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

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3) REVISED ✓
22/11/2019
DATE SIGNATURE

CASE NO: 1181/2017
DATE: 14 October 2019

IN THE MATTER BETWEEN

MAGRA PROCESS ENGINEERING (PTY) LTD Applicant

and

PLATCHRO MAANDAGSHOEK MINING SERVICES (PTY) LTD Respondent

JUDGMENT

WANLESS AJ

Introduction

[1] PLATCHRO MAANDAGSHOEK MINING SERVICES (PTY) LIMITED (hereafter referred to as "the Respondent") has instituted an action in this court under case number 1181/2017 against MAGRA PROCESS ENGINEERING (PTY) LIMITED (hereafter referred to as "the Applicant"). The Respondent's cause of action (as Plaintiff in the action) is essentially one of services provided to the Applicant by the

Respondent as a sub-contractor in terms of an oral agreement. It is further alleged that the parties then entered into a second oral agreement whereby certain invoices which had been disputed by the Applicant were removed from the account of the Respondent and the Applicant was re-invoiced in respect of those invoices which were not in dispute. Thereafter, it is alleged that the Applicant was re-invoiced separately in respect of those invoices which were in dispute. It is alleged (paragraph 13 of the Respondent's Particulars of Claim) that in terms of this second oral agreement, it was agreed that the Applicant would make payment "in respect of all outstanding invoices" by 2 December 2016. Finally, it is alleged by the Respondent that the Applicant failed in its obligation in respect thereof and "only effected partial payment to the Plaintiff".

[2] The Applicant (as Defendant in the action) pleaded to the Respondent's Particulars of Claim and, at the same time, instituted a Claim-in-reconvention (which it chose to refer to as a "Provisional Counterclaim"). In response thereto the Respondent elected to file a Replication to the Applicant's Plea together with its Plea to the Applicant's Claim-in-reconvention. The pleadings were then closed in terms of Rule 29. All of the said pleadings in the action are to be found in a bundle with the title "INDEX-PLEADINGS". Subsequent to the pleadings closing as aforesaid and on or about the 11th of February 2019 the Applicant instituted an interlocutory application which is the present application before this court. It is common cause between the parties that this interlocutory application, opposed by the Respondent, was instituted in terms of Rule 30. In response to the Applicant's Notice of Motion, supported by the Applicant's Founding Affidavit the Respondent filed an Answering Affidavit. The Applicant then elected not to file a Replying Affidavit and the application was set down for hearing before this court on the Opposed Motion Court Roll.

[3] The relief initially sought by the Applicant is that the Respondent's Reply (more correctly the Respondent's Replication) and its Plea to the Provisional Counterclaim (more correctly the Respondent's Claim-in-reconvention) be struck out, with costs. At the hearing of the application the Applicant sought the relief as set out in a Draft Order, handed up during the course of argument. In terms thereof the Applicant sought relief that certain paragraphs only of the Respondent's pleadings referred to above should be struck out and that the Respondent be granted a period of 10 days to effect amendments thereto. The Applicant persisted with its request for costs. All of the

aforesaid documents may be found in the court file pertaining to this matter with particular reference to a bundle of documents with the heading "INDEX TO APPLICATION".

[4] **Rule 30 (Irregular proceedings)** reads as follows:-

> "(1) A party to a cause in which an irregular step has been taken by any other party may apply to court to set it aside;
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> (2) An application in terms of subrule (1) shall be on notice to all parties specifying particulars of the irregularity or impropriety alleged, and may be made only if-
>
> (a) the applicant has not himself taken a further step in the cause with knowledge of the irregularity;
>
> (b) the applicant has, within ten days of becoming aware of the step, by written notice afforded his opponent an opportunity of removing the cause of complaint within ten days;
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> (c) the application is delivered within fifteen days after the expiry of the second period mentioned in paragraph (b) of sub-rule (2).
>
> (3) .....
>
> (4) ....."

The Applicant has complied with the formal requirements of Rule 30 and the application is properly before this court.

