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

Case number: 2081/2021

REPORTABLE: NO  
OF INTEREST TO OTHERS JUDGES: NO  
REVISED  
20/4/22

In the matter between:

**NUMBER TWO PIGGERIES (PTY) LTD  
(Registration No. 1980/00797/07)**

**EXCIPIENT**

**And**

**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**RESPONDENT**

**In re:**

**CITY OF TSHWANE METROPOLITAN MUNICIPALITY**

**PLAINTIFF**

**And**

**NUMBER TWO PIGGERIES (PTY) LTD  
(Registration No. 1980/00797/07)**

**DEFENDANT**

**JUDGMENT**

**TOLMAY J:**

**INTRODUCTION**

[1] This is an exception in which the defendant (excipient) complains that the plaintiff's ("the City") amended particulars of claim are vague and embarrassing and/or lacking in allegations necessary to sustain a cause of action.

**BACKGROUND**

[2] On 14 January 2021 the City issued a combined summons claiming payment from the excipient for electricity and municipal services rendered together with interest and costs.

[3] The excipient delivered notices in terms of Rules 35(12) and (14) on 1 April 2021 calling upon the City to produce, for inspection, a copy of the written consumer agreement it alleged it had concluded with the excipient and the invoices or statements to which the City referred in its particulars of claim. The excipient delivered a Rule 30A notice when the City failed to produce those documents. The City delivered a notice of intention to amend its particulars of claim on 28 April 2021.

[4] A further exchange of correspondence between the parties' respective attorneys ensued wherein the excipient pointed out that the City's proposed amendment did not disclose a cause of action, was vague and embarrassing and that the excipient remained entitled to the documents sought under Rules 35(12) and (14). The City delivered a second notice of intention to amend its particulars of claim on 21 May 2021.

[5] On 10 June 2021, the excipient's attorneys wrote to the City's attorneys pointing out that the formulation of its claim in paragraph 8 thereof was problematic. The City was invited to reconsider its position before any formal steps would be taken in relation thereto by the excipient. The City declined the excipient's invitation. The excipient filed a formal objection to the second proposed amendment which crossed with the delivery of the City's amended pages. The City's attorneys adopted the stance that, because amended pages had been filed, the excipient was precluded from objecting thereto. Implicit in the City's stance is that the excipient is precluded from objecting thereto, because the amended pages had been filed. The City was

again requested to reconsider its position. The City declined to do so. As a result of the City's stance, the excipient delivered a notice to remove the cause of complaint on 21 June 2021 and, when this was ignored, an exception was delivered on 21 July 2021.

### **LEGAL PRINCIPLES APPLICABLE TO EXCEPTION**

[6] The law pertaining to exceptions is trite. The aim of exception procedures is to avoid the leading of unnecessary evidence and to dispose of a case wholly or in part in an expeditious and cost effective manner.

[7] It is important to refer to Rule 18 of the Uniform Rules of Court in this regard,

- (a) Rule 18(4) provides: *"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."*
- (b) Rule 18(5) provides: *"When in any pleading a party denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but shall answer the point of substance."*
- (c) Rule 18(6) provides: *"A party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleadings shall be annexed to the pleading."*

[8] In *Trope v South African Reserve Bank*<sup>1</sup> the following was said about an exception relying on the allegation that the pleading was vague and embarrassing:

*"An exception to a pleading on the ground that it is vague and embarrassing involves a two-fold consideration. The first is whether the pleading lacks particularity to the extent that it is vague. The second is whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced (Quinlan v MacGregor 1960 (4) SA 383 (D) at 393 E – H). As to whether there is prejudice, the ability of the excipient to produce an exception-proof plea is not the only, nor indeed the most important, test –*

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<sup>1</sup> 1992 (3) SA 208 (T) ("Trope").

