

**IN THE HIGH COURT OF LESOTHO**

**(Commercial Division)**

**CCT/125/2009**

In the matter between:

**SUPER QUICK CENTRES t/a RETYRE (PTY)LTD      PLAINTIFF**

**And**

**LESIA NKHAHLE**

**DEFENDANT**

**JUDGMENT**

<b>Coram</b>	:	Honourable Justice J.D. Lyons (a.i)
<b>Dates of Hearing</b>	:	7 September,2012
<b>Date of Jugment</b>	:	7 September,2012

**ANNOTATIONS:-** admissability of computer generated evidence.

**CITED CASES:-** Harris v Smith 372 F 2d 806 (8<sup>th</sup> CIR 1967 – US), Rook v Maynard 126 ALR 150.

**LYONS J. (A.J)**

**[1]** I heard this case on 7 September, 2012. At the conclusion I decided the case in favour of the Plaintiff. As promised, herewith are my reasons.

- [2]** The plaintiff is a firm that trades in tyres and similar goods. The defendant is said to have been a customer of the Plaintiff. It is said that the plaintiff rendered goods and services to the defendant over the period from 2005 to 2007 (inclusive). Those services included the sale of tyres (new and retreads), wheel balances and the like.
- [3]** The defendant put the plaintiff to proof. He did not call any evidence.
- [4]** I heard from Mr. E. Botha for the plaintiff. He is a director of the plaintiff. He is responsible for the day to day running of the plaintiff's business.
- [5]** Mr. Botha's evidence was to the effect that when a customer came to the plaintiff's place of business and made a purchase, the appropriate transaction generated a computer invoice that recorded the relevant details. These invoices were printed out. One copy went to the customer and two other copies were filed in the plaintiff's records. As well, the original computer entry/invoice was retained in the computer memory.
- [6]** Mr. Botha knows the defendant. He said that over the period (and otherwise), the defendant came to the plaintiff's place of business and ordered goods and services. The defendant ran an account. He paid some of it but as at

about September 2007, the amount of M(R)50,063.88 was due and owing. This had not been paid.

**[7]** The plaintiff sues for this M50,063.88 plus interest. The interest claimed is under clause 3.3 of the invoice/contract. It invokes the provisions of the National Credit Act (34) (South Africa) 2005.

**[8]** No expert evidence was presented regarding the National Credit Act (South Africa). Accordingly I am unable to apply that Act. Hence the interest claimed by virtue of this foreign law cannot be granted.

**[9]** Mr. Botha said that at the end of each work day he personally checked all the work done, for correctness and for its entry into the invoicing system.

**[10]** He said that he supervised this process. He also said that the hard copy paper invoices retained by the plaintiff had been lost in a fire. However, the computer records (from which the paper invoices were generated) remained intact. He said that it was impossible for these records to be wrong.

**[11]** Mr. Botha gave evidence that he personally supervised the bookkeeper when retrieving the invoice records of the defendant for use in this litigation. He produced a bundle of invoices and a summary sheet of those invoices.

**[12]** I accept that Mr Botha, being very much a ‘hands – on’ director, has sufficient knowledge of the business and of the defendant, to make him (Mr. Botha) the appropriate person to give evidence in this matter on the plaintiff’s behalf. I also accept his evidence as accurately describing the defendants transactions with the plaintiff.

**[13]** The defendant raised the question of the admisibility of the bundle of invoices and the summary. Though his counsel, be argued that there was insufficient evidential nexus between Mr. Botha and the production of the invoices. No case authority was submitted to support this argument. I understood the defendant to be arguing that Mr. Botha lacked sufficient direct contact with the computerized invoice generating system to be able to give admissable evidence of its accuracy and content.

**[14]** This question has raised some judicial comment over the years. Mostly nowadays in other jurisdictions the Evidence Acts enact the admissability of computer records. I was not referred to any such act of the Lesotho Parliament.

**[15]** The general thrust of the authorities is that once the computer has been established as reliable, the evidence is admitted (see: Harris v Smith 372 F 2d 806 (8<sup>th</sup> CIR 1967 – US). The courts tended to utilize the same principles applicable to evidence of ‘scientific instruments’ (See Rook v

Maynard 126 ALR 150 – Australia/Supreme Court of Tasmania – 19 November 1993).

**[16]** Adopting this test, I am satisfied from Mr. Botha's evidence that the computer was reliable. I accept the invoices as admissible. Further Mr. Botha's close supervision of the daily invoices leads me to conclude the computer records were, on balance, accurate. As he had supervised the book keeper when raising these invoices for trial, I accept, on balance, that the invoices were properly regained from the computer.

**[17]** As the invoices have been ruled admissible, it follows that the short summary of those invoices is also admissible. In effect the summary is merely a short-form aid to the court in its understanding of the more comprehensive invoices.

**[18]** Accordingly I am satisfied that the plaintiff has proven its case to the required degree.

**[19]** I find for the plaintiff for its claim M50,063.88.

**[20]** As I said, I cannot allow interest as per the National Credit Act (South Africa). On the matter of interest, I will allow interest at 18.5% pa from the date of filing of the summons herein (11 November 2009) up to judgment (7 September 2012). I calculate this as M24,765.85 (2 years and 246 days).

**[21]** The total judgment for the plaintiff is M74,824.73. This will continue to attract interest at the prescribed rate (18.5%pa) until payment.

**[22]** The plaintiff is awarded costs to be taxed if not agreed.

**J.D. LYONS**  
**JUDGE (A.i)**

For Plaintiff : Mr. Loubser

For Defendant : Mr Mahlakeng