IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF GOODWOOD
HELD AT GOODWOOD

Case No: 4861/2019

In the matter between:

GROUP T- MINING PTY LTD t/a GRATCHAR DRIED FRUIT Plaintiff

And

JAV TRADING PTY LTD t/a EDEN Defendant

JUDGEMENT

The plaintiff in this matter issued a summons against the defendant for breach of contract. At the commencement of the trial it was agreed and recorded as common cause that defendant in fact failed to pay the outstanding balance due after delivery of goods were made in May 2019. The plaintiff claims for (i) damages in the amount of R 83 892.50 (ii) interest thereon a *tempora morae* and (iii) costs of suit .

The defendant in this matter had in fact entered a counterclaim against the plaintiff. At the commencement of the trial the defendant abandoned a portion of its counterclaim for R 50 451.32. Defendant only proceeded to claim for the amount of R 75 267.50. This computation for damages was not disputed. The disputed issue was whether the defendant could indeed succeed in this counterclaim and if so then it would amount to a set off of the claims.

After hearing Counsel, the leading of evidence and with regard to the Heads of Argument the following is common cause between parties :

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(i) That plaintiff and defendant entered into an agreement during 2018 in which it was agreed that the defendant would purchase dried Mango strips from the plaintiff.
(ii) The plaintiff delivered two batches (I) first delivery in Jan 2019 and (ii) second delivery was in May 2019.
(iii) The plaintiff only received partial payment for the last delivery in May 2019.
(iv) The defendant does not dispute the plaintiff has a valid claim against the defendant for the payment of the outstanding amount of R 83 893.50.
(v) The plaintiff did not dispute the fact that defendant sourced 5 tons of Mango strips from Cape Mango.
(vi) The amount paid for the 5 tons is R 75 267.50 and this amount is undisputed.

The disputed facts between the parties were as follows:

(i) The exact nature of the term of the agreement concluded ie was it a condition of the agreement entered into between the two parties that defendant would have to purchase 25 tons of the Mango Strips in order for the price of R 113.00 p/kg to remain fixed for the year 2019.
(ii) Defendant has submitted that the condition was rather that defendant had to purchase an amount of Mango Strips from the plaintiff in order to qualify for the fixed price- no fixed tonnage was agreed on in order to qualify for the purchase price of R 113.00p/kg.
(iii) The plaintiff's case is that an oral agreement was reached.
(iv) Defendant submitted that the agreement was partly oral and partly written.
(v) Defendant has submitted that the plaintiff has repudiated on the terms and therefore the agreement was deemed cancelled and defendant accepted the termination.
(vi) The plaintiff disputes that it repudiated but rather the defendant had failed to purchase the agreed tonnage and therefore it was not in breach.

The parties proceeded to present evidence. The plaintiff called Stephan Raab and after it closed its case the defendant called Vito Paparella and John Smith. Due to the nature of the issue in dispute it is necessary for the court to summarize the evidence of the witnesses. The outcome rests on the evidence and the witness testimony.

Stephan Raab for the plaintiff testified that he was employed at Group T Mining as the general manager. His duties included being involved in sales, production, buying and general management. It was his evidence that Jav Trading were potential buyers and he met with them during October 2018 in Cape Town. The persons present at the meeting according to his recollection was Vito Paparella and Johannes Smith. He testified that it was his intention to sell 25 tons of Mango Strips at R 113 p/kg. A discussion was held

