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

CASE NO: 47268/18

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

26/02/19
DATE

SIGNATURE

In the matter between:

COMPENSATION SOLUTIONS (PTY) LIMITED **APPLICANT/PLAINTIFF**

And

THE COMPENSATION COMMISSIONER **FIRST RESPONDENT/ DEFENDANT**

THE DIRECTOR-GENERAL OF THE DEPARTMENT OF LABOUR OF THE NATIONAL GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA **SECOND RESPONDENT/ DEFENDANT**

JUDGMENT

COLLIS J:

INTRODUCTION

[1] This is an opposed application for Summary Judgment.

BACKGROUND

[2] The plaintiff conducts business of *inter alia* factoring medical accounts. The plaintiff annually factors approximately 260 000 medical accounts from approximately 1250 medical services providers, that are payable by the defendants from the Compensation Fund.

[3] The fund was established in terms of section 15 of the Compensation for Occupational Diseases and Injuries Act, Act 130 of 1993 ("CIODA").

[4] The plaintiff took cession of all rights, title and interest in and to each one of all such accounts in terms of a separate agreement concluded between the plaintiff and each of the approximately 1810 medical service providers.

[5] The plaintiff in conducting its business, submitted claims for payment of medical accounts so factored to the first defendant, who is required in terms of COIDA and the duties delegated to him by the second defendant, to process and validate medical

accounts to the plaintiff from annual contributions/premiums collected by the first defendant from employees registered with it.

[6] During or about 2009, the plaintiff instituted proceedings against the defendants alleging that the defendants had failed to fulfil their duties in terms of COIDA. Particularly, so the plaintif alleges, the defendants had failed to process accounts submitted by the plaintiff to effect payments.. Flowing from such proceedings, a settlement agreement, annexure ("POC 1") was reached, which resulted in a court order, marked "POC 2" annexed to the particulars of claim.

[7] In terms of the settlement agreement, the defendants were obliged to process and validate or validly reject medical accounts and effect payment of such validated medical accounts, within 75 calendar days of acceptance by the first defendant of a claim for compensation in terms of COIDA by an employee resulting from an injury whilst on duty. Alternatively where such medical accounts, relating to that accepted claim, were submitted by the plaintiff after the date of acceptance of the claim by the first defendant, within 75 calendar days of submission of such medical accounts.

[8] The defendants have breached the terms of annexures "POC 1" and "POC 2", in that the medical accounts submitted by the plaintiff to the first defendant for payment in terms of COIDA, pursuant to accepted claims, have not been paid within the 75 day period, and remain unpaid due and payable despite having been processed and validated by the first defendant.

THE LAW

[9] In the matter Breitenbach v Fiat SA (Edms) BPK at 227F-G, the Court held:

> *"To avoid summary judgment the defendant is required in terms of Rule 32(3) (b) of the High Court Rules to set out in an affidavit, facts which if proved at the trial, will constitute an answer to the plaintiff's claim. The rule also requires that the defendant satisfy the court that the defence is bona fide. This means that the defendant must swear to a defence, valid in law, in a manner which is not seriously unconvincing. Finally, it is required of the defendant that he discloses fully the nature and grounds of the defence and the material facts relied upon therefore. This means that the statement of material facts must be sufficiently full to persuade the court that what the defendant has alleged, if it is proved at trial, will constitute a defence to the plaintiff's claim."*

[10] In First National Bank of Sa Ltd v Myburg and Another 2002 (4) SA 176 (C) at 177D-F the Court held:

> *"The Court will grant summary judgment only where the plaintiff has an unanswerable case. If it has the slightest doubt, the Court will not grant summary judgment."*

DEFENCES BY THE DEFENDANT

[11] The defendants in opposition to the summary judgment had raised the following points *in limine* which it persisted with at the hearing of the application:

11.1. The first being that the plaintiff has no *locus standi*;

11.2. secondly, non-compliance with the provisions of Rule 32(2);

11.3 thirdly, non-compliance with the provisions of Rule 18; and

11.4 lastly, failure by the plaintiff to prove that the claims submitted are due, owing and payable.

Absence of Locus Standi

[12] In this regard the defendants contend that, as the plaintiff alleges in its particulars of claim that it took cession of all right, title and interest in and to all accounts of separate agreements concluded between the plaintiff and each of the medical service providers, the plaintiff should have annexed the cession agreements concluded with the medical providers to prove its *locus standi*. Failure, by the plaintiff to annex the cession agreements it so contends, disentitled to plaintiff to institute these proceedings against the defendants.[1]

[13] Upon a mere reading of the particulars of claim, it is clear that the plaintiff's particulars of claim is not premised on the cession agreements concluded with each of the medical service providers, but that it is premised, on the settlement agreement ("POC 1") which resulted in an order of court ("POC 2").

[14] In terms of both the settlement agreement and the court order, the plaintiff is cited as the applicant and this is the *locus standi* which the plaintiff relies upon before this court.

[15] Consequently, I find no merit in the first point *in limine* raised.

Non-compliance with Rule 32(2)

[1] Resisting Affidavit paragraph 3

[16] Rule 32(2) provides as follows:

"The plaintiff shall within 15 days after the date of delivery of notice of intention to defend, deliver notice of application for summary judgment, together with an affidavit made by himself or by any other person who can swear positively to the facts verifying the cause of action and the amount, if any, claimed and stating that in his opinion there is no bona fide defence to the action and that notice to defend has been delivered solely for the purpose of delay....."

