



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case No: 3643/2014

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

26 May 2015

E J Francis

In the matter between:

RENSA ENGINEERING CC

Plaintiff/Respondent

And

P-PRO CONSTRUCTION (PTY) LTD

First Defendant/Excipient

ATTACHE BROKERSEFENDANT

Second Defendant

JUDGMENT

FRANCIS J

Introduction

1. The plaintiff instituted an action for damages in the sum of R220 000.00 against the first defendant - Rensa Engineering and the second defendant – Attache Brokers on the grounds that the first defendant had undertaken to insure the plaintiff's motor vehicle which it failed to do. The plaintiff's motor vehicle was involved in a motor vehicle as a result of which it was damaged and it was uneconomical to repair it.

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2. The first defendant delivered an exception to the plaintiff's particulars of claim in terms of rule 23(1) of the Uniform Court Rules (the Rules) on the basis that it fails to disclose a cause of action, alternatively it is vague and embarrassing. It had initially raised several exceptions but after the plaintiff had amended its particulars of claim, is only proceeding with two exceptions.

The relevant legal principles

3. 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. 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.
4. It is trite that there is often a substantial overlap between exceptions based on a vague and embarrassing complaint, and those applicable to an application under rule 30(1) relating to the lack of particularity required by rule 18(4).

The principles applicable to the two procedures are different. The two procedures are not mutually exclusive. Where a plaintiff's pleadings do not

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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.

5. Rule 18(4) provides that every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, with sufficient particularity to enable the opposite party to reply thereto. The principles applicable to an exception based on no cause of action differ from one based on a vague and embarrassing complaint.
6. 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.
7. 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

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embarrassing, leave to amend is generally granted to the party which produced the excipiable pleading.

8. 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:

- 8.1 the question must firstly be asked whether the exception goes to the heart of the claim, and
- 8.2 if so, whether it is vague and embarrassing to the extent that the defendant does not know the claim he has to meet, and
- 8.3 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.

9. 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 exception

10. In paragraph 11 of the plaintiff's particulars of claim, the plaintiff pleads that on or about 2 May 2011 at approximately 20h00 to 21h00 and at or near Krugersdorp on the N12 highway Schafner, there and then driving the vehicle of the plaintiff and duly authorised to drive it, the plaintiff was involved in a motor collision. As a result of aforementioned collision the vehicle of the plaintiff was damaged beyond economical repair. The plaintiff would have been, but for the lapsing of the insurance policy with ABSA Insurance Company, been insured against the risk of the collision and would have been compensated by ABSA Insurance Company limited for the loss of the vehicle.
11. In paragraph 12 the plaintiff pleads that the second defendant, as represented therein aforesaid, neglected to have the vehicle insured on the first defendant's insurance whilst it represented that it did insure the vehicle. The second defendant knew and/or reasonably foresaw that the plaintiff would act on the assumption that the representation relating to insuring of the vehicle on the insurance of the first defendant was factually correct and owed a duty of care to the plaintiff. The representation was material and made with the intention of inducing the plaintiff to act on such representation.
12. The exception is that the plaintiff has failed to state who or what was the cause of the alleged collision, or even where such alleged collision took place. The plaintiff has pleaded that Siegbert Karl Schaffner was the driver of the plaintiff's motor vehicle, at the time of the collision but has failed to plead

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whether there were other vehicles or pedestrians involved in the collision, the details of such other parties or the cause of the collision. The details of the collision and any other party involved is vital for the first defendant, in determining the cause of the alleged collision, for the determination of any apportionment of damages, if any, alternatively, to ensure that all the relevant or interested parties are before court. In terms of the particulars of claim, no detail or clarity is provided in regard to the alleged collision and therefore the plaintiff fails to plead the necessary facts or *facta probanda* upon which the claim of the plaintiff is based in the matter with sufficient clarity or detail, as is required by rule 18(4). The plaintiff's failure to plead in detail, makes it impossible for the first defendant to determine the correctness of the plaintiff's allegations, and therefore makes it impossible for the first defendant to plead thereto. It further makes it impossible for the first defendant to determine any apportionment of damages, or joining any and all interested parties. As a result, the plaintiff's particulars of claim lacks the averments which are necessary to sustain a valid cause of action, alternatively, the particulars of claim is vague and embarrassing, and the first defendant is unable to plead thereto.

13. It is clear from the exception filed by the first defendant that it has clearly misconstrued the plaintiff's claim. The plaintiff's claim is that the first defendant is liable for the damages that it has suffered as a result of its failure to ensure that the vehicle was insured despite having indicated that the vehicle was insured. Paragraphs 11 and 12 clearly identifies the factual averments

detailing respects upon which the plaintiff relies for its conclusion of a failure on the part of the defendants. It is further clear from reading the particulars of claim as a whole that the plaintiff claim is based on a failure to insure the vehicle. The identity of the other vehicle or driver etc. is irrelevant to the pleaded cause of action and does not prevent the first defendant from pleading sensibly thereto. There is nothing vague or embarrassing in the manner in which the particulars were drafted nor does it suffer from any defect. The exception is ill-founded and stands to be dismissed.

The second exception

14. In paragraphs 16 and 17 of the particulars of claim, the plaintiff pleads that as a result of the negligent conduct of the second defendant, alternatively the first defendant, further alternatively the first and second defendant the plaintiff suffered damages in the amount of R220 000.00 being the fair and reasonable replacement costs of the vehicle as the vehicle was damaged to such a state making repairs thereto uneconomical. The plaintiff is entitled to payment in the amount of R220 000.00 and despite demand both the first and second defendants fail and/or refuses to make payment.
15. The exception is that the plaintiff has failed to state how the alleged amount of damage is calculated, how the amount was derived at, or even what the alleged damage entails. Further the plaintiff has failed to plead how this amount is calculated, what damage was caused to the vehicle in the alleged collision or who determined that the repair of the vehicle was uneconomical to repair. No

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proof is attached and no detail is pleaded by the plaintiff. The plaintiff has therefore failed to plead the necessary facts of *facta probanda* upon which the claim of the plaintiff is based in the matter as is required by rule 18(4) read with rule 18(10) as the first defendant is unable to assess the quantum of the damage claim thereof. The plaintiff's particulars of claim lacks the averments which are necessary to sustain a valid cause of action, alternatively, the particulars of claim is vague and embarrassing and the first defendant is unable to plead thereto.

16. This exception does not meet the test for vague and embarrassing and should fail. The claim for damages is covered by rule 18(10) which does not set out the requirements of what should be pleaded in a damages case other than bodily injuries. The plaintiff has pleaded that the motor vehicle has been damaged beyond economical repair. It has also pleaded the make and year model of the motor vehicle. In my view, there is sufficient information pleaded for the defendant to plead sensibly thereto. The defendant can either dispute the damages suffered.

17. The exceptions stand to be dismissed. There is no reason why costs should not follow the result.

18. In the circumstances I make the following order:

18.1 The exceptions are dismissed with costs.

FRANCIS J

HIGH COURT JUDGE

FOR PLAINTIFF : C E THOMPSON INSTRUCTED BY
BERNARD L DU PLESSIS INC

FOR 1ST DEFENDANT : B RIDGARD INSTRUCTED BY
BREYTENBACH ATTORNEYS INC

DATE OF HEARING : 13 MAY 2015

DATE OF JUDGMENT : 26 MAY 2015