and it was his understanding that an agreement had been reached that they would purchase 25 tons and the price had also been agreed upon. The only issue which had not been settled was in fact the breakdown of the 25 tons, ie how many at a time would be delivered, they would revert back to him on that aspect. It was an oral agreement which had been reached between the parties. On his return to his employer he sent a standard email to Vitou Paperella (referred to as Vitou hereinafter) which is found on page 41 of exhibit A (dd 2/11/2018). He received a request for a delivery of 5 tons and was informed they were still waiting on their orders see page 43 email dd 5/11/2018. He stated that at that stage he was still waiting on the full breakdown of the 25 tons which had been agreed upon. He received a second email, page 44 dd 20/12/2018 in which Vitou ordered an amount of 7 tons spread over a few months. Two batches were delivered to Jav Trading namely January 2019 and May 2019. Raab 's evidence is that he then phoned Vitou to enquire if he is then no longer purchasing 25 tons to which Vitou had informed him that he was not taking the 25 tons as he had to spread his buying around. On 29/05/2019 an email was sent to Vitou which contained a revised price of R 151.80p/kg. He was contacted by the defendant who had indicated that he was dissatisfied with the increased price and that it had to be sorted out. A few emails were then exchanged between the parties : page 53 from Jan Heyneke the main director stated that the increase in price was non-negotiable , page 54 a response form Johannes Smit who had attended the Cape Town meeting in which he expressed his dissatisfaction and page 55 in which Heyneke indicated that no agreement was broken. During cross-examination he indicated that he had taken a document with which stated that 25 tons meant a price of R 113p/kg but he conceded that they had not reached agreement on the day he left even though he had discussed the 25 tons. He also indicated that he no longer had the document. It was put to him that defendant would state that plaintiff had only explained his supply venture but no agreement had been reached to which plaintiff conceded. Plaintiff further conceded that they should have agreed that day but they had not. When it was put again to him that clients' instructions were that they had not agreed yet on that day plaintiff answered by saying that they were satisfied with his proposal and therefore he had sent the email on page 41. On being cross-examined on the email and the fact that it did not state that it was a requirement to order 25 tons , he agreed that the email did not reflect that it was a requirement. Raab then stated that he had said in his Cape Town meeting that he expected 25 tons . It was further put to him that they had not agreed to 25 tons and he answered yes to this question. When it was put to him when had he realized that they had not agreed to 25 tons he stated that he had received the email only requesting 5 ton. He knew how much they wanted after he had received a further request for 7 tons. He conceded that the initial email after the meeting did not stipulate that if they order 25 tons the price would remain the same but he was adamant that he had indicated in his discussions in Cape Town that the offer was 25 tons meant a fixed R113p/kg. It was put to him that defendant would state that there was no discussion in the Cape Town meeting

that they would have to order 25 tons in order for the fixed price of R 113.00p/kg to be applicable – the plaintiff maintained that he had offered the 25 tons at R 113.00. He was adamant that he had explained the condition of the guarantee and that he had accepted that they understood it as well. It was his evidence that in light of the order of only 7 tons the defendant was therefore not entitled to the guarantee. /Further the defendant had told him that he is spreading his orders around and therefore he was not entitled to the guarantee.
After plaintiff's case was closed the defendant presented the evidence of Vitou Paperella (Vitou) and Johannes Smith.

Mr Vitou Paperella on behalf of defendant testified that he is a director of JAV Trading and assisted by Johannes Smith his business partner. The nature of the business is to purchase bulk stock and then to distribute it. He confirms that during October 2018 they met with plaintiff in Cape Town. A discussion was held in which they indicated they may purchase a small portion but they were not prepared to purchase the total quantity from him. He confirmed that the price of R 113.00p/kg was discussed. It was his evidence that there total quantity for the year was 18 tons and therefore they would not have agreed to 25 tons. Further he denied that it was discussed that 25 tons would mean a price tag of R113.00p/kg. He maintained that he made it clear to Raab that they would spread the buy and as a result they ordered the initial 5 tons which they then increased to 7 tons. It was his evidence that a specific quantity had not been discussed at the meeting and that he and Johann would still go and discuss whether they would do business with plaintiff. According to defendant's witness he had told plaintiff to send an offer in writing for them to consider. They received an email on the 2/11/2018 ,page 41 which reflected 25 tons but he understood that this was the amount available not necessarily what they would purchase 25tons. It referred to the fact that if a certain quantity was bought the price would be R 113.00p/kg which was what they were interested in. From this the order was placed and delivered; he was shocked to receive an email concerning the price increase in may 2019. He attempted to contact the plaintiff but did not get hold of him and eventually sent an email dd 29/5/2019, page 51. The defendant's attorney then sent an email, page 57 in which they stated that the contract was broken, they accepted the repudiation and cancelled the agreement. As a result of this they were still short 5 tons of the total 18 tons and had to source from Cape Mango strips at R 126,09p/kg. The witness was cross-examined and during cross-examination he stated that no agreement was reached in Oct 2018 – they had only discussed the proposal. It was his version that agreement was only reached once he actually sent an email placing an order which meant he accepted the proposal of R 113.00p/kg. He stated that the verbal agreement was the discussions held and the written portion was the actual placement of the order. He was asked whether agreement had been reached on quantity and he re-stated that he had made it clear he was not prepared to give all his business to the plaintiff. It was put to him that Raab

discussed the number of 25 tons with them in Dec 2018 but defendant stated this was not the case as in Oct 2018 he had made it clear he only needed 18 tons. The email as he understood it refers to availability and not the quantity that had to be ordered. It was put to the witness that it was never put to Raab that their total quantity was 18 tons but the witness maintained that he had told Raab. It was also put to the witness that if the court were to read the email without the parties – the obvious interpretation would be that 25 tons were required for a fixed price. The witness did not agree with this interpretation.

