

FREEZEWELL REFRIGERATION

versus

BARD REAL ESTATES

IN THE HIGH COURT OF ZIMBABWE
CHIWESHE J
BULAWAYO 26 JULY & 17 OCTOBER 2002

N Ndlovu for the applicant
J Sibanda for the respondent

Opposed Matter

CHIWESHE J: The applicant sued the respondent under case number 758/02 for payment of the sum of \$403 156,00 being the balance for work, labour and materials supplied to the respondent by the applicant between January and February 2002.

The respondent company had contracted the applicant to repair air conditioners at Forestry Commission Building in Bulawayo. It had also contracted the applicant company to repair doors for that building. At the time of the agreement no quotations had been supplied indicating the cost of the work to be done. Applicant duly performed its part of the contract and tendered an invoice in the sum of \$300 400,00 for the repairs of the air conditioners and \$244 980,00 for the repair of the doors. The total cost of the repairs amounted to \$545 380,00. Of this amount the respondent company has paid \$153 624,00. In addition the applicant sought to recover an amount of \$11 400,00 being travelling expenses to Harare in pursuit of payment.

The respondent entered an appearance to defend the matter and filed its plea.

In its plea the respondent admits that applicant carried out the work it was contracted to do but contends that the charges raised by the applicant were duly unreasonable and exorbitant, and that they required applicant to prove the reasonableness of those charges. The respondent also stated that the sum of \$153 624,00 had been paid by their Harare head office owing to undue pressure exerted upon them by the applicant and that the said head office did so without the full background knowledge of the facts. Therefore that payment had been made in error as respondent had queried applicant's invoice from the time of its presentation. Further the respondent avers that travelling to Harare had not been part of the agreement and that the applicant did so of its own accord. As such respondent was not liable for any expenses incurred in that regard. The respondent therefore consented to payment of "proven reasonable charges", while denying the present charges. He denied liability for the present charges on the grounds that they were exorbitant.

Notwithstanding this plea which clearly discloses a defence on the part of the respondent the applicant proceeded to apply for summary judgment. It cannot be said that the applicant has established a clear and unanswerable case upon which an application of that nature can be granted. The respondent is entitled to query the reasonableness of the charges levied against it. The applicant alleges that an officer of the respondent had verbally agreed to meet the charges. This is denied by the respondent, thereby giving rise to a factual dispute which cannot be resolved without hearing *viva voce* evidence. Further it is obvious that in the circumstances the sum claimed cannot be regarded as liquid as it is subject to proof.

Accordingly there is absolutely no merit in this application. The application is hereby dismissed with costs on the higher scale.

Lazarus & Sarif applicant's legal practitioners

Job Sibanda & Associates respondent's legal practitioners