The basis of the Applicant's complaints

[5] The Applicant's complaints are as set out in the notices served upon the Respondent in terms of Rule 30 and which are annexures DT2 and DT3 to the Applicant's Founding

Affidavit (pages 11 to 16 inclusive of the application papers).These complaints are in respect of the Respondent's Replication to the Applicant's Plea and the Respondent's Plea to the Applicant's Claim-in-reconvention. As set out above the aforesaid complaints must be read with the Draft Order of the Applicant.

Respondent's Replication to the to the Applicant's Plea

[6] The Applicant avers that in paragraphs 24 and 29 of the Replication the Respondent has not complied with the provisions of Rule 18(4) in that the Respondent has failed to provide clear and concise material facts as to which specific supporting documentation was provided; the date when same was provided; who provided it and to whom it was provided. Further, the Applicant avers that in paragraph 48 of the Replication the Respondent has not complied with the provisions of Rule 18(4) in that the Respondent has failed to provide clear and concise material facts pertaining to when the credit notes were passed; by whom the credit notes were passed; to who the credit notes were provided and failed to include copies of the said credit notes, with numbers, in order to enable these credit notes to be checked against the invoices in respect of which the Respondent claimed payment.

Respondent's Plea to the Applicant's Claim-in-reconvention.

[7] The Applicant avers that in paragraph 21 of the Respondent's Plea to the Applicant's Claim-in-reconvention the Respondent has not complied with the provisions of Rule 22(2) and/or 22(3), read with Rule 18(4), in that the Respondent has failed to provide clear and concise material facts as to which specific supporting documentation was provided; the date when same was provided; who provided it and to whom it was provided. Further, the Applicant avers that in paragraphs 49 and 55 of the Respondent's Plea to the Applicant's Claim-in-reconvention the Respondent has failed to comply with the provisions of Rule 22(2) and/or Rule 22(3), read with Rule 18(4), in that the Respondent has failed to provide clear and concise material facts as to which specific supporting documentation was provided; the date when same was provided; who provided it and to whom it was provided.

The relevant Uniform Rules of Court

[8] The Rules relied upon by the Applicant for the relief sought are as set out hereunder.

Rule 18(4)

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, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

Rule 18(12)

"If a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with rule 30.

Rule 22(2)

The defendant shall in his plea either admit or deny or confess and avoid all the material facts alleged in the combined summons or declaration or state which of the said facts are not admitted and to what extent, and shall clearly and concisely state all material facts upon which he relies.

Rule 22(3)

Every allegation of fact in the combined summons or declaration which is not stated in the plea to be denied or to be admitted, shall be deemed to be admitted. If any explanation or qualification of any denial is necessary, it shall be stated in the plea.

Rule 22(5)

If the defendant fails to comply with any of the provisions of subrules (2) and (3), such plea shall be deemed to be an irregular step and the other party shall be entitled to act in accordance with rule 30.

The Respondent's opposition to the relief sought by the Applicant

[9] In essence the opposition by the Respondent is based on the premise that the Respondent, as a matter of law, need only plead material facts outlining the case for the Respondent. Following thereon the Respondent avers that the Respondent has, as a matter of fact, complied fully with the obligations upon it to plead facts, not evidence, which define the issues and which has allowed the Applicant to know the case which the Applicant has to meet without pleading any unnecessary evidence. In amplification thereof the Respondent submits that where any particularity in the Respondent's pleadings may be lacking the remedy of the Applicant is to seek relief by way of discovery and/or inspection of documents, alternatively, by means of a request for further particulars and not by following the procedure as set out in Rule 30. Further, it was submitted on behalf of the Respondent that the Applicant has failed to show any substantial prejudice suffered by it as a result of any deficits in the Respondent's pleadings.