The following witness to testify on behalf of defendant was Johannes Smith . He confirmed that he joined the meeting with Vitou and Raab after he was requested to do so. He testified that they had informed Raab that they would not be able to purchase all was the Strips from the plaintiff but would take between 5-7 tons and if they took the offer the price provided was acceptable. He confirmed they then received the email after the meeting – he understood it to mean 25 tons were available but they were not going to take up that quantity. His understanding was that the email said "a certain quantity" it did not mean 25 and as far as he was concerned they qualified as they had ordered a certain quantity. He confirmed in his evidence that they then received an email in May 2019 about the price increase – he testified that Vitou thought it may be a mistake and they then tried to contact the plaintiff but received no response. Smith then stated that he sent plaintiff an email referring to the price which was agreed upon and the reply they received can be found on page 53. He was adamant that Raab had never made the price conditional to an acceptance of 25 tons. They accepted the repudiation and cancelled the agreement with plaintiff. During cross-examination Smith stated that the email they received on 2/11/2018 was the offer they accepted and it contained the guarantees that they required. It was put to him that it was a continuous agreement which should include the discussions with Raab and Smith replied that they accepted what was put in the email. He confirmed what the previous witness had said which was that they had not yet agreed to business in the Oct 2018 meeting. It was put to him that during cross-examination of Raab it was never put to the witness that they wanted re-assurances but the witness stood by the fact that it was conveyed in the meeting. The witness further stood by his testimony that they had not agreed to 25 tons but that they had said a certain quantity and that the price would be R 113.00p/kg.

In short there are two conflicting versions as to what was discussed at the Oct 2018 meeting regarding the relevant condition and in addition two competing versions as to how the email of 2/11/2018 should be interpreted. The approach to be adopted when faced with two competing versions was set out in **Stellenbosch Farmers' Winery Group Ltd and Another v Martell and Others 2003(1)SA 11** – the court when faced with competing versions has to consider the credibility of the witnesses, the reliability of the

witnesses and has to weigh up the improbabilities and probabilities of the matter. At the end ultimately the probabilities prevail.

The case law with regard to the approach to be adopted when contracts are interpreted by the courts is well documented in the case law. In **Novartis v Maphil [2015] ZASCA 111 (3 September 2015) Lewis JA** restated the principles with regard to the contract interpretation by the courts reading from paragraph **[27]**
'I do not understand these judgments to mean that interpretation is a process that takes into account only the objective meaning of the words (if that is ascertainable) and does not have regard to the contract as a whole or the circumstances in which it was entered into. This court has consistently held ,for many decades that the interpretative process is one of ascertaining the intention of the parties – what they meant to achieve . And in doing that , the court must consider all the circumstances surrounding the contract to determine what their intention was in concluding it. KPMG, in the passage cited , explains that parol evidence is inadmissible to modify ,vary or add to the written terms of the agreement, and that it is the role of the court, and not witnesses , to interpret the document . It adds , importantly that there is no real distinction between background circumstances , and that a court should always consider the factual matrix in which the contract is concluded – the context -to determine the parties' intention.....[28]....A court must examine all the facts – the context – in order to determine what the parties intended. And it must do that whether or not the words of the contract are ambiguous or lack clarity. Words without context mean nothing.'

In **V v V [2016] ZAGPJHC 311 (24 November 2016)** the court stated the following at paragraph [16]
' While the object is to determine the meaning to be given to the words used, **it remains the primary function of the court to gather the intention of the parties** or the legislature by reference to those words ; and this can only occur if the object and purpose of the contract or the legislation (in which case it would include the mischief sought to remedied) are brought into consideration when examining the words used in the context of both the document as a whole and the context or factual matrix in which the document came to be produced.'

