

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2017/63061

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
.....16/8/2019.....	
DATE	MOKOSE SNI

In the matter between:

LAURIKA LOUIS DU BOIS N.O.

1st Plaintiff

JOHANNES PETRUS DU BOIS N.O.

2nd Plaintiff

DANIEL FRANCOIS DU BOIS N.O.

3rd Plaintiff

(In their capacity as trustees of the time being of the
Anglo African Management Trust trading as
DE VETTE MOSSEL hereinafter referred to as "the trust")

and

THEO WALLIS

1st Defendant

MARIET WALLIS

2nd Defendant

JUDGMENT

- [1] The defendants filed an exception to the plaintiffs' particulars of claim after the plaintiffs had been given an opportunity to amend the particulars of claim in order to remove the cause of complaint. The plaintiffs filed a notice of amendment to which an objection was filed. However, they did not proceed with the proposed amendment.
- [2] The defendants' notice of exception is based on the Notice in terms of Rule 23(1) which indicated that the summons was vague and embarrassing and also that they failed to disclosed a cause of action. The proposed amendment which was not proceeded with failed to cure the inefficiencies.
- [3] The plaintiffs' case is that an agreement was concluded on 8 June 2016 wherein it provided, *inter alia*, that the trust had an obligation to act as independent contractors for the management of the De Vette Mossel Restaurant in Klerksdorp. This included the payment of building materials and the provision of all relevant equipment. The defendants' obligation was to pay the sum of R175 000,00 in respect thereof. The agreement further provided that the defendants would bear the full costs for the building and fitting out of the restaurant. The trust's 30% profit share would be used to reimburse the defendants.
- [4] The excipient bears the onus of proving that the allegedly lacking in sufficient particularity is such as he would be embarrassed in pleading thereto. When the particularity pertains to a mere detail, the defendant's remedy is to utilise the Uniform Rules of Court and either plead to the averment made or use the Rules of Court by

means of a request for particulars for trial of those particulars which are strictly necessary to enable the defendant to prepare for trial.¹

[5] Pleadings are deemed to be vague and embarrassing if when read as a whole, the pleadings are so unclear and ambiguous that the opposing party is uncertain of the case he is required to meet and, materially prejudiced if he is required to plead in answer thereto. To successfully establish an exception based on pleadings being vague and embarrassing, the excipient must satisfy the court of the following, that:

- (i) the allegation of vagueness and embarrassment must not relate to or be directed to particular and isolated paragraphs. They must relate to the whole cause of action;
- (ii) it requires the excipient to satisfy the court that the pleadings are so unclear and ambiguous that the reader thereof would be unable to determine a clear and single meaning from the statement; and
- (iii) the court must be satisfied that on any conceivable interpretation of the pleading, the excipient could not plead thereto without being embarrassed.

[6] In respect of an exception based on the failure of the plaintiff to sustain a valid cause of action, the allegations contained in the particulars of claim are deemed to be accurate. The excipient has to prove that even if all the allegations in the pleadings are genuine, they do not amount to the founding of a valid cause of action on any conceivable interpretation that could reasonably be attached to the pleadings.²

¹ Jowell v Bramwell-Jones and Others 1998 (1) SA 836 at 902 B - D

² Amalgamated Footwear and Leather Industries v Jordan & Co Ltd 1948 (2) SA 891 (C) at 893

- [7] The defendants' first ground of exception is that the plaintiffs rely on an agreement which is partly written and partly an oral agreement concluded between them. The copy of the agreement annexed to the particulars of claim does not bear the signatures of either of the trustees or the second defendant. No allegation was made to the effect that the alleged agreement was ever signed by the parties or that they accepted the agreement in some manner or another.
- [8] Counsel for the defendant conceded that the agreement annexed to the particulars of claim had in fact not been signed by the parties.
- [9] It is essential that particulars of claim are pleaded in such a manner that when read as a whole, they are not so unclear and ambiguous that the opposing party is uncertain of the case it is required to meet, and becomes materially prejudiced if it is required to plead in answer thereto.³
- [10] In view of the concession by the plaintiff, I am of the view that the excipient has been prejudiced by their failure and accordingly uphold the exception.
- [11] The second ground upon which the defendant raises an exception is that in terms of the agreement the trust would be responsible for the erection of the structure and the provision of a fully operational restaurant. The agreement further states that the defendants would be responsible for the payment of R175 000,00 but further on in the agreement, there is an apparent contradiction in that the defendants would bear the full costs for such erection. The trust's profit share of 30% would be used to reimburse

³ Tuckers Land & Development Corporation v Loots 1981 (4) SA 260 (T) 263-264

the defendants for that portion that they paid over the initial payment of R175 000,00. The averments make reference to a letter in terms of which supplementary terms were set out. The defendant avers that the letter dated 10 April 2017 clearly does not set out supplementary terms of the agreement.

[12] The plaintiff attempted to rectify this but failed to proceed with the proposed amendments to the particulars of claim.

[13] I am of the view that the plaintiffs' particulars of claim are indeed vague and embarrassing in that the defendants are unable to discern a clear and unambiguous meaning therefrom, nor plead thereto without being embarrassed. Accordingly, the exception is upheld.

[14] The third ground upon which the defendants excepted to the particulars of claim is that it is unclear on what basis the allegation is made that the defendants' notice that the restaurant was no longer viable constituted a repudiation.

[15] It is unclear whether the plaintiffs rely on the alleged repudiation as a cause of action in light of the fact that it appears to be a *rei vindication*. Furthermore, the defendant excepts to the particulars of claim which appears to be a *rei vindication*.

[16] From the pleaded version of the particulars of claim, it appears that the trust did not pay for the equipment in terms of the agreement. The defendants had provided for and paid for the equipment. There is no indication as to when transfer of ownership of

the equipment to the trust had taken place. It is unclear from the particulars of claim how the trust alleges that it became the owner of the equipment.

- [17] The object of an exception is to dispose of the case or a portion thereof in an expeditious manner or to protect a party against an embarrassment. I am of the considered view that the particulars of claim are vague and embarrassing and as such, the exception is upheld.
- [18] Counsel for the plaintiff indicated to the court that because of her concession that the agreement attached to the particulars of claim was incorrect and because they did not proceed with the proposed amendment to the particulars of claim, they would not oppose the exceptions raised by the defendants.
- [19] Accordingly, the grounds for the exceptions are upheld and the following order is granted:
- (i) The plaintiff is ordered to amend the particulars of claim within fifteen (15) days of the granting of this order;
 - (ii) The plaintiff is ordered to pay the defendant's costs of the exception.



MOKUSE J

Judge of the High Court
of South Africa

Gauteng Division,
Pretoria

For the Plaintiff:

Adv SG Van der Walt

Instructed by

Du Bois Attorneys

c/o Tim du Toit & Co Inc

For the First Defendant:

Adv DTVR du Plessis SC

instructed by

Owen de L'Ange Attorneys

c/o Bernhard van der Hoven Attorneys

Date of Hearing: 6 August 2019

Date of Judgement: 16 August 2019