The law

[10] It is fairly trite that the purpose of pleadings is to bring clearly to the attention of the court and the parties to an action the issues upon which reliance is to be placed. Further, the object of pleading is to ascertain definitely what the question at issue between the parties actually is. This can only be ascertained when each party states his case with precision.[1] Moreover, it is trite that a party has to plead, with sufficient clarity and particularity, the material facts upon which that party relies for the conclusion of law he or she wishes the court to draw from those facts. In the premises, it is not sufficient to plead a conclusion of law without pleading the material facts giving rise to it.[2]

[11] In respect of the issue of prejudice, proof thereof is a prerequisite to success in an application in terms of Rule 30(1).[3] In the matter of *Sasol Industries v Electrical Repair Engineering 1992 (4) SA 466 (WLD) at 470H-J*, it was held:-

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[1] *Impreted (Pty) Limited v National Transport Commission 1993 (3) SA 94 (AD)*

[2] *Trope v South African Reserve Bank and Another 1993 (3) SA 264 at 273A-B; Mabaso v Felix 1981 93) SA 865 (AD) at 875A-H (Rule 18(4)); Radebe and Others v Eastern Transvaal Development Board 1988 (2) SA 785 (AD) at 792J-793G*

[3] *SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO* 1981 (4) SA 329 (O) at 333G; *De Klerk v De Klerk* 1986 (4) SA 424 (W) at 426I; *Consani Engineering (Pty) Ltd v Anton Steinecker Maschinenfabrik GmbH* 1991 (1) SA 823 (T) at 824G-H; *Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd*

> *"....if a pleading does not comply with the subrules of Rule 18 requiring specific particulars to be set out,* ***prejudice has, prima facie, been established.*** *Cases may well arise where a party would not be prejudiced by the failure to comply with these subrules, or where a pleader would be excused from providing the prescribed particularity because he is unable to do so.* ***But in such cases the onus would..... be on him to establish the facts excusing his non-compliance.*** *The law reports abound with cases which lay down this principle in respect of other Rules of Court, and the same principle applies...in relation to non-compliance with Rule 18".*
>
> (My emphasis)

Also, in the matter of *Nasionale Aartappel Kooperasie Bpk v Price Waterhouse Coopers Ing 2001 (2) SA 790 (T) at 805E-I,* it was held:-

> *"In 'n aansoek in terme van Reël 30 sal regshulp toegestaan word slegs indien die onreëlmatige stap die party wat did stap ter syde wil stel sal benadeel. Hierdie benadeling is beperk tot benadling in die voer van die saak – sien Trans-African Insurance Co Ltd v Maluleka 1956 (2) SA 273 (A) at 276F-H; SA Metropolitan Lewensversekeringsmaatskappy Bpk v Louw NO 1981 (4) SA 329 (O) op 333D-F EN 333H-334E; De Klerk v De Klerk 1986 (4) SA 424 (W) op 426F-427B; Consani Engineering (Pty) Ltd v Anton Steinecker Maschinenfabrik GmbH* 1991 (1) SA 823 (T) at 824G-H: *Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen (supra op 469G); Afrisun Mpumalanga (Pty) Ltd v Kunene NO and Others 1999 (2) SA 599 (T) op 611C-F. Die verweerders sal beslis in die voer van hulle saak benadeel word. Die geskilpuntesal nie volgens die reël neergelê in die gewyses in die pleitstukke met presiesheid identifiseer en omlyn word nie. Die verweeders sal die vae feitlike gevolgtrekkings moet ontken omdat hulle nie weet wat die werklike feite waarop die eis berus is nie. Hierdie massiewe litigasie sal dan voortgaan totdat verdere besonderhede vir doeleindes van verhoor en/of deskundige kennisgewings en opsommings afgelewer word.* ***Op daardie laat stadium sal die verweerders dan hopelik***

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t a L H Marthinusen 1992 (4) SA 466 (W) at 469G; *Gardiner v Survey Engineering (Pty) Ltd* 1993 (3) SA 549 (SE) at 551C.

weet wat die wesenlike feite is waarop die eiser steun. Intussen sal geleenthede om relevante getuienis en getuienis te identifiseer en te bewaar verlore gaan. Die verweerder sal ook koste moet aangaan om die feite te ondersoek, welke ondersoeke uiteindelik totaal irrelevant mag wees met 'n gepaardgaande verspilling van fondse."