Having heard their evidence it is clear that the parties met in Oct 2018. A discussion was held about the purchase of Mango Strips. Both plaintiff and defendant are in agreement that the purchase price of R 113.00p/kg was put on the table. It is also clear from plaintiff's answers in cross-examination that no actual agreement had been reached on the day that they had left. This is the same version as that of the defendants who testified that they had to consider the discussions before a decision could be made. The defendant testified that they made it clear that they were not prepared to take 25 tons from a single

supplier. Further they had not understood that the discussion meant 25 tons guaranteed R113.00p/kg. Both witnesses for defendant confirmed that no agreement had been reached at the Cape Town discussions. They would get back to the plaintiff after he sent an offer. The plaintiff in his answers during cross-examination was quite clear that at the meeting no agreement had been reached yet. This was different to his version in chief where the impression created was that they had agreed on 25 tons it was simply the breakdown of delivery which was outstanding. Following on from the meeting the Plaintiff took the initiative and sent the email dated 2/11/2018. It is this email which contains the offer according to the defendant. Further the contract is concluded with his response by only ordering a certain quantity and not 25 tons. The plaintiff argues differently and says the email should be interpreted together with the discussions which they had in Oct 2018 and it is then clear according to him that the offer was 25 tons @ R 113,00p/kg – a verbal agreement. Yet as stated earlier the plaintiff himself during cross-examination then does and about turn and says no agreement had been reached. Having considered the evidence of the plaintiff and the defendant the probabilities favour the defendant that indeed it was not a verbal agreement only which had been concluded. Rather the context shows together with the emails exchanged that the agreement was both oral and written as per the defendant's case.

The next question is whether he had mentioned that only if one ordered 25 tons then the price of R 113.00p/kg was fixed. If one considers the meeting in Cape Town both parties are in agreement that the price of R 113.00p/kg for Mango strips was mentioned by the plaintiff in the meeting. The parties also both refer to the fact that plaintiff indicated that he has 25 tons of Mango Strips available. The plaintiff has submitted that his intention was to sell the 25 tons at R 113.00p/kg and that he verbally mentioned this to the parties at the meeting. The defendant disputes that this was mentioned in the discussion or that they understood the offer to mean this. The defendant is adamant that they made it clear they would not be ordering all their strips from Plaintiff and they would get back to him so no agreement had been reached. Plaintiff then in his own testimony in the witness box contradicts himself regarding that meeting. In chief he was confident and said he had stated clearly that 25tons were to be sold at R113.00p/kg. He was confidant they had reached an agreement and that only the breakdown was outstanding. During cross-examination however he painted a different picture. This picture was more in line with what the defendant relays about the meeting in Cape Town. He conceded during cross-examination that in fact no agreement had been reached. He further conceded that they had not agreed to 25 tons. He further conceded that the email offer which he then sent on 2/11/2018 did not categorically state that if one orders 25 tons it would guarantee a fixed price of R 113.00p/kg. In fact the email reads as per the defendant's testimony ie the breakdown indicates that Mango Strips were at a cost of R 113.00p/kg ; the availability was 25 tons and in bold it states " Supply: Should you commit to a certain

quantity I will guarantee you that stock will be available –" Defendant understood availability to mean that plaintiff had a supply of 25 tons in storage fridges. Further if they ordered a certain quantity it would mean they benefit from the price fix at R113.00p/kg. The ordinary meaning of certain according to the Cambridge English Dictionary is – 'having no doubt or knowing exactly that something is true'. This term does not quantify the amount to a specific amount as the plaintiff wishes the email to be read. The plaintiff expects the email to be understood in light of his statements at the meeting. Surely he could simply have stated the amount – however he does not and therefore the probabilities do not favour his version. He claims he had made it clear that 25 tons meant the price was fixed and that they accepted this yet he deviated in cross examination and said no agreement had been reached and that they had not agreed to 25 tons. This is totally in line with and favours the defendant's version. Further if plaintiff had clearly stated a fixed tonnage and agreed on a fixed price for the tonnage why would plaintiff then proceed to send an offer which does not reflect this intention at all. Instead it reflects a general statement of availability and the price involved for mango strips and mango chunks. Surely if his market venture was 25 tons at a fixed price then this could have been set out as clearly in the email. The word 'Certain' meaning 'no doubt' or something that can be accepted as definite cannot be interpreted to read 25 tons in the context of the statement. The statement reads that the fridges run whole year due to their production of banana and guava production and for this reason stock will be available and costs will not increase. The court's reading of this statement is that the mere fact that the fridges have to run in any event which costs would have to be paid in any event – the price for the Mango Strips remain fixed. The defendant in terms of the statement was simply required to put in a 'definite', 'firm' order- an order that left no room for doubt that they would indeed contract with the plaintiff which was plaintiff's objective. Plaintiff wished to source buyers and therefore the meeting was arranged. A certain amount or fixed amount of Mango Strips would indeed mean that he had a definite order and buyer as opposed to a mere promise to consider doing business with Group T – Mining.

