

REPUBLIC OF SOUTH AFRICA



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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2020/48002

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
19/10/2021	<i>[Signature]</i>
DATE	MOKOSE SNI

In the matter between:

THE BODY CORPORATE WEeping WILLOW

Respondent/Plaintiff

and

MATOME THOMPSON MALATJI

1st Excipient/Defendant

SENKOANE THANDI MOIFO

2nd Excipient/Defendant

JUDGMENT

MOKOSE J

[1] The first and second defendants raised an exception to the plaintiff's particulars of claim on the basis that it is vague and embarrassing and/or it lacks averments necessary to sustain a cause of action.

[2] The plaintiff's case is that *'the defendants are in arrears with the payment of levies as well as legal fees incurred by the Body Corporate in obtaining the recovery of the arrear levies, as set out in the levy statement marked D, for which the defendants are liable in terms of paragraph 7 in the amount of R77 510,25 for the months from July 2018 up to and including the months of September 2020.'*

[3] The defendants excipiated to the summons for the reasons they are unable to determine how much the arrear levies are, for which months they are applicable and what portion of the claim is in respect of legal fees.

[4] It is trite law that for the purposes of adjudicating an exception, the facts as alleged in the challenged pleadings must be accepted as correct. It is essential that an excipient proves that the pleading is excipiable on every conceivable interpretation that can reasonably be attached to it and the pleadings must be looked at as a whole.¹

[5] 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.²

[6] 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

¹ First National Bank of SA Ltd v Perry N.O. 2001 (3) SA 960 (SCA) at 965 C - D

² Jowell v Bramwell-Jones and Others 1998 (1) SA 836 at 902 B - D

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.

[7] 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.³

[8] The defendants argue that they are unable to plead to the particulars of claim for the reason that a globular amount of R77 510,25 is being claimed without an indication of what amount is in respect of legal fees.

³ Amalgamated Footwear and Leather Industries v Jordan & Co Ltd 1948 (2) SA 891 (C) at 893

[9] They argue further that according to Section 25(4) of the Sectional Title Schemes Management Act 8 of 2011, a member of a body corporate would only be liable for and must pay the body corporate all reasonable legal costs and disbursements as are taxed or agreed to by the member in the collection of arrears amounts due and owing by the member or in compliance with the conduct rules of the scheme or the Act.

[10] The plaintiff contends that the particulars of claim are not vague and embarrassing as alleged and that the claim sufficiently sets out the amount of the claim with supporting annexures. As such, the defendants are in a position to plead to the averments and are not embarrassed to plead to the averments. Furthermore, the plaintiff contends that it has pleaded every fact, if traversed by evidence would entitle it to be granted judgment on the cause of action. Accordingly, the particulars of claim do not lack averments to sustain a cause of action.

[11] 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.⁴

[12] The question the court needs to consider is whether the plaintiff's allegations in the particulars of claim enable the defendant with some particularity to ascertain what portion of the amount claimed is in respect of legal fees. It is noted that the Sectional Title Schemes Management Act provides a body corporate may not debit a member's account with any amount that is not a contribution or charge levied in terms of the Act without the member's consent or the authority of a

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

judge, adjudicator or arbitrator.⁵ It is the duty of a court when an exception is taken to a pleading, first to see if there is a point in law to be decided which will dispose of the case as a whole or in part. If there is not, then it must see if there is embarrassment which is real and as such cannot be met by asking of particulars, as the result of the faults in pleading to which exception is taken. And, unless the excipient can satisfy the court that there is such a point of law or such real embarrassment, then the exception should be dismissed.⁶

[13] I am of the view that the plaintiff's particulars of claim are indeed vague and embarrassing in that the excipients are unable to discern a clear and unambiguous meaning therefrom of what the amounts claimed are in respect of, nor plead thereto without being embarrassed. The excipients are unable to sensibly plead and meet the plaintiff's case properly on every interpretation that can be reasonably be attached to it and are materially prejudiced. Accordingly, the exception is upheld.

[14] The following order is granted:

- (i) the plaintiff is ordered to amend the particulars of claim within ten (10) days of the granting of this order;
- (ii) the plaintiff is ordered to pay the defendants' costs of the exception.



MOKOSE J

Judge of the High Court of
South Africa

Gauteng Division, Pretoria

⁵ Section 25(5) of the Sectional Title Schemes Management Act 8 of 2011

⁶ Khan v Stuart 1942 CPD 386 at 392

For the Excipients:

Adv A Khosa

Instructed by

CL Mabasa Attorneys

For the Respondent:

Adv CJS Kock

Instructed by

Pretorius Le Roux Inc

Date of Hearing: 18 October 2021

Date of Judgement: 19 October 2021