IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION)

CASE NO: 32802/13

In the matter between:

SOUTH AFRICAN SECURISATION PROGRAMME (RF) LTD	First Plaintiff
SASFIN BANK LIMITED	Second Plaintiff
SUNLYN (PTY) LTD	Third Plaintiff
and	
VAIOS KOKKORIS T/A KOKKORIS ATTORNEYS	First Defendant
CHRISTODOULOU AND MAVRIKIS INC	Second Defendant
BYRON MARK HARDY	Third Defendant

JUDGMENT

FRANCIS J

Introduction

1. The first, second and third plaintiffs instituted an action against the first, second and third defendants, jointly and severally, the one paying the others to be absolved, for the payment of the sum of R422 957.40, together with interest and costs on the attorney and own client scale.

The background facts

2. The underlying foundation of the action is a rental agreement which was concluded on 11 June 2009 between Sunlyn Rentals (Pty) Ltd and a firm of attorneys,

Christodoulou and Mavrikis Inc (the second defendant). Sunlyn (Pty) Ltd was previously known as Sunlyn Rentals (Pty) Ltd and before that as Sunlyn Investments (Pty) Ltd. The agreement of hire appears as annexure "A" to the particulars of claim. Attached to that rental agreement is a deed of suretyship signed by the defendant on 11 June 2009.

3. The plaintiffs pleaded that on or about August 2010, the first defendant (Kokkoris) and Sunlyn Rentals concluded a written delegation agreement in terms of which the obligations of the second defendant (Christodoulou and Mavrikis) in terms of the rental agreement were delegated to the first defendant. The delegation agreement appears as annexure "B" to the particulars of claim.

4. The plaintiffs allege in paragraph 10 of the particulars of claim that the equipment was delivered to the defendant by the supplier, but it is not stated to which defendant it was delivered.

5. The particulars of claim refer to two independent agreements of cession:

   5.1 the first cession is alleged to have taken place on 29 March 2006 and is one which Sunlyn ceded to the second plaintiff its right, title and interest in and to the rental agreement (annexure A to the particulars of claim);

   5.2 the second cession is alleged to have taken place on 21 September 2007 and is one in terms of which the second plaintiff ceded to the first plaintiff the right, title and interest which the second plaintiff had derived from the cession agreement with the third plaintiff.

6. The claim against the first defendant is derived from the terms of the delegation agreement, in terms of which Sunlyn Rentals agreed to Christodoulou and Mavrikis Inc delegating to Kokkoris all of the former's obligations arising from the rental agreement. It is alleged that Kokkoris assumed the obligations of Christodoulou and Mavrikis Inc to pay rentals in terms of the agreement if hire.

7. It is alleged in paragraphs 21 and 22 of the particulars of claim that the first defendant defaulted on the obligations in terms of the rental agreement by failing to pay the rentals due in terms thereof.

8. The indebtedness of the first defendant is stated to be R422 957.40.

9. The first defendant has filed an exception to a paragraph 27.1 of the particulars of claim complaining that the allegation contained in it does not sustain a cause of action against the first defendant.

10. The second defendant has also excepted to the particulars of claim also on the basis that the pleading against both the first and second defendants does not contain facts which disclose a cause of action against either.

The relevant legal principles

11. It is trite that there is often a substantial overlap between exceptions based on a vague and embarrassing complaint, and those relating to the lack of particularity required by rule 18(4) of the Uniform Rules of Court (the Rules). The principles applicable to the

two procedures are different. They are not mutually exclusive. Where a plaintiff's pleadings do not comply with the requirements of rule 18 in that, for instance, the specific particulars are not set out therein, and are also vague and embarrassing, the defendant will have a choice whether to proceed in terms of rule 30 read with rule 18 or in terms of the rule 23 exception procedure. A defendant is entitled to bring both procedures in the alternative.

12. It is a basic principle that particulars of claim should be so phrased that a defendant may reasonably and fairly be required to plead thereto. This must be seen against the background of the abolition of requests for further particulars of pleading and the further requirement that the object of pleadings is to enable each side to come to trial prepared to meet the case of the other and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form; and the cause of action or defence must appear clearly from the factual allegations made.

13. The whole purpose of pleadings is to bring clearly to the notice of the Court and the parties to an action the issues upon which reliance is to be placed and this fundamental principle can only be achieved when each party states his case with precision.

14. The principles applicable to an exception based on no cause of action differ from one based on a vague and embarrassing complaint. A party may except to a pleading on the grounds that it is vague and embarrassing. Where an exception to a pleading is brought on the ground that it is vague and embarrassing, it involves a two-fold

consideration, the first being whether the pleading lacks particularity to the extent that it is vague and the second whether the vagueness causes embarrassment of such a nature that one is prejudiced. This prejudice lies in the excipient's inability properly to prepare to meet the opponent's case.

15. Where a pleading lacks particularity, it is either meaningless or capable of more than one meaning or can be read in any one of a number of ways. Where a court upholds an exception which alleges that the pleading is vague and embarrassing, leave to amend is generally granted to the party which produced the excipiable pleading.

16. The approach to be adopted where a matter involves a complaint that a pleading is vague or embarrassing and hence is excipiable or in non-compliance with rule 18(4) was identified in *Jowell v Bramwell – Jones & Others* 1998(1) SA 836 (W) at 905 H - I as follows:

16.1 the question must firstly be asked whether the exception goes to the heart of the claim, and

16.2 if so, whether it is vague and embarrassing to the extent that the defendant does not know the claim he has to meet, and

16.3 should he find that an exception on any ground fails, to then ascertain in the second place whether the particulars identified by the defendant are strictly necessary in order to plead and, if so, whether the material facts are unequivocally set out.