(My emphasis)

The pleadings complained of

[12] Paragraph 29 of the Respondent's Replication reads as follows:-

> "*29. The Plaintiff was simply required to provide as much supporting documentation as is reasonably necessary to support and justify the amounts and or quantities as were reflected in its invoices. The Plaintiff has delivered all reasonably necessary supporting documents, being attachments to the various invoices submitted by it.*"

Paragraph 48 of the Respondent's Replication reads as follows:-

> "*48 Notwithstanding the above, the Plaintiff pleads specifically that it has passed any and all credits notes required of it in the circumstances.*"

Paragraph 21 of the Respondent's Plea to the Applicant's Claim-in-reconvention reads as follows:-

> "*21. The Plaintiff was simply required to provide as much supporting documentation as is reasonably necessary to support and justify the amounts and or quantities as were reflected in its invoices. The Plaintiff has delivered all reasonably necessary supporting documents, being attachments to the various invoices submitted by it.*"

Paragraph 49 of the Respondent's Plea to the Applicant's Claim-in-reconvention reads as follows:-

"49. *It is specifically pleaded that the Plaintiff has provided the Defendant with all 'books', items and supporting documents that it was obliged to provide the Defendant with and places the Defendant to the proof of the contrary. Alternatively, the Plaintiff has provided the Defendant with all reasonably necessary 'books', items and documents that it has in its possession.*"

Conclusion

[13] The pleadings complained of must be examined against the well-established principles of our law as set out herein. Moreover, it is imperative that the particular paragraphs singled out by the Applicant be considered not only in the context of the respective causes of action relied upon by both the Respondent and the Applicant in the Particulars of Claim and the Claim-in-reconvention but also in the context of the entire pleadings as a whole. The paragraphs which are sought to be struck out cannot be viewed in isolation.

[14] This exercise has been carried out by both parties in the Heads of Argument filed on their behalf by their legal representatives in anticipation of the hearing of this application. To repeat that exercise in detail and the arguments put forward by both parties in conjunction therewith, would only serve to burden this judgment considerably (and unnecessarily). Nevertheless, the parties may rest assured that this court has carefully considered the aforegoing and taken due cognisance thereof. Rather, this court will, in this judgment, deal as succinctly as possible with those factors which have ultimately given rise to the decision reached.

[15] As already dealt with earlier in this judgment the Plaintiff's cause of action is essentially one of services provided to the Applicant by the Respondent as a sub-contractor in terms of an oral agreement. In support thereof the Respondent specifically relies on further oral agreements in terms of which the amount allegedly owing by the Respondent to the Applicant was determined by way of invoices which were either in dispute or were no longer in dispute. In the premises, these invoices, as relied upon by the Respondent, are, in the first instance, essential to prove the Respondent's claim against the Applicant. Moreover, the facts pertaining thereto and

the identification of the invoices relied upon in support of that claim are necessary to enable the Applicant to be fully apprised of the issues which will be canvassed at the trial.

[16] To this end the Respondent has clearly failed to comply with the provisions of Rule 18(4) and/or Rule 22(2) and/or Rule 22(3).These Rules were specifically promulgated to deal with pleadings and to ensure, *inter alia*, that the issues to be canvassed at trial were clearly defined for both the court and the parties. Also, in terms of both Rule 18(12) and Rule 22(5), failure to comply with the aforementioned Rules "shall be deemed to be an irregular step and the opposite/other party shall be entitled to act in accordance with rule 30" (which the Applicant has done). The Respondent has not pleaded when, where and by whom the credit notes were provided and issued to the Applicant. Further, despite the Respondent having elected to rely on certain invoices which were put up as annexures to the Respondent's Particulars of Claim, it has failed to identify the relevant invoices relied upon in the Respondent's Replication and its Plea to the Applicant's Claim-in-Reconvention.

