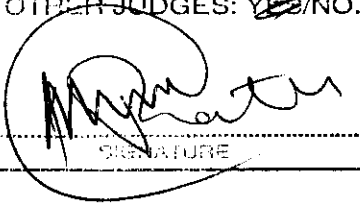




IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO.	<del>YES</del> /NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	YES/ <del>NO</del> .
(3) REVISED.	
25/04/2014	
DATE	SIGNATURE

Case No: A765/2013

Date heard: 27 March 2014

Date of judgment: 25 April 2014

In the matter between:

MC WELTHAGEN TRANSPORT (PTY) LTD

Appellant

And

PRIDE MILLING CO. (PTY) LTD

Respondent

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JUDGMENT

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PHATUDI J:

[1] The appellant was the plaintiff in the court *a quo*. The appellant appeals against the magistrate's court order upholding the respondent's (the defendant in the court *a quo*) special plea. The respondent specially pleaded that the appellant's claim exceeds the

jurisdiction of the magistrates' court by virtue of the appellant's splitting of claims as envisaged in section 40 of the Magistrates Court Act, 32 of 1944.

[2] The appellant caused issue of summons against the respondent alleging that:

'1.1 During October 2002 at Ogies the parties entered into an agreement in terms of which the plaintiff undertook to remove and convey certain goods from and to various destinations for and on behalf of the defendant from time to time.

1.2 The parties agreed that the plaintiff would be paid an amount for such removal and conveyance from time to time, payment to be made at the end of every month during which the removal and conveyance was done.

2.1 At the special instance and request of the defendant, the plaintiff duly removed and conveyed goods for and on behalf of the defendant during the period January 2006 to June 2008.

2.2 The defendant has failed to pay to the plaintiff the agreed amount or any other amount resulting in the plaintiff having several claims against the defendant in respect of the various months during which goods were conveyed and removed. Particulars of the plaintiff's claim are set out below.'<sup>1</sup>

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<sup>1</sup> Plaintiff's Particulars of Claim – page 4 record

[3] The appellant formulated claims 1 to 20 in accordance with months upon which “goods were conveyed and removed”<sup>2</sup> at the “defendant’s special instance and request”<sup>3</sup>

[4] The respondent specially pleaded that

‘A1. The plaintiff has formulated a cause of action on which 20 claims are based on the same cause of action ...

2. ...

3. ...

4. In terms of section 40 of the Magistrates Court Act the splitting of claims are disallowed if the cause of action is the same relating and every claim if the total amount claimed exceeds the jurisdiction of the Magistrates Court and therefore the Plaintiff is not entitled to attempt to claim the amount of R293 129.88 by splitting the claims.’<sup>4</sup>

[5] Section 40 of Magistrates Court Act 32 of 1944 provides that ‘[a] substantive claim exceeding the jurisdiction may not be split with the object of recovering the same in more than one action if the parties to all such actions would be the same and the point at issue in all actions would also be the same.’

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<sup>2</sup> Plaintiff/appellant Particulars of Claim – page 4 paragraph 2.2

<sup>3</sup> Plaintiff/appellant Particulars of Claim – page 4 paragraph 2.1

<sup>4</sup> Defendant/respondent special plea – page 75

[6] In **Badenhorst v Alum Konstruksie en 'n Ander**<sup>5</sup> the court, in reliance and in reference to **Mahomed and Son v Mahomed**<sup>6</sup>, found that 'a litigant is entitled, subject to the prohibition against the splitting of claims as provided for in section 40, to institute multiple principle claims in the same action even if the total value of the claims is more than [R100, 000.00].'<sup>7</sup>

[7] It was further found that the Magistrates Court does have the jurisdiction where the 'total value in excess of [R100,000.00] can be claimed in one action provided that each item is claimed under separate causes of action and, naturally, provided that the value of the things claimed in each cause of action does not exceed [R100,000.00]'<sup>8</sup>

[8] A cause of action is defined as 'the phrase ordinarily used to describe the set of material facts relied upon to establish the debt.'<sup>9</sup>

[9] It is not in dispute that the goods were conveyed and removed by the appellant at the respondent's special instance and request. It is further not in dispute that such goods were conveyed and removed

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<sup>5</sup> 1986(2) SA 255 (T)

<sup>6</sup> 1959 (2) SA 688 (T)

<sup>7</sup> *Badenhorst v Alum Konstruksie en 'n Ander* 19886 (2) SA 255 (T) headnote at page 266 E - G

<sup>8</sup> *Ibid.* See as well Section 29(1)(g) of Magistrate Court Act 32 of 1944

<sup>9</sup> *Aeronexus (Pty) Ltd v Firstrand Bank Limited T/A Wesbank* (249/2010) [2011] ZASCA 21 (17 March 2011) paragraph [13]

from time to time. Such conveyance and removal of goods by the appellant at the instance of the respondent established the debt.