The court is therefore in favour of the defendant's version on the facts and evidence before court. The probabilities favour defendant that they were told what was available and the price at which it would be sold and this was followed up in the email as they received it. Further no agreement had been reached in October 2018 but rather after the 2/11/2018 emailed details were sent to defendant did they then proceed and indicate the purchase of 7 tons. A stated earlier plaintiff started to make concessions during cross-examination on material aspects ie that no agreement had been reached on 25 tons and in fact that they would still discuss the matter before a decision would be made. The court cannot place any reliance on plaintiff's statements that he made regarding the meeting during his evidence in chief. As stated the defendant's version of how they understood the meeting is in fact echoed in the email sent by Raab.

In fact after plaintiff's email defendant then proceeds and sends an email saying they could start with 5tons and maybe increase the amount. At that stage plaintiff could have sent an email stating that it should be born in mind that only if 25 tons were ordered could they guarantee the price in light of the fact that no agreement had as such been reached in Cape Town. Nothing is done from plaintiff's side. Plaintiff then receives an increased request of 7 tons with a breakdown. On this Plaintiff replies 28 December 2018 that it is in order but remains silent on the fact that he was pushing for 25 tons @ R 113.00p/kg. One would expect that if that was the agreement he wished to achieve that he would send a reply in which he states clearly that it in light of their order the guarantee falls away which would place defendant in a position to determine if the agreement was viable. But absolutely nothing is said until 31 May 2019 when a letter is sent with a price increase. Plaintiff claims he did call the defendant to ask about the remaining order to which it seems defendant once again stated quite clearly that they would not be ordering everything from plaintiff once again. This corresponds with what defendant says he also stated clearly in the Cape Town meeting.

Despite this plaintiff at no stage until 31May 2019 makes a communication in writing to the defendant in which for the first time plaintiff starts speaking about a price increase. Now if the court looks at the letter regarding the price increase sent to the defendant it is absolutely silent on the fact that only an order of 25 tons would guarantee a price of R 113.00p/.kg. Surely if that was the actual offer made then it would have been re-stated in the initial email(2/11/2018) which the court already has found it was not and secondly it would have been stated in the very important letter sent in May 2019. The May letter rather states the price increase is as a result of unforeseen costs of the Minimum wage increase and electricity supply/load shedding which are factors beyond their control and therefore cannot be absorbed by themselves. It is silent on the fact that they were of the view that defendant had not in fact taken up the offer of 25tons and therefore he did not qualify for the price increase. In plaintiff's particulars of claim at paragraph 9 it is stated "....the pricing structure has been reviewed with effect from 1 June 2019, due to the current economic climate and various other factors". Nothing is stated in this paragraph either that it was sent as a result of defendant's failure to commit to 25 tons.

This is supposedly the crux of plaintiff's dissatisfaction yet no mention is made of it in the letter which supposedly deals with the reasons for the price increase – This was the condition or term on which plaintiff had said the contract was made of yet nothing is mentioned of this in the email exchange or the formal price increase letter which was sent to the other contracting party. The court is of the view that if the failure to commit to 25 tons was the point of concern then plaintiff surely should have formulated the letter of 31 May 2019 in such clear terms. The fact that plaintiff did not and instead chose to list other

factors favours the defendant's submissions that the understanding was that provided they ordered an amount which could be easily ascertained and/or made a firm order and committed to it then the price would remain fixed at R 113.00p/kg.

