



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 - No

DATE: 1 February 2019.....

SIGNATURE:

Case No. 35432/2018

In the matter between:

GPC INTERNATIONAL LOGISTICS CC

PLAINTIFF

And

MOBILE TELEPHONE NETWORKS (PTY) LTD

FIRST DEFENDANT

DSV SOUTH AFRICA (PTY) LTD

SECOND DEFENDANT

JUDGMENT

MILLAR, A J

1. This is an application for the upholding of exceptions taken against the particulars of claim filed by the plaintiff in an action against the first and second defendants. For purposes of this judgment I will refer to the excipients as defendants and to the plaintiff as the respondent.
2. Both of the defendants delivered notices in terms of rule 23(1) of the Uniform Rules of Court calling on the plaintiff to remove the particular causes of complaint raised by each of them.
3. No response was forthcoming from the plaintiff to either of the defendants, and so both proceeded to deliver their respective exceptions to the plaintiff's particulars of claim.
4. The first defendant raised six different grounds upon which its exception was taken. Essentially the complaint in each was that the plaintiff failed to comply with the provisions of Rule 18:
 - 4.1 Rule 18(6) in that the particulars to be pleaded in respect of an oral contract were not pleaded in paragraph 4 of the particulars of claim – the first exception; and
 - 4.2 Rule 18(10) in that there was insufficient particularity pleaded to enable the assessment of the services rendered and goods supplied and following from this the quantum claimed (in paragraph 5.2) – the second to sixth exceptions.
5. The second defendant's exception is a crisp one and is raised on the basis that there is no cause of action pleaded against it.
6. The relevant paragraphs of the particulars of claim read as follows:

“4. During July 2015 and at Johannesburg, Plaintiff represented by Gary Paul Murphy and Defendant represented by Thelma Nthudu verbally agreed that

Plaintiff would render logistical services to First Defendant for a period of 3 (Three) years to terminate on 31 July 2018.

5. *The relevant terms and conditions of the Agreement were then as follows:*

5.1 *Plaintiff would render services to Defendant on a monthly basis for the 3 (Three) year period terminating at the end of July 2018;*

5.2 *The services would entail the rendering of logistical services (transport of Cell phones and other assets), security services, and supply of vehicles to the First Defendant.*

5.3 *First Defendant would reimburse the Plaintiff at a fixed rate of R1 772 441.66 excluding VAT per month in respect of security services (inclusive of Escorts).*

5.4 *Plaintiff would provide security, radio and tracking devices at a cost of R32 172.71 excluding VAT per month.*

5.5 *Plaintiff would provide vehicles at a rental cost of R443 169.68 excluding VAT per month.”*

6. *“Rule 18(4) of the Uniform Rules of Court provides that 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, with sufficient particularity to enable the opposite party to reply thereto.*

It is, of course, a basic principle that particulars of claim should be so phrased that a defendant may reasonably and fairly be required to plead thereto. This must be seen against the background of the further requirement that the object of pleadings is to

enable each side to come to a trial prepared to meet the case of the other and not be taken by surprise.

Pleadings must therefore be lucid and logical and in an intelligible form; the cause of action or defence must appear clearly from the factual allegations made”¹

7. In the present matter the particulars of claim must be looked at as they stand² and

“We have to look at the matter from the point of view of the party who is faced with a pleading of this nature. How is he to know what case he is called upon to meet?”³

and

“in order for an exception to succeed, it must be excipiable on every interpretation that can reasonably be attached to it. See First National Bank of Southern Africa Ltd v Perry NO and Others 2001 (3) SA 960 (SCA) at 965D. Further, that a charitable test is used on exception, especially in deciding whether a cause of action is established. The pleader is also entitled to a benevolent interpretation. The pleadings must be read as a whole, no paragraph can be read in isolation.”⁴

8. Paragraph 4 of the particulars of claim refer to an agreement having been reached with the “defendant” – in the singular⁵ but there are two defendants cited in the papers.

¹ Trope v South African Reserve Bank and Another 1992 (3) SA 208 (T) at 210G-H

² Dilworth v Reichard [2002] 4 All SA 677 (W)

³ General Commercial and Industrial Finance Cor, Ltd v Pretoria Portland Cement Co., Ltd 1944 AD 444 at 454

⁴ Nel and Others NNO v McArthur and Others 2003 (4) SA 142 (T) at 149E-G

⁵ “Separate, individual, single” and “Of or pertaining to an individual” Shorter Oxford English Dictionary, Oxford University Press, Fifth Edition 2002 at page 2846

Paragraph 4 thereafter refers to the contract for the render of services to the First Defendant.