[17] It has further been submitted, on behalf of the Respondent, that the Applicant has failed to prove any prejudice which, as dealt with above, is a prerequisite to the granting of an application in terms of Rule 30. In support of this submission, it was averred that the Applicant could, at the appropriate stage, rely on the relevant Rules pertaining to discovery and/or further particulars necessary for the purposes of preparation for trial, to cure any deficiencies in the Respondent's pleadings. The aforegoing does not assist the Respondent in this application. Firstly, as set out in the matter of *Sasol Industries v Electrical Repair Engineering (supra) at 470 H-J* the failure of the Respondent to comply with the provisions of Rule 18(4) and/or Rule 22(2) and/or Rule 22(3) establishes, *prima facie*, that the Applicant will be prejudiced unless this court comes to the Applicant's assistance and grants the relief sought. Furthermore, the Respondent has failed to discharge the onus incumbent upon it to establish the facts excusing the Respondent's non-compliance with the said rules. Secondly, applying the principles as set out in the matter of *Nasionale Aartappel Kooperasie v Price Waterhouse Coopers Ing (supra) at 805 E-I* the Applicant should not be prejudiced in its preparation for trial, for, *inter alia*, the reasons set out in this decision, by having to rely on the relevant Rules pertaining to discovery and/or further

particulars necessary for the purposes of preparation for trial at a later stage in the litigation instituted by the Respondent. In light of the aforegoing, it is clear that the Applicant should be granted the relief as sought in the Draft Order referred to above.

Costs

[18] The Respondent has (in respect of procedure and also, presumably, in respect of the issue of costs), submitted that it was not necessary for the parties to depose to affidavits in respect of this application since no evidence needed to be tendered which is not already on the pleadings.[4] Regrettably for the Respondent, this submission cannot be correct. As already noted earlier in this judgment, proof of prejudice is a prerequisite to success in an application in terms of Rule 30(1).In the premises, as noted by the learned authors in *Erasmus: Superior Court Practice (Second Edition) at D1-354*, to this extent an application under subrule 30(1) needs to be supported by affidavit.[5] The application proceeded on the basis that the affidavits filed by both parties were properly before the court and that the court could take due cognisance of the contents thereof. Following thereon, there is no reason why any cost order should exclude the costs incurred in respect of the Applicant's Founding Affidavit and the Respondent's Answering Affidavit.

[19] With regard to the issue of costs, it is true that the Applicant has been substantially successful and that it was obliged to institute this application in terms of Rule 30. Further, as set out above, the Applicant cannot be criticised for bringing this application by way of a Notice of Motion supported by a Founding Affidavit. However, it is also true that the relief granted is that in terms of the Draft Order handed in to this court at the hearing of the application which differs fairly materially, both in substance and in form, to the relief originally sought in the Applicant's Notice of Motion. In this regard, it could well be argued that the Respondent was justified in opposing this application on that ground alone. Another feature of this matter pertaining to the issue of costs is that whilst the Applicant is entitled to the relief ultimately granted by this court, it will only be fully resolved at the trial in this matter as to the extent to which the deficiencies in the pleadings of the Respondent were

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[4] *Paragraph 4 of the Respondent's Answering Affidavit at page 27 of the application papers*
[5] *Paragraph 9 of the Applicant's Founding Affidavit at page 9 of the application papers*

prejudicial to the Applicant at this stage of the proceedings and what documentation, in the form of, *inter alia*, invoices and credit notes the Applicant was in possession of which would have, to one extent or another, alleviated the prejudice presently experienced by the Applicant. None of the aforegoing is, at this stage of the litigation pending between the parties, apparent *ex facie* from the pleadings and will require evidence at the trial to shed light thereon. For these reasons this court finds that it would be just and equitable if the costs of this application were reserved for the decision of the court finally determining the action and Claim-in-reconvention under case number 11881/2017.

[20] In the premises, this court makes the following order:-

(a) Paragraphs 29 and 48 of the Respondent's Replication to the Applicant's Plea and paragraphs 21 and 49 of the Respondent's Plea to the Applicant's Claim-in-reconvention, are struck out;

(b) In terms of subrule 30(3) the Respondent is given leave, within thirty (30) days of the date of this order to amend its pleadings in terms of Rule 28;

(c) The costs of this application in terms of Rule 30 are reserved for the decision of the court finally determining the action and Claim-in-reconvention under case number 11881/2017.

BC WANLESS

ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

HEARD ON:	16 October 2019
FOR THE APPLICANT:	G F Ackermann
INSTRUCTED BY:	Imraan Kaka Attorneys, Pretoria
FOR THE RESPONDENT:	W M Keeny
INSTRUCTED BY:	Van Velden-Duffy Inc, Pretoria
DATE OF JUDGMENT:	22 November 2019