[17] In the affidavit filed in support of the application for summary judgment, the deponent sets out that he is the Chief Executive Officer of the applicant, and that he is duly authorised to depose to the affidavit in support of the application for summary judgment. Furthermore, by virtue of his position within the plaintiff, both operational and financial, he exercised control and authority insofar as all records and documents pertaining to this matter are concerned; has first-hand knowledge of this matter and as such he can and do swear positively to the facts verifying the cause of action and the amount claimed.[2]

[18] In this regard the defendant contends that as the plaintiff's cause of action is based on the medical services rendered by different practitioners to different employees, the deponent is neither the service provider, nor the medical practitioner and has not rendered any medical services to the affected employees. Therefore, they challenge that the deponent has any knowledge and as such they further challenge that the deponent can swear positively to the facts that form the subject-matter of this action.

[2] Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 423

[19] As previously mentioned, the plaintiff's cause of action is not based on medical services either rendered by it, as service provider or as medical practitioners. Its cause of action is based and "POC 1" and "POC 2" annexed to the particulars of claim.

[20] The defendant having misconstrued the plaintiff's cause of action, could therefore, not have meaningfully challenged the authority of the deponent to the affidavit filed in support of the application for summary judgment.

[21] Consequently, I conclude that the second *point in limine* also without merit.

Non-compliance with the provisions of Rule 18(4)

[22] Rule 18(4) of the rules of court provides as follows:
"Every pleading shall contain a clear and concise statement of the material facts upon which a 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."

[23] In Benson and Simpson v Robinson 1917 WLD 126 it was held that the object of pleading to is to define the issues so as to enable the other party to know what case he has to meet.

[24] In this regard the defendants contend, that the plaintiff as per paragraphs 5.2 and 5.3 of the particulars of claim, relies and annexure "POC 1" and "POC 2". If one has regard to annexure "POC 1" with specific reference to paragraph 3 thereof, it mandates the first defendant to process the backlog medical accounts referred to in annexure

"JL12", by 30 October 2009. Furthermore, the said "JL12" was not annexed to the particulars of claim to enable the defendants to consider whether outstanding accounts forming the basis of this action fall within the list.[3]

[25] In addition to what has been stated above, if one considers the content of annexure "POC 3" to the particulars of claim, it reflects dates of injury and treatment, all occurring after 31 July 2009; being the date when the agreement was made an order of court. As a result these outstanding accounts, so the defendants went on to contend, cannot form part of the backlog medical accounts as contained in annexure "JL12" which was not attached to the particulars of claim.[4]

[26] In respect of this *point in limine*, Mr Welgemoed appearing on behalf of the plaintiff had argued, annexure "POC 3" contains sufficient particularity to enable the defendants to reply thereto. Furthermore, that the defendants have all the information which they might require on their computer system whereby the correctness of the plaintiff's claim could be verified.

[27] This argument with respect, I cannot find favour with. It is not for the defendants to check their computer systems to verify the correctness of the plaintiff's claim. If one has regard to annexure "POC 3" it reflects how the liquidated amount sounding in money sued for by the plaintiff was arrived at, but more importantly it reflects as correctly pointed out by Mr. Mothibe acting on behalf of the defendants, dates of injury

[3] Affidavit resisting paragraph 5
[4] Affidavit resisting para 5.5

and treatment all incurring after 31 July 2009. This being the date when the settlement agreement forming the underlying *causa,* was made an order of court.

[28] A court in considering a summary judgment application is required to assess as to whether a defendant has disclosed the nature and the grounds of his or her defence and whether on the facts so disclosed the defendant appears to have as to either the whole or part of the claim, a defence which is bona fide and good in law.[5]

[29] Furthermore, in the matter Gulf Steel (Pty) Ltd v Rack-Rite Bop (Pty) Ltd and Another 1998 (1) SA 679 (O) at 683I-J the Court held:

> *"In view of the nature of the remedy the Court must be satisfied that a plaintiff who seeks summary judgment has established its claim clearly on the papers and the defendants have failed to set up a bona fide defence as required in terms of the Rules of Court. There are accordingly two basic requirements that the plaintiff must meet, namely a clear claim and pleadings which are technically correct before the Court. If either of these requirements is not met, the Court is obliged to refuse summary judgment."*

[30] Ex facie annexures "POC 1 and POC 3" and for the reasons alluded to *supra*, I am not persuaded that the plaintiff has established its claim clearly on the papers and that its pleadings are furthermore, technically correct. Consequently, I find that the *point in limine of non-compliance with the provisions of Rule 18(4)* to have merit.

[5] Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 426

[31] The defence of the plaintiff's pleadings not being technically correct, in my view is dispositive of the requirements set out in terms of Rule 32(3)(b) in that it will if proved at trial constitute an answer to the Plaintiff's claim.

ORDER

[32] Consequently and for the reasons alluded to above the following order is made:

32.1 The application for summary judgment is refused.

32.2 Leave to defend is granted to the defendants, with

32.3 Costs in the cause.

C. J. COLLIS

JUDGE GAUTENG DIVISION PRETORIA

APPEARANCES	:	
FOR APPLICANT	:	Adv. C.J. Welgemoed
INSTRUCTED BY	:	Quiryn Spruyt Attorneys.
FOR RESPONDENTS:		Adv. W. Mothibe
INSTRUCTED BY	:	The State Attorney Pretoria.
DATE OF HEARING	:	16 October 2018
DATE OF JUDGMENT:		26 February 2019