The defendant and his witness testimony if considered against that of the plaintiff's did not deviate from their evidence on material aspects – they were clear in their testimony that no agreement had been reached in Cape Town . They had been cautious to deal with a new-comer and they did not wish to commit to a full order of 25 tons from a supplier. They requested something in writing and as a result the offer was sent on 2/11/2018 from plaintiff which they then proceeded on and placed an order with the understanding that the email of 2/11/2018 did not state that 25 tons had to be ordered but only a certain quantity. The plaintiff himself conceded that no agreement was reached in Cape Town. He also conceded that the email does not state emphatically that 25 tons meant a fixed price of R133,00p/kg. The court is of the view that reliance can be placed on the evidence of defendant's witnesses as the emails in fact support their testimony. It may be that some statement's were made in their evidence which was not put to Raab but that did not affect their testimony as a whole. Having regard to the events which followed in which no further mention of the 25 tons was made in the email communications and/or even the letter in which the price increase is based the court is of the view that the probabilities favour the version of the defendant.
The plaintiff had not concluded an agreement with the defendant in which it was agreed that 25 tons would guarantee R113.00p/kg. Rather taking into account the surrounding circumstances, the emails and the delivery of the Mango Strips despite plaintiff realizing it was not 25 tons it can only be regarded as an agreement having been reached that Mango Strips would be delivered at a price of R 113.00p/kg and therefore the defendant satisfied with the content of the offer on 2/11/2018 proceeded to place on order for 7 tons. The price increase amounts to a breach by the plaintiff and is a clear indication that it repudiated on the agreement. The defendant as a result of the contract with plaintiff had calculated its business expenditure for 7 tons of strips on the price which had been provided to them. Subsequently they had to then source the remainder of the order at a different provider at an alternative price. But for the plaintiff's actions these costs would not have been occurred and the court is satisfied that a causal link does in fact exist between the defendant's damages and the plaintiff's conduct. The defendant sent a letter in which it clearly accepted the repudiation. The defendant in light of the fact that plaintiff no longer wished to be bound to the agreement was entitled to accept the repudiation. The court finds that the plaintiff had no legal justification for repudiating on the agreement. The court's finding is that defendant has proved on a balance of probabilities its counterclaim – that is that the parties had concluded a partially oral and part verbal agreement in which Mango Strips would be purchased from the plaintiff at the offered price of R 113.00p/kg. The increase in price for the reasons stated in the letter clearly did

not speak to the failure to order 25 tons. It is a clear indication that plaintiff no longer considered the agreement binding and that it had repudiated the agreement.

The defendant's counterclaim against the plaintiff is upheld for the amount of R 72 267.50 and interest thereon at 10.25% from 1 July 2019. The defendant at the beginning of the proceedings stated that it admits the claim of the plaintiff for R 83 892.50 and indicated that in the event the counterclaim succeeds a set-off should be made. In light of this the Plaintiff has succeeded in its claim for payment of R 83 892.50 which is for the amount still unpaid on the May 2019 invoice against the defendant, including interest thereon at 10.25% from date of demand.
With regard to costs both parties have canvassed in their argument that costs should be awarded on an attorney client scale due to the complexity of the matter and that Counsel had to be instructed for the proceedings. A party is entitled to litigate and should not be unduly punished for approaching the court to assist in resolving the issues. However the court is *ad idem* with the parties that the nature of the matter was indeed complex relating to the Counterclaim. The main claim was not necessarily complex as it simply involved a straight forward determination as to payment due for an amount outstanding after delivery. Parties were in agreement that delivery had taken place, part payment had been made and it was clear that the balance was outstanding for the May 2019 delivery. It is not necessary for an award on attorney-client scale.

The court therefore grants judgment as follows :

1) Defendant to pay the plaintiff's claim for the amount of R 83 892,50 together with interest thereon at 10.25% from date of demand.
2) Plaintiff was successful in its main claim and is awarded costs of suit including the cost of counsel.
3) Plaintiff to pay Defendant's counterclaim for the amount of R 75 267,50 together with interest thereon at 10.25% from 1 July 2019.
4) The capital amount and interest on Defendant's claim to be set off against the plaintiff's claim including the interest thereon of 10.25% from date of demand.
5) In the event after set off has been applied and any amount still remains due to a party to these proceedings such amount forms part of this judgment award and shall be paid to the Plaintiff or defendant depending on to whom the outstanding balance after set off is due.
6) Defendant being successful on its counter claim is awarded costs of on an attorney client scale which includes the cost of counsel (not to be taxed on a higher scale) including travel expenses of counsel only.

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