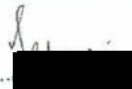


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 79806/2018

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
11 January 2022	
DATE	SIGNATURE

In the matter between:

VOX TELECOMMUNICATIONS (PTY)LTD

PLAINTIFF

And

BRIDGE COLLECTIONS (PTY)LTD

DEFENDANT

JUDGMENT

TLHAPI J

[1] The defendant launched an application excepting to the plaintiff's particular of claim on 9 November 2020.

[2] The causes of complaint were stated as follows:

First complaint:

"1.1 The plaintiff's summons is vague and embarrassing as it fails to comply with Rule 18(4) and 18(10) which provides the following

"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

(10) A plaintiff suing for damages shall set them out in such manner as will enable the defendant reasonably to assess the quantum thereof."

1.2 In terms of the particulars of claim the plaintiff is suing the defendant for the amount pf R939 630.21

1.3 The plaintiff fails to set out with sufficient clarity when the indebtedness arose, how such an amount is calculated and on what basis the amount is claimed

Second complaint:

2.1 The plaintiff's claim is vague and embarrassing as it refers to "the second agreement" as dated 22 April 2015 that is attached as "POC2" however the agreement attached as "POC2" is an agreement dated 22 April 2016.

[3] The relief sought was that the exception be upheld, the plaintiff be ordered to amend the particulars of claim within 15 days of the order being obtained. With regard to the second complaint the amended particulars of claim refer to a further

Subscribers Agreement marked "POC2"

[4] The exception was opposed by the plaintiff and notice was given to the defendant in terms of Rule 30 and Rule 30 A that the defendant had failed to comply with Rule 23(1)(a) of the Rules of Court by giving notice within 10 days of the receipt of the pleading where the defendant contended in its exception that the pleadings were vague and embarrassing and by giving the plaintiff 15 days to remove cause of complaint as required by the said rule. According to the plaintiff non-compliance was fatal and that the exception was bad at law.

[5] Rule 23 (1)(a) provides:

"23 (1).....where a party intends to take an exception that pleading is vague and embarrassing he shall within the period allowed as aforesaid by notice afford his opponent an opportunity of removing the cause of complaint within 15 days: Provided further that the party excepting shall within ten days from the date on which a reply to such notice is received or from the date on which such reply is due, deliver his exception" (my underlining)

[6] It is common cause that the defendant filed a first notice in terms of Rule 30 and 30A on 6 March 2019 which was followed by a notice of exception dated 25 June 2019 where the complaint being dealt with presently was listed as complaint 8. The present exception of 9 November 2020 was not preceded by a notice as demanded by the plaintiff. This notice of exception was preceded by the first notice of bar served on 14 June 2019 and the second notice of bar on 22 October 2020. The exception of June 26 2019 was not prosecuted.

[7] Ordinarily the Rule 23(1)(a) should be a preliminary step taken by an aggrieved party who alleges that the pleadings are vague and embarrassing. In this

instance since it was the defendant then it had to have in mind when contemplating the exception that it too had to comply in that the notice had to be served within certain time periods and the exception to be filed only when the response to the notice was not satisfactory.

[8] When regard is had to the chronology set out by the plaintiff what is of importance now is to question how serious is the failure by the defendant to take the preliminary step first to serve the Rule 23(1)(a). In my view the plaintiff was served with the first notice which the defendant failed to prosecute. The plaintiff was aware of the exception raised relating to the pleadings being vague and embarrassing in that notice. In my view the plaintiff could have dealt with the complaint in its amended pleadings. As I see it, the fact that it was not dealt with is the reason for the exception. In my view having regard to the facts that preceded the exception this court should allow the exception in the interests of progress. The relief claimed by the defendant requires nothing more than removing the cause of complaint. In as far as the second complaint is concerned, in "POC2" what comes before the date 22 April 2015 is illegible and it is not clear who the signatories are. However on 22 April 2016 the Accountant and Sales Manager affirm that authorisation has been given to enter to the agreement. It is not clear whether there was an error but the facts relied upon by the plaintiff have to be clearly pleaded. Counsel for the defendant has in his heads of argument made out a case to my satisfaction that it would be prejudiced in pleading if there was no clarity on the details relating to the cause of action.

[9] While I would allow the exception the issue of costs needs to be determined. Summons were issued on 31 October 2018, followed by an application for summary judgement which was resisted and, from there various processes were engaged. It is not appropriate to determine at this stage which party is being dilatory as I do not have the facts. I have determined that the ordinarily a Rule 23 (1)(a) notice was a requirement but I also found that the plaintiff had knowledge of the issues raised and could simply have dealt with it by amending its particulars of claim. I shall therefore

not award costs for the exception to any of the parties,

[10] In the result the following order is given:

1. The defendant's exception is upheld;
2. The Plaintiff is ordered to amend the particulars of claim within 15 days of service upon it of this order;
3. There is no order as to costs;



TLHAPI V V

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON	:	17 AUGUST 2021
JUDGMENT RESERVED ON	:	17 AUGUST 2021
ATTORNEYS FOR THE PLAINTIFF'S	:	JACOBSON & LEVY INC.
ATTORNEYS FOR THE DEFENDANTS:		MAKDA CULL KOTZE INC.