

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

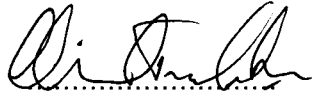
23/7/14
CASE NO: 15048/11

In the matter between:

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

Plaintiff

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
	22/01/14..... DATE	 SIGNATURE

REAL TIME INVESTMENT 518 CC

First Defendant

IZAK JOHANNES BIBBEY

Second Defendant

PETER R BRISTOW

Third Defendant

GRANADA BUSINESS SOLUTIONS (PTY) LIMITED

Fourth Defendant

JUDGMENT

Tuchten J:

- 1 The fourth defendant ("Granada") has taken exception to the plaintiff's particulars of claim on the ground that no cause of action has been disclosed. The plaintiff's case is that it concluded a written agreement with the first defendant, represented by the second defendant, in terms of which the plaintiff bought the first defendant's farms for

R22 500 000. Granada was the effective cause of the sale. In the negotiations preceding the sale, the several defendants, including Granada, submitted to the plaintiff a valuation report prepared by the third defendant.

- 2 The plaintiff's complaint is that the valuation report misstated the true position, thus inducing the plaintiff to contract as it did, while the true value of the farms was only R9 360 000. This lower value, the plaintiff pleads, includes five pivot irrigation devices. The written agreement is however silent as to whether any such pivots are included in the *merx*. The plaintiff seeks rectification of the written agreement to include the five pivots in the *merx*. The plaintiff also seeks to rectify the description of one of the farms but this is not material for present purposes,
- 3 The plaintiff's main claim against the defendants is for damages of R13 140 000, effectively reducing the purchase price to R9 360 000. There is an alternative claim for R1 750, the alleged replacement cost of the five pivots.
- 4 The case against Granada is that it

... unlawfully and intentionally, alternatively negligently, by presenting to the plaintiff the property and the third defendant's valuation ... misrepresented to the plaintiff that the reasonable value of the properties was R22 500 000 whereas it was only R9 360 000.

- 5 The alleged unlawfulness of Granada's conduct is said to have arisen from a duty of care to prevent the plaintiff from suffering financial loss. The plaintiff sets out what it calls grounds for this conclusion but in context, the plaintiff's case is that Granada ought itself to have evaluated the third defendant's valuation report and then to have come to the conclusion that it was misleading. Granada ought, according to the plaintiff, additionally to have evaluated comparable sales of property and whether water rights attached to the farms. It ought further, according to the plaintiff, to have pointed out to the plaintiff that the land reflected in the valuation report as being under irrigation, 10 ha by means of drag lines and 210 ha by means of pivots, could not be lawfully irrigated because no water rights attached to the farms.
- 6 Counsel for the plaintiff directed my attention to two provisions within the Code of Conduct binding on estate agents pursuant to the provisions of the Estate Agency Affairs Act, 112 of 1976. Under item 2.2, an estate agent must protect the interests of his client at all times to the best of his ability, with due regard to the interests of all other

parties concerned. Under item 4.1.1 an estate agent must convey to a prospective purchaser all material facts which are or should reasonably in the circumstances be within his knowledge.

- 7 But the plaintiff's particulars do not make the case that Grenada knew that the farms were worth less than the amount at which the first defendant was prepared to sell them. It is not the duty of an estate agent to make an independent valuation of a property he is asked to sell unless he agrees to do so. Nor is it the duty of an estate agent to consider, unless he agrees to do so, whether a prospective purchaser is likely to make a prudent purchase or whether it is adequately protected by the terms of the agreement such a purchaser chooses to conclude. The position might be different if the estate agent is in possession of material information and suppresses it from a prospective purchaser but that is not alleged to be the case here. It is not claimed that Grenada was an expert in the field of valuation of farm land. The case is solely that Grenada, having received a copy of the third defendant's valuation report, ought independently to have valued the farms and communicated to the plaintiff its opinion in this regard, notwithstanding that its opinion was not solicited by the plaintiff, and that by passing the report on to the plaintiff without comment, Grenada impliedly associated itself with the opinions in the report. There is no basis in fact set out in the particulars of claim for

any of the legal conclusions which the plaintiff claims would render Grenada liable to it. I agree with counsel for Grenada that by passing the report on to the plaintiff, Grenada did not make any representation as to the validity or otherwise of the opinions contained in the report.

- 8 Nor is there, in my view, any material in the particulars of claim on the basis of which it can be concluded that Grenada was under a legal duty to have advised the plaintiff on whether the agreement proposed by the first defendant adequately protected the plaintiff's rights. In particular, in this regard, there is nothing in the particulars to ground a conclusion that Grenada ought to have appreciated that the agreement ought to have made reference, but did not, to the five pivots referred to by the plaintiff
- 9 The use in the particulars of the word "intentionally" to characterise Grenada's conduct takes the matter no further. There is no allegation that Grenada was party to a plan to defraud the plaintiff.
- 10 Grenada's exception must succeed. I make the following order:
 - 1 The fourth defendant's exception to the plaintiff's particulars of claim is upheld with costs;

- 2 The plaintiff is granted leave to apply within one month of the date upon which this order is delivered for the amendment of its particulars of claim;
- 3 The plaintiff must pay the fourth defendant's costs in relation to the exception.



NB Tuchten
Judge of the High Court
21 July 2014