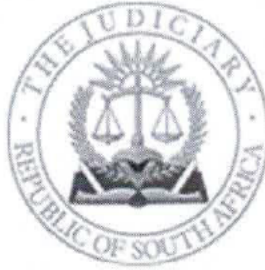


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 40205/14

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 15 February 2022 E van der Schyff I

In the matter between:

BRAVO GROUP MANUFACTURING (PTY) LTD APPLICANT

and

CITY OF JOHANNESBURG RESPONDENT

JUDGMENT

Van der Schyff J

Introduction

[1] The applicant filed a notice of motion wherein it sought that the court issue an order compelling the respondent to reply to the applicant's request for further particulars for the purposes of trial within 10 (ten) days of service of the order. A notice of set

down, wherein the matter was set down for hearing on the unopposed roll was filed with the respondent electronically on 3 September 2021. On 4 February 2022 the respondent filed a notice titled – ‘Notice of intention to oppose plaintiff’s application to compel further particulars for purposes of trial preparation’. On 7 February 2022, at 13h59, less than twenty-four hours before the matter was set down to be heard in the unopposed motion court, the respondent filed a notice of motion and answering affidavit with the applicant. The respondent seeks an order that the applicant’s application be removed from the unopposed court roll and that its answering affidavit be admitted.

- [2] The respondent did not proffer any explanation for the delay in filing its notice of intention to oppose the application or the answering affidavit, neither did its counsel make submissions in this regard. The respondent merely submitted in its answering affidavit that:

‘... there are cogent grounds for this affidavit to be considered and the Defendant’s late delivery of same be condoned.’

It is inexcusable that a litigant who is legally represented conducts its litigation in this fashion not explaining the reason for an excessive delay. This conduct impacts on the costs order granted.

- [3] Due to the nature of the relief sought, and to consider the relief sought by the respondent to remove the matter from the unopposed roll and for it to be re-enrolled in the opposed motion court, I afforded both counsel the opportunity to address me. Counsel for the applicant submitted that the nature of the relief sought did not justify the application to be directed to the opposed motion court for adjudication.

- (i) The applicant’s submissions

- [4] The applicant states in its founding affidavit that pleadings have closed and that trial preparations have commenced. Despite having served two requests for ‘Further Particulars for Trial Purposes’, the applicant has not received any response from the

respondent. The parties apparently held a pre-trial conference on 16 March 2021. The minutes are not uploaded.

(ii) The respondent's submissions

- [5] The respondent denies that there is a pending trial to be adjudicated. The defendant submitted that the plaintiff obtained an order during 2014 for the totality of the relief it sought as set out in the particulars of claim on a default basis. This, counsel submitted, brought finality to the litigation.

(iii) The applicant's reply

- [6] Applicant's counsel submitted in reply that the respondent lost sight of the nature of the relief sought by the applicant in the summons, and the effect of the court order. Counsel submitted that the nature of the litigation is characterised as 'statement and abatement'. Counsel referred the court to Harms, *Amler's Precedent of Pleadings*, where the learned author stated with reference to caselaw that a final order cannot be issued before debatement.

Discussion

- [7] It is common cause that the applicant instituted action against the respondent under the same case number in 2014. The relief sought, is set out in the particulars of claim as follows:

'WHEREFORE the Plaintiff prays for an order in the following terms:

1. Interdicting the Defendant from interfering with the supply of electricity to the Plaintiff until this matter has been finalised.
2. Ordering the Defendant to render a full account detailing the Plaintiff's consumption of electricity for the period January 2012 to date hereof within 90 (ninety) days of this Order; and
3. Ordering the Defendant to debate the account with the Plaintiff within 150 (one hundred and fifty) days from the date of this order.

4. That the Defendant credit the account of the Plaintiff with the amounts found to be due as credits to the Plaintiff, alternatively, that the Defendant make payment to the Plaintiff of the amounts found to be due as credits to the Plaintiff including interest charged in respect of amounts that should not have been debited to the account'
5. That the Defendant pay the costs of this action.
6. Further and/or alternative relief.'

[8] On 17 November 2014, and on a default basis, Basson J granted an order in the following terms:

'IT IS ORDERED

1. Interdicting the defendant from interfering with the supply of electricity to the plaintiff until this matter has been finalised;
2. THAT the defendant is to render a full account detailing the plaintiff's consumption of electricity for the period January 2012 to date hereof within 90 (ninety) days of this order;
3. THAT the defendant is to debate the account with the plaintiff within 150 (one hundred and fifty) days from the date of this order;
4. THAT the defendant credits the account of the plaintiff with the amounts found to be due as credits to the plaintiff, alternatively, that the defendant make payment to the plaintiff of the amounts found to be due as credits to the plaintiff including interest charged in respect of amounts that should not have been debited to the accounts;
5. THAT the defendant pays the costs of this application.'

[9] It is based on this order, that the respondent's counsel submitted that the litigation between the parties are finalised. However, I agree with the applicant's counsel who averred the respondent's counsel lost sight of the unique nature of the process often referred to as 'statement and debatement'.

- [10] Harms describes the procedure underpinning statement and debatement in *Ambler's Precedents of Pleadings*,¹ and then states with reference to *Dale Street Congregational Church v Hendrickse*:²


'This procedure is not obligatory and a plaintiff is entitled, in an appropriate case, to continue with the action for an account and simultaneously for its debatement.'

- [11] In *casu*, the plaintiff obtained the order providing for the provision of the account and its debatement. To date the order has not been complied with. The respondent's inaction cannot bring an end to the litigation. In these circumstances the plaintiff is entitled to proceed to trial. The plaintiff is entitled to the information requested to provide for a court to finally determine the matter. There is no basis or need to refer the application to the opposed motion roll.

ORDER

In the result, the following order is granted:

1. The respondent is ordered to reply to the plaintiff's Request for Further Particulars for the Purposes of a Trial within 10 (ten) days.
2. The respondent is to pay the costs of the application on an opposed motion attorney and client scale.


E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email. The date for hand-down is deemed to be 15 February 2022.

Counsel for the applicant:

Adv. CD Roux

¹ 7th ed, p2.

² 1992 (1) SA 133 (E).

Instructed by:	RC Christie Incorporated
For the respondent:	Adv. Sithole
Instructed by:	Madhlopa & Tenga Incorporated
Date of the hearing:	8 February 2022
Date of judgment:	15 February 2022