*see the remarks of Conradie J in Levitan v Newhaven Holiday Enterprises CC 1991 (2) SA 297 (C) at 298G – H. If that were the only test, the object of pleadings to enable parties to come to trial prepared to meet each other's case and not to be taken by surprise may well be defeated. Thus, it may be possible to plead to particulars of claim which can be read in any one of a number of ways by simply denying the allegations made; likewise to a pleading which leaves one guessing as to its actual meaning. Yet there can be no doubt that such a pleading is excipiable as being vague and embarrassing – see Parow Lands (Pty) Ltd v Schneider 1952 (1) SA 150 (SWA) at 152F – G and the authorities there cited. It follows that averments in the pleading which are contradictory and which are not pleaded in the alternative are patently vague and embarrassing; one can but be left guessing as to the actual meaning (if any) conveyed by the pleading.”<sup>2</sup>*

[9] It was also stated in *Trope* that “A bare reference to a statute or set of regulations, without specifying the particular section or regulation on which reliance is placed or the facts which enable the section or regulation to be identified cannot in my view suffice, and that must be so whether the statute or regulation on which reliance is placed are the only facts relied upon to fix the defendant with liability or whether they are but one of the factors to be considered in conjunction with any other facts on which reliance is placed ...”<sup>3</sup>

[10] To determine whether a pleading is vague and embarrassing the pleading must be read as a whole.<sup>4</sup> An exception based on vagueness and embarrassment is intended to rectify any defect or incompleteness in the manner in which the pleading is structured and which will result in embarrassment to the party required to plead and strikes at the formulation of the cause of action.<sup>5</sup> It can only be allowed if the excipient will be seriously prejudiced if the offending allegations are not expunged and can only be taken if the vagueness relates to the cause of action.<sup>6</sup>

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<sup>2</sup> *Ibid* p 211 A – E.

<sup>3</sup> *Ibid* 214 E – G.

<sup>4</sup> *Trope and others v South African Reserve Bank* 1993(3) SA 264(A) at 268F, 269I.

<sup>5</sup> *Jowell v Bramwell-Jones and Others* 1998 (1) SA (W) at p 889 G; *Nel and Others N.O. v McArthur* 2003 (4) SA 142 (T) 149F.

<sup>6</sup> *Levitan v New Haven Holiday Enterprises CC* 1991 (2) SA 297 (C) p 298 A.

[11] A court is obliged to consider whether the pleading lacks particularity to an extent amounting to vagueness. A statement is vague if it is either meaningless or capable of more than one meaning.<sup>7</sup> If the aforementioned vagueness exists the court is obliged to undertake an analysis of the embarrassment that the excipient can show is caused due to the vagueness complained of.<sup>8</sup> The ultimate test when determining an exception is whether the excipient is prejudiced.<sup>9</sup> The *onus* is on the excipient to proof both vagueness, embarrassment and prejudice.<sup>10</sup>

[12] If the exception is based on an absence of a cause of action the court should deal with the exception sensibly and not in an over-technical manner.<sup>11</sup> Although one should not be overly technical and read the pleading as a whole the claim should be formulated in a way that allows the defendant to ascertain clearly what the case against it is and should enable the defendant to plead on it.

### **THE GROUNDS OF COMPLAINT**

[13] The excipient complains that the City's amended particulars of claims is vague and embarrassing and/or lacking in allegations necessary to sustain a cause of action. One of the offending paragraphs against which the exception is raised is paragraph 8.

[14] Part 8 of the particulars of claims reads as follows:

*“8. On or about 20 April 2016, the defendant opened an account with the plaintiff for the provision of municipal services such as electricity and also the levy for property rates. Upon opening the account with the plaintiff the defendant was allocated account number [...]. The defendant used account number [...] as a reference whenever the defendant made payment to the plaintiff for municipal services and for the levy on property rates. The following are common cause arising from the above:*

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<sup>7</sup> Wilson v South African Railways & Harbours 1981 (3) SA 1016 (C) p 1018 H.

<sup>8</sup> Trope p 211 B.

