

**IN THE NORTH GAUTENG HIGH COURT OF PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

CASE NUMBER: 60765/2012

DATE: 7/2/2014

In the matter between:

TRUSTCO GROUP HOLDINGS

First Plaintiff

TRUSTCO GROUP INTERNATIONAL (PTY) LTD

Second Plaintiff

TRUSTCO MOBILE (PTY) LTD

Third Plaintiff

and

REGENT LIFE ASSURANCE CO. LTD

First Defendant

REGENT INSURANCE COMPANY LTD

Second Defendant

CLICKS GROUP LIMITED

Third Defendant

CLICKS MANAGEMENT (PTY) LTD

Fourth Defendant

JUDGMENT

DE KLERK AJ

This is an exception brought by the Defendants' in terms of Rule 23 (1) of the Uniform Rules of Court on the basis that the Plaintiffs' Particulars of Claim are vague and embarrassing and / or do not make out a cause of action for the relief sought.

In response to the Defendants' Notice to Remove Cause of Complaint, the Plaintiffs delivered a reply confirming that the only documentation contained in the bundle of confidential information, which do not contain confidential information, are some nine pages to wit 64, 65, 66, 91,94,99,100,101 and 102.

The response did not satisfy the Defendants and they then served the said Notice in terms of Rule 23 (1).

The Gist of the Defendants' complaint is that, in view of the wide variety of documents included in the bundel and the wealth of information contained therein, the Defendants are unable to determine the nature and extent of the confidential information.

Plaintiff's claim:

The Plaintiffs (collectively referred to in the Particulars of Claim as "Trustco") have instituted a claim for an interdict and an enquiry into damages against the Defendants based on the Defendants' alleged use of confidential and proprietary information.

The Plaintiffs' claim against the First and Second Defendants (collectively referred to as Regent) is based on the alleged breach of two confidentiality agreements entered into between Regent and the Plaintiffs as well as a claim of unlawful competition.

The Plaintiffs' claim against the Third and Fourth Defendants (collectively referred to as "clicks") is based on unlawful competition.

The Particulars of Claim contain reference to a bundle of documents which the Plaintiffs allege contain full details of the confidential information.

Legal principles:

The principles laid down in the rules and existing case law relating to exceptions are trite.

Section 23 (1) of the Uniform Rules of Court deals with exceptions and states that where any pleading is vague and embarrassing or lacks averments, which are necessary to sustain an action or defence, as the case may be, the opposing party may deliver an exception thereto.

Rule 18 of the Uniform Rules of Court deals with rules relating to pleadings generally. Rule 18 (4) requires that each pleading in an action shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim with sufficient particularity to enable the opposite party to reply thereto.

The material facts whereon a plaintiff relies should be concisely stated in his particulars of claim and these facts only, and no other should be pleaded.

The material facts do not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. *Facta probantia* has no place in pleadings.

A pleading should not contain matters irrelevant to the claim.

Pleadings that are “a rambling preview of the evidence proposed to be adduced at the trial do not meet the requirements of Rule 18 (4) and would be excipiable as being vague and embarrassing. (**Moaki vs. Reckott 1968 (3) SA 98 AD at 102 A-B**).

The plaintiff is certainly not entitled to plead a jumble of facts and force the defendant to sort them judiciously and fit them together in an attempt to determine the real basis of the claim. (**Roberts Construction Ltd vs. Dominion Earthworks Ltd 1968 (3) 255 at 263**).

The purpose of the exception procedure is *inter alia* to remove the need for guesswork.

Particulars of Claim should be so phrased that a defendant is able to reasonably comprehend what case he is called upon to meet and reasonably and fairly able to plead thereto without embarrassment.

It may be possible to plead to Particulars of Claim by simply denying the allegations made, yet such a pleading would itself be expiable as being vague and embarrassing.

Same would defeat the whole purpose of pleadings to wit to bring clearly to the notice of the court and the parties to an action the issues upon which reliance is to be placed.

The more complex the matter is, the greater would be the demand for conciseness, lucidity, logic, clarity and precision.

An exception that a pleading is vague or embarrassing will not be upheld unless the excipient will be seriously prejudiced.

Application of the legal principles to the facts of the case:

The gist of the exception is that the Plaintiffs' Particulars of Claim do not identify the nature of the alleged confidential information nor do they refer to, or identify any document or portion thereof in

the bundle on which they rely as constituting the confidential information.

The interest which the Plaintiffs sought to protect by entering into the two confidentiality agreements with Regent, was that relating to confidential information. The Plaintiffs rely on the bundle as constituting full details of the confidential information.

The confidential information goes to the core of the cause of action.

It is a complex case which makes the demand for conciseness, logic, lucidity, clarity and precision greater.

In my view it is not sufficient for the Plaintiffs to say that full details of the confidential information are in the bundle.

The Plaintiffs cannot expect of the Court and the Defendants to sift through some hundred pages and fit them together to determine what constitutes confidential information. Certainly there should be no difficulty on the part of the Plaintiffs to do so.

In my view the Plaintiffs should specify the nature, extent and details of the confidential information relied upon by them.

In my view the Particulars of Claim are vague and embarrassing as it is not clear what the confidential information is.

The embarrassment is so serious as to cause prejudice to the Defendants if they are compelled to plead to the pleading in the form to which they have objected.

Accordingly it is ordered that:

1. The exception is upheld;

2. The Plaintiffs are afforded a period of 14 days from the date of this order, to amend their particulars of claim, failing which the Defendants may approach the Court for an order that the Plaintiffs' action be dismissed with costs;
3. The costs of this exception to be paid by the Plaintiffs including the costs of two councils including senior council.

Signed at _____ on this _____ day of
_____ 2014.

Judge De Klerk AJ
The Honourable Judge of the
High Court
Of Pretoria