17. The purpose of an exception that a pleading does not disclose a cause of action is to

dispose of the case, as pleaded, in whole or in part. In order to disclose a cause of action, a pleading must set out every fact (material fact) which it would be necessary for the party to prove, if traversed, in order to support his right to judgment of the court. A pleading which fails to meet this standard is therefore excipiable. The excipient has the duty to persuade the court that upon every interpretation which the pleading can reasonable bear, no cause of action is disclosed.

The first ground of exception against the claim formulated against the first defendant

18. The first defendant is described in paragraph 4 of the particulars of claim to be "Vaios Kokkoris, an adult male attorney trading as Kokoris Attorneys".

19. In paragraph 26 of the particulars of claim it is pleaded as a primary proposition that the National Credit Act, 2005 is not applicable to the rental agreement as:

"27.1 The first defendant is a juristic person with an asset value or annual turnover, together, with that of its related juristic persons equally or exceeding R1 000 000.00."

20. "Juristic person" is defined in section 1 of the National Credit Act to include:

"A partnership, association or other body of persons, corporate or unincorporated, or a trust if ..."

21. The plaintiffs description of the first defendant is obviously confusing and if read in isolation is somewhat vague and embarrassing. This is not the complaint raised by the first defendant in its exception. It is arguable that the allegations contained in the particulars of claim do not sustain a cause of action of action against the fist defendant. In my view paragraphs 27.1 of the particulars of claim should be read with paragraphs 27.2 where it is pleaded in the alternative that the agreement entered into

is not a credit agreement and/or lease agreement as defined in Section 1 and Schedule 8 of the National Credit Act 34 of 2005 (the Credit Act). All that is pleaded in the aforesaid paragraphs is that the Credit Act is not applicable because of the fact that the first defendant is a juristic per with an asset value or annual turnover, together with that of its related persons equalling or exceeding R1 000 000.00. In the alternative it is pleaded that the agreement does not fall under the definition of a credit agreement.

22. The exception does not go to the core of the plaintiffs claim against the first defendant. It does not have the effect of disposing of the case in whole or in part. Even if the exception was to be upheld, it does not disposes of the plaintiffs claim against the first defendant. Paragraphs 27.1 should not be read in isolation but should be read with paragraph 27.2 of the particulars of claim.

23. The first exception stands to be dismissed.

The second exception – the claim against the second defendant

24. It is pleaded in paragraph 27 of the particulars of claim that the second defendant bound himself as surety and co-principal *in solidum* with the first defendant for the payment by the first defendant of all monies due to one of the unidentified plaintiff. The allegation is that the deed of surety binding the second defendant is one signed on 11 June 2009 a copy of which is annexure "A" to the particulars of claim. The complaint is that Annexure "A" does not contain any suretyship by the second defendant and that self evidently that document has an attachment a deed of surety

which purports to have been signed by Byron Mark Hardy.

25. It was further contended by the second defendant that on the assumption that the pleader intended to rely on annexure "B" to the particulars of claim as the document binding the second defendant to the unidentified plaintiff for the liabilities of the first defendant, then the particulars are excipiable for the following reasons:

25.1 annexure "B" to the plaintiff's particulars of claim is a document styled: "Delegation Agreement";

25.2 attached to that documents (as the last page thereof) is a document headed "Suretyship";

25.3 that document has not been signed by any party other than the third defendant as a witness. In the result, the document upon which the plaintiffs appear to rely in support of their cause of action against the second defendant does not comply with the provisions of the General Laws Amendment Act, 50 of 1956.

26. The second defendant contends that in the result the particulars of claim as currently pleaded do not make out a cause of action against the second defendant.

27. The second ground of exception is a complaint that the suretyship is not signed by Christodoulou and that the particulars of claim do not disclose a defence by its failure to comply with the provisions of the General Laws Amendment Act 50 of 1956.

28. This exception us baseless. The agreement on page 22 of the particulars of claim incorporates a deed of suretyship of the "user" who is Christodoulou. On page 23 of

the document in clauses 1 and 5 the "user" binds himself as suety to the delegee (Kokkoris). In particular reference is made to "clauses 3-14 in the Suretyship on the reverse hereof which terms and conditions shall apply hereto mutatis mutandis". Below clause 5 are 3 signatures. Clauses 3-14 of the suretyship are referred to on page 25. In my view whether or not Kokkoris is liable as surety and whether or not the provisions of the General Laws Amendment Act 50 of 1956 have been complied with is a matter of evidence and interpretation of the agreement. This exception which has to do with the interpretation of an agreement is inappropriate to be determined at this stage. The terms of a deed of suretyship may be supplemented by incorporating another document to comply with the statutory requirement. This is a matter that should be reserved for trial.

29. The exceptions stands to be dismissed/

30. There is no reason why costs should not follow the result.

31. In the circumstances I make the following order:

31.1 The exceptions are dismissed with costs.

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FRANCIS J

HIGH COURT JUDGE

FOR PLAINTIFFS	:	C COTHILL INSTRUCTED BY SMIT JONES & PRATT
FOR DEFENDANTS	:	ARG MUNDELL SC INSTRUCTED BY RINA CALDEIRA ATTORNEYS
DATE OF HEARING	:	31 JULY 2014
DATE OF JUDGMENT	:	8AUGUST 2014