9. There is no reference to the Second Defendant specifically anywhere in paragraph 4 or for that matter elsewhere in the particulars of claim save for its citation in paragraph 2.2 and in paragraph 7 where the allegation is made that it paid invoices submitted to it. Save for these two direct references there are no other references to the second defendant.
10. It is not clear from the manner in which the agreement has been pleaded in paragraphs 4 and 5 (in referring to the “defendant” in the singular in paragraphs 4 and 5.1 and referring specifically to the first defendant in paragraphs 5.2 and 5.3 and referring to neither of the defendants in paragraphs 5.4 and 5.5), who the agreement was entered into with and what the terms were with the party or parties concerned⁶. For these reasons the exception taken by the second defendant must be upheld.
11. The first defendant did not raise as a ground of exception that the particulars of claim disclosed no cause of action. If it had, I would have upheld it. During argument it was contended that as the second defendant had delivered its exception first, the first defendant need not have raised the same exception. The argument was that once the particulars of claim are found to be excipiable then the consequences that flow from this inure to the benefit of both parties.
12. While this is so, it must be borne in mind that each party has taken its own exception. Each is separate and distinct (in this case) and it is only a matter of convenience that both were heard at the same time. If one of the parties had withdrawn its exception or the plaintiff had withdrawn the action against that party, it would not have been open to the other to rely on grounds of exception not raised by it.

⁶ Nel supra at 146H-147A; Jowell v Bramwell-Jones & Others 1998 (1) SA 836 (W) at 899G; see also Francis v Sharp 2004 (3) SA 230 (C)

13. I now deal with the exceptions raised by the first defendant. The first exception is that because the particulars of claim did not specify the specific date or place when and where the contract was entered into, the particulars of claim are vague and embarrassing. I do not agree – as appears from paragraph 4, the contract was stated to have been entered into “*During July 2015 and at Johannesburg*”. Sufficient particularity has been furnished to plead to this allegation. Insofar as the first defendant is entitled to further particulars in regard to these allegations, it does not detract from the fact that it is able to plead. For this reason, I would not uphold the first ground of exception.
14. The second to sixth grounds of exception are raised in respect of what is claimed from the first defendant and the quantum of the claim. The plaintiff pleaded a claim for “*logistical services*”, referring to this in paragraphs 3 and 4. In paragraph 5.2 it is pleaded as “*logistical services (transport of Cell phones and other assets)*”. It also referred to “*services*” in paragraph 6 and to a “*service agreement*” in paragraph 8. The plaintiff also pleads and relies on a written termination of the “*service agreement*” expressed in an annexure to the particulars of claim to be in respect of “*vehicle rental services*”
15. It is against this background that the particulars of claim are said to be vague and embarrassing, the plaintiff having pleaded in in paragraph 5.2 that the “*services*” it would provide were for logistical services, security services and the supply of vehicles. It also pleads separately, claims for “*security services (inclusive of escorts)*”, “*security, radio and tracking devices*” and “*vehicles at a rental cost*”. All of these claims are expressed as lump sums. None of the amounts claimed are expressed to be estimates and have been calculated to a specific amount.⁷ The plaintiff having pleaded insufficient

⁷ Sasol Industries (Pty) Ltd t/a Sasol 1 v Electrical Repair Engineering (Pty) Ltd t/a L H Marthinusen 1992 (4) SA 466 (W) at 467D – “A bald allegation by a plaintiff as to the quantum of his damages does not amount to compliance with Rule 18(10), particularly where he does not allege that the damages claimed are an estimate and where it furthermore appears they were calculated to an exact amount.”

information for the first defendant to plead, the second to sixth exceptions must be upheld.

16. In the circumstances it is ordered:

12.1 The exception of the first defendant is upheld with costs.

12.2 The exception of the second defendant is upheld with costs.

12.3 The plaintiff is granted leave to deliver amended particulars of claim within 15 days.

A MILLAR
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 31 JANUARY 2019

JUDGMENT DELIVERED ON: 1 FEBRUARY 2019

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