<sup>9</sup> Trope p 211 B; Francis v Sharpe 2004(3) 230 (C), p 240 E – F;

<sup>10</sup> Lockhat v Minister 1960(3) SA 765 D p 777 A; Colonial Industries Ltd v Provincial Insurance Co Ltd 1920 CPD 627, p 630. Amalgamated Footwear & Leather Industries v Jordan & Co Ltd 1948 (2) SA 891

(C) p 893

<sup>11</sup> Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standard Authority SA 2006 (1) SA 461 (SCA) p 465 H.

*8.1 the plaintiff has standard terms and conditions for the supply of property rates and electricity as envisaged in the Municipal Property Rates Act and Standard Electricity By-Laws. A copy of the plaintiff's standard terms and condition applicable to all businesses including the defendant is attached hereto and marked "NTP 1.1".*

*8.2 These standard terms and conditions, read together with the Municipal Property Rates Act and Standard Electricity By-Laws are binding on the defendant as they constitute the terms and conditions for the supply of electricity and also for the levy for municipal property rates and must accordingly be read as if specifically incorporated herein.*

*8.3 The defendant, being bound by the standard terms and conditions read together with the Municipal Property Rates Act and Standard Electricity By-Laws, paid the plaintiff for municipal services such as electricity and the levy for the property rates using account number [...] as reference number whenever the defendant made payment to the plaintiff.*

*8.4 It is common cause that the defendant has at all material times used account number [...] as a reference number when making payment to the plaintiff for the cost (sic) electricity supplied by the plaintiff to the defendant and for the levy for property rates as this is evident by the defendant's detailed breakdown statement attached hereto and marked "NTP 1.1.1". It is further common cause that annexure NTP 1.1.1. is the clearest indication that the defendant consumed electricity supplied to it by the plaintiff at the immovable property and was also billed for property rates and for which the defendant was not only liable to pay for it, but also paid for it."*

[15] The excipient complains that the alleged common cause facts that are pleaded in paragraph 8.2, 8.3 and 8.5 do not establish a cause of action and are inchoate and incomplete and ultimately the indication is that they are not common cause at all.

[16] The excipient complains that:" in paragraph 8.2, the Plaintiff alleges that it has

Standard Terms and Conditions "... *for the supply of property rates and electricity as envisaged in the Municipal Property Rates Act and the Standard Electricity By-Laws.*"

[17] The excipient complains that the City does not indicate which portions of the By-Laws and the Municipal Rates Act it relies on. This, the excipient argues is impermissible and it is as a result impossible for the excipient to plead. It is imperative that the City should indicate on which portion of the By-Laws and sections of the Municipal Rates Act it relies as confirmed in *Trope* referred to above. Absent that, the particulars of claim are vague and embarrassing. It cannot be expected from a litigant to guess which By-Laws and sections of the Municipal Rates Act find application. Applying the aforementioned legal principles, the failure to identify the applicable By-Laws and sections of the Municipal Rates Act, renders the particulars of claim vague and embarrassing. It requires an amendment of the particulars of claim in which the applicable By-Laws and sections of the Municipal Rates Act relied on are clearly identified.

[18] The excipient continues to complain in relation to paragraph 8.3 of the particulars of claims as follows. The Plaintiff alleges that the "*Standard Terms and Conditions, read together with the Municipal Property Rates Act and the Standard Electricity By-Laws are binding on the Defendant*" and "... *must accordingly be read as specifically incorporated herein.*" The City seems to rely on an agreement, but it is not clear whether the agreement was written, oral or partly written and oral. It seems to rely on unsigned documents that seems to be part of the agreement. In terms of rule 18(6) of the Uniform Rules of Court, a party should state whether the contract is oral or written and a copy of the agreement should be attached. The contract could be partly written and partly oral, but then it should be alleged. Absent these allegations the particulars of claim do not comply with Rule 18(6) of the Uniform Rule of Court and requires amendment.