[10] The court *a quo* upheld the special plea with reliance on paragraph 9 of the agreement concluded by the parties. The paragraph stipulates:

'9.1 Payment by the Company to the Carrier will be made monthly 30 days after date of the monthly statement of the Carrier. Any discrepancies or amounts in dispute may be withheld by the Company pending clarification between the Company and the carrier, provided that only the amounts in dispute shall be withheld and the remainder of the account shall be paid by due date.

9.2 A reconciled monthly statement must be submitted by the seventh day of the next month.<sup>10</sup>

[11] The respondent's counsel's submission that from the reading of the appellant's pleadings it is clear that the appellant is relying on one amount that is due and the deduction of the total amount of credits from that one amount, confirms the single cause of action upon which the appellant's case is based, has no merit. It is clear from the reading of the particulars of claim that the appellant would remove

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<sup>10</sup> Record – page 67 line 10 – 20; Judgment- page 137 line 7- 17

and convey goods from time to time for and on behalf of the respondent. It is further clear that payment for such conveyance would be made at the end of every month during which the removal and conveyance was done.

[12] In my evaluation of the pleadings and the contract relied upon, I find reliance by the trial court on clause 9.1 of the agreement to be a misdirection in that the payment method by the creditor to the debtor does not constitute a cause of action. As I already indicated above, a cause of action is a set of material facts relied upon to establish a debt.<sup>11</sup>

[13] The appellant's cause of action is the conveyance or transportation of goods from and to various destinations from time to time at the instance of and on behalf of the respondent. Each transaction, in my view, constitutes a cause of action establishing a debt. The appellant rendered services that culminated in the appellant having several claims against the respondent in respect of

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<sup>11</sup> See *Aeronexus Pty Ltd v Firststrand Bank* – opcit fn 9

the various months during which goods were conveyed and removed.<sup>12</sup>

[14] It is further my view that the appellant's claims 1 to 20 are claims for the amounts based on causes of action that are compounded monthly as a result of every conveyance of goods by the appellant at the instance of the respondent within the said month. The said debt (causes of action) would then be payable monthly by the respondent as agreed between themselves and not per transaction. The appellant set out the monthly debts which the respondent was liable to pay.

[15] The respondent, in my view, conceded the allegations giving rise to the causes of action in respect of the appellant's claims. This is demonstrated by its special plea, singling out, by way of prescription, the first claim in respect of services rendered in January 2006. The respondent's counsel accepted on my enquiry that the singling out of the said claim is an indication that one may construe

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<sup>12</sup> See Particulars of Claim – page 48 paragraph 2.2

that as a concession that different claims existed as opposed to one amount that was due as contended by the respondent.

[16] In the final analysis, I find no splitting of claims as specifically pleaded by way of special plea. The appellant is thus entitled to institute its multiple claims in the same action arising from different causes of action, even if the total value of the claims is more than R100, 000.00. The appellant's appeal must, on this basis alone, be upheld.

[17] In my view costs should follow the event. The appellant succeeds with the appeal and is entitled to the costs of the appeal.


[18] In the result the following order is made.

**Order:**

- 1. The appeal is upheld**
- 2. The Magistrate's order upholding the special plea is set aside and replaced with the following:**



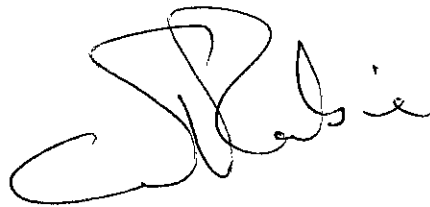
**"The defendant's special plea relating to the splitting of claims as envisaged in terms of section 40 of Magistrates Court Act is dismissed with costs."**



A.M.L. Phatudi

Judge of the High Court

I agree.



C.P. Rabie

Judge of the High Court

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