

CLAUDIO CHIARELLI
versus
BOUNA INVESTMENTS (PRIVATE) LIMITED T/S
BOUNA SAFARIS, TRAVEL AND TOUR

HIGH COURT OF ZIMBABWE
MATANDA-MOYO J
HARARE, 22 July 2015

Opposed Matter

Ms S Njerere, for the applicant
T Moyo, for the respondent

MATANDA-MOYO J : This is an application for specific performance. The applicant is a professional hunter who is in the business of bringing clients to Zimbabwe from abroad. The respondent is a company carrying on business of Safari Tourism. Sometime in 2013 the applicant and the respondent agreed to have two hunters undertake hunting at the respondent's Safari. The two are Mr Zucca and Mr Taddei. The two successfully completed their hunting safari and left. The applicant has settled the respondent's dues in respect of the two hunters. The applicant requires to send hunting trophies to the two. In order to do so the applicant should be in possession of completed TR 2 forms. Such forms are provided by the respondent. Despite demand, the respondent allegedly failed to submit such TR 2 forms. The applicant seeks an order compelling the respondent to deliver to him the relevant stamped TR 2 forms in respect of Mr Zucca and Mr Taddei.

The respondent opposed the relief sought on the basis that the applicant owes it in respect of other hunting safaris done by their other clients. As long as those payments remain outstanding the applicant is not entitled to the order sought. At the date of the hearing the respondent also argued that the order could not be granted without the applicant submitting forms ZIMRA 47 which shows such funds were from outside Zimbabwe.

The parties agreed that the applicant settled all dues in respect of huntings carried out by Mr Zucca and Mr Taddei. The parties also agreed that they were outstanding monies in respect of other hunters. However, it is my finding that the huntings relating to others constituted different agreements. This court is only concerned with the agreement for Mr Zucca and Mr Taddei. I am of the view that each hunting constitutes a separate agreement.

Specific performance is an extraordinary equitable remedy that compels a party to execute a contract in terms of the precise terms agreed upon. It is an order which grants the applicant what he bargained for in the contract. A valid contract must exist between the parties and the party seeking specific performance must have substantially fulfilled his obligations in terms of the contract. A party may also be granted the relief if he has offered to do or is ready and willing to do all acts that were required of him to execute the contract according to its terms.

Specific performance would be denied where damages would adequately compensate the applicant for the loss. In the case herein it is common cause that the issue of damages does not arise. The applicant herein intends to export the hunter's trophies and the only remedy applicable is specific performance. It is settled law that every party to a binding contract who is ready to carry out its own obligations under it has a right to demand from the other party, so far as it is possible, performance of that other party's obligations in terms of the contract see *Farmers Co-Operative Society v Berry* 1912 AD 343 @ 380. In matters involving payment of money the full amount must have been paid or at least there must be a tender for payment of the full amount owing, otherwise the creditor is allowed to refuse the tender and the debtor is not entitled to specific performance see Christie *The Law of Contract in South Africa* 5 ed p 405.

During argument counsel for the respondent argued that there are other payments owed by the applicant in relation to hunting by other persons than the ones herein. Assuming I was wrong that each hunting constituted a separate agreement, the applicant offered payment for the other huntings, to be held in his lawyers trust account. Such payment would only be released to the respondent upon fulfilling his obligation in terms of the two hunters herein. I am of the view that such offer represents valid tender which entitles the applicant to the relief sought.

During the hearing counsel for the respondent argued that for the respondent to provide the TR 2 forms claimed, the applicant must avail to the respondent ZIMRA Form 47, to show that the funds were received from outside the country. The applicant had no problems complying

with any requirements by Reserve Bank of Zimbabwe hence my inclusion of the proviso to my order that the applicant shall satisfy all those requirements.

It follows from the foregoing that the applicant is entitled to an order for specific performance as per my order of 24 July 2015 as follows:

1. That within seven days of the granting of this order, the respondent be ordered to deliver to the applicant, two completed TR 2 forms, appropriately stamped, relating to hunting safaris undertaken by Micco Zucca and Roberto Taddein in 2013, upon the applicant satisfying RBZ requirements.
2. That the respondent pays costs of this application.

Honey & Blanckenberg, applicant's legal practitioner's
Tamuka Moyo Attorneys, respondent's legal practitioner's