he has never had any personal dealings with the plaintiff as claimed and is therefore wrongly joined in this action as plaintiff has no cause of action against him.

In its reply to the special plea in bar, plaintiff avers that in its dealing with the defendant he did not disclose that he was acting in his capacity as a director of a registered company with limited liability and that all receipts and invoices made out by defendant reflect that they are for "Greenwich Electrical Contractors" and the words "LTD, "PVT", "limited", "Private", "Co" or "company" where not mentioned

in legible characters as required by law. For those reasons, so argues plaintiff, defendant must be held personally liable to plaintiff in terms of the law. On his part defendant maintains he signed the contract on behalf of Greenwich Electrical Contractors and that failure to mention the word “limited” or Ltd” or “Private” or “Pvt” does not render defendant personally liable.

The fact that Greenwich Electrical Contractors (Pvt) Ltd is a company duly registered in terms of the law is not in dispute. In terms of a certificate of incorporation filed of record, the company was registered on 9 September 1997.

I agree with defendant that section 113 of the Companies Act Chapter 24:03 does not in any way impute personal liability on a director who deals with clients without displaying the words (Pvt) Ltd save in specified circumstances of fraud or dishonesty. Whilst creating penal sanctions for a company or director failing to display such words when issuing publications or signing on behalf of the company, the section does not go further to impute personal liability for directors found guilty of such omissions save in cases involving the issuance of promissory notes, bills of exchange, cheques or orders for money or goods.

Clearly plaintiff does not fall into any of the above categories. Accordingly there is no basis upon which defendant can be held personally liable. The special plea raised by the defendant must therefore succeed.

The plaintiff’s claim against defendant personally must be and is hereby dismissed with costs.

Sibusiso Ndlovu Legal Practitioners applicant’s legal practitioners
Cheda & Partners, respondent’s legal practitioners