[19] pleaded in paragraph 8.1 where the ostensible cause of action is one arising *ex contractu* from the opening of an account, whereas in paragraph 8.3 the City appears to allege an *ex lege* cause of action without identifying which legislation it relies on as set out above. The particulars of claim should clearly indicate whether

the claim is based on contract or *ex lege* and, if in the alternative, it should be pleaded as such.

[20] The excipient continues to point out as far as para 8.4 is concerned, that “paragraph 8.4 is a conclusion, which conclusion is the binding effect of the hitherto unidentified *"Standard Terms and Conditions"* and portions of the *"Municipal Property Rates Act and Standard Electricity By-Laws"*. In the light of what was already stated this paragraph constitutes a difficulty and makes it virtually impossible to plead to it and requires clarification.

[21] The excipient's objection also extends to paragraph 8.5, and the respondent alleges the defendant has used a particular account number and when referred to NTP1.1.1 it is alleged that it is proven that the defendant consumed electricity supplied to it and billed for property rates. The excipient argues that the allegation that the excipient was given a particular account number does not make it common cause that it consumed electricity. The fact of a statement annexed to the particulars of claim does not make it common cause that there was any consumption of electricity. It is accordingly clear that the alleged common cause facts are not common cause, but actually the respondent's version.

[22] The City's amended particulars of claim does not identify any right to claim from the excipient in a clear and cogent manner as far as the quantum is concerned. The City pleads as follows in paragraph 10 thereof:

*“The Plaintiff has rendered monthly tax invoices to the Defendant for municipal services such as electricity and property rates and taxes... A copy of this tax invoice is attached hereto and marked “NTP2”. The defendant made part payments for some of these invoices and elected not (sic) pay other invoices atall...”*

[23] The City attaches a series of invoices to the particulars of claim. These invoices however only demonstrate the fact that they were rendered. The City is required to plead the facts that led to the statement. The consumption of electricity is proved by meter readings and not by computer-generated printouts, where insufficient facts are alleged to enable the defendant to understand the content of the



statements and to plead thereto. The City similarly attach numerous pages of electronic printouts without any narrative explaining what they are.

[24] The City is required to identify and plead the meter readings over the relevant period and the charges associated therewith in such a manner that would enable the excipient to understand the basis of the City's calculation so that it could plead thereto. The only manner in which the *quantum* can be determined is to compare meter readings with applicable charges and subtract the payments made. It is required that the factual basis for the rendering of invoices be laid. The mere existence of invoices rendered is not sufficient to allow for proper pleading on the facts. This should be addressed by an appropriate amendment.

[25] The excipient argues correctly, that relating to property rates and zoning of the property and the applicable rates, the period for which the rates were unpaid should be alleged. If the excipient does not have these facts, it will be impossible to assess the quantum, whether the rates were properly levied and at the correct rate. Absent this information, the excipient is not placed in a position to effectively plead. The same applies to the electricity supply. The City is obliged to plead the applicable tariff and meter readings, which when multiplied, will determine the quantum. Absent this information it is not possible to plead to the allegation. The City will have to amend its particulars of claim to provide for these essential allegations to be made.

## **CONCLUSION**

[26] The conclusion is that the City's amended particulars of claim is vague and embarrassing and it cannot be expected of the excipient to plead to it.

[27] Contrary to what the excipient proposes, namely that the particulars of claim be struck out, I am of the view that the shortcomings can be rectified by a proper amendment to remove the causes of complaint.

## **COSTS**

[28] The excipient requested costs on an attorney and client scale but in my view such an order is not justified.

[29] The following order is made:

1. The exception is upheld.
2. The respondent is given 15 days from date of this order to attend to an amendment of the particulars of claim.
3. The respondent to pay the costs of the exception.

**R G TOLMAY**  
**JUDGE OF THE HIGH COURT, PRETORIA**

**DATE OF HEARING: 9 FEBRUARY 2022**

**DATE OF JUDGMENT: 2022-04-21**

**ATTORNEY FOR EXCIPIENT: MAURICE SHADIACK ATTORNEYS**

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