

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO.: 36709/2010

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

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DATE

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SIGNATURE

In the matter of:

CHARTIS SOUTH AFRICA (PTY) LTD

Applicant / Defendant

And

SUPER GROUP TRADING (PTY) LTD

Respondent / Plaintiff

JUDGMENT

GAIBIE, AJ

- [1] There are two interlocutory applications in this matter: the first is an application in terms of rule 21(4) in which the applicant, Chartis South Africa Limited ('Chartis'), seeks to compel the respondent, Super Group Trading (Pty) Ltd ('Super Group') to furnish further and better particulars to its request for particulars for trial; and the second is an application for the separation of issues in terms of rule 33(4). In respect of the latter application, the parties agree that there should be a separation, but differ over the formulation of the separated issues.

- [2] This matter emanates from an action launched by Super Group as the insured, against Chartis the insurer for certain financial losses suffered by it during the period March 2006 and May 2008 and in respect of which it claims it is insured. Super Group's cause of action is based on a written Corporate Armour Crime Policy of indemnity insurance ('the Policy') which was issued by Chartis on 22 May 2007. Super Group operates a division through which it conducts the business of warehousing and transporting fast moving consumer goods for 3 clients: Colgate Palmolive (Pty) Ltd, Kimberly-Clark of SA (Pty) Limited and Unilever SA Foods (Pty) Ltd ('the clients'). In rendering these services to its clients, Super Group contends that it undertook the risk of loss or damage to its clients' goods which were in its possession.
- [3] In terms of the *Policy*, the initial period of insurance was from 1 April 2007 to 31 March 2008, and the Policy was renewed for a further period of twelve months from 1 April 2008 to 31 March 2009 ('the contractual period'). What is quite peculiar about the contractual arrangements between the parties is that Chartis provided insurance cover for financial loss that may have been suffered by Super Group, or a 3rd party to whom Super Group might become legally liable, if such loss was discovered by Super Group during the contractual period (or within 12 months after the termination of the Policy), even if the loss was suffered prior to the contractual period but not earlier than 30 June 1999, being the 'retroactive date'¹.
- [4] In any event, the *Policy* is quite specific about what loss is covered, and the circumstances in which indemnity for such loss would be provided. And like all insurance policies, this one too has particular limits and layers of cover, exclusions, conditions and the well known principle of aggregation.

The application in terms of rule 21(4)

- [5] It is trite that the purpose of rule 21(4), and consequently the purpose of permitting a party to call for further and better particulars, is to prevent surprise by ensuring that the parties are told with greater precision what the other party is going to prove in order to enable his opponent to prepare his case to disprove such allegations, and in so doing, to balance the rights of the parties by ensuring that the party called upon to deliver better particulars is not unfairly tied down or limited in his case at trial. In essence therefore, the purpose of rule 21(4) is to ensure that a party knows what case he has to meet.

¹ Clause 8 of the Schedule to the Policy read with exclusion 7 on page 11 of the Policy.

[6] Whether Chartis is entitled to the particularity which it seeks is a matter for this court's discretion². In exercising that discretion, and in determining what particulars, if any, must be provided by Super Group to Chartis, in terms of rule 21(4), it is necessary to look at the pleadings, as well as the terms of the *Policy* on which Super Group relies upon for the purposes of indemnification³. I deal with the relevant terms of the *Policy* first. Before I do so, it is necessary to record that there is in my view no dispute between the parties about the interpretation of the terms of the *Policy*, save for one aspect to which I will return later, and that the dispute between the parties is limited to an application of the terms of that *Policy* to the facts.

[7] The salient terms of the *Policy* include the following:

- a) In terms of insuring clause A, the financial loss for which indemnity was provided, was that caused by one or more dishonest or fraudulent acts of any of Super Group's employees whether committed alone or in collusion with others⁴. In respect of such loss Super Group was insured to the maximum amount of R30 000 000 (thirty million rands) for 'each and every occurrence and in the annual aggregate'⁵ subject to a 'self insured deductible' in the amount of R750 000 for each and every such 'occurrence'⁶. In other words, Chartis' obligation is effectively triggered only once the amount of R750 000 is deducted from the loss suffered by Super Group in respect of each and every occurrence of a dishonest or fraudulent act by one or more of its employees acting alone or in collusion with each other.
- b) However, and only in so far as such dishonest or fraudulent acts are committed by '*one person or in which such person is involved or implicated will be considered one occurrence*'⁷ ('the 2nd proviso' or the 'aggregation clause'). In other words, if Super Group suffered a spate of fraudulent acts, they would ordinarily be regarded as individual occurrences each of which would be subject to a deductible of R750 000 unless each occurrence had the common denominator of the same actor, in which case the 'spate' would be regarded as one occurrence and against which the deductible would

² Schmidt Plant Hire (Pty) Ltd v Pedrelli 1990 (1) SA 398 (D).

³ Thompson v Barclays Bank DCO 1965 (1) SA 365 (W) at 369; Hardy v Hardy 1961 (1) SA 643 (W) at 646.

⁴ Clause A page 4 of the *Policy*.

⁵ Clause 5 of the Schedule on page 2 of the *Policy*.

⁶ Clause 7 of the Schedule on page 2 of the *Policy*.

⁷ The 2nd proviso on page 6 of the *Policy*.

operate only once. Any reliance on the aggregation clause would, in my view, require the identity of the common actor.

- c) In so far as Super Group suffered loss as a result of the fraud or dishonesty of any of its employees, but it was unable to designate the specific employee or employees causing the loss, then its claim for indemnity would not be invalidated by its inability to do so, provided that it was able to furnish evidence to prove to the reasonable satisfaction of Chartis that the loss was caused by one or more dishonest or fraudulent acts of one employee or more than one employee acting in collusion.
- d) In addition to providing indemnity for losses suffered by Super Group as defined in the *Policy*, Chartis also undertook in such circumstances to cover: 1) the costs and expenses reasonably incurred by Super Group in producing and certifying any particulars or details required by Chartis, in relation to any claim, provided that such costs do not exceed R500 000; and 2) the costs and expenses incurred by Super Group with the consent of Chartis for the recovery or attempted recovery of any loss to which the policy applied provided that such costs do not exceed R500 000⁸.
- e) Upon discovery of any event which may result in a loss covered by the Policy, Super Group was required to give notice thereof to Alexander Forbes Group (Pty) Limited as soon as reasonably practicable and in any event within 30 days and, as soon as practicable after the event to inform the police, and to submit full details of the claim to Chartis⁹.

[8] In its particulars of claim, Super Group alleges that during the period March 2006 and May 2008, it sustained financial loss in the sum of R38 741 104,28 as a result of the theft of its clients fast moving consumer goods that was in its possession. It claims that the loss was occasioned by a series of dishonest and fraudulent acts of a multiplicity of employees acting in collusion. Given that it suffered such loss, or part of such loss prior to the inception of the policy but after the retroactive date, Super Group must establish that it had no knowledge of that loss prior to the inception of the *Policy* in terms of clause 7 of the 'exclusions', in order to lodge a successful claim. In dealing with this aspect, Super Group contends that it had, during August 2007,

⁸ Clauses C and D of the insuring clauses on page 6 read with Clause 5 of the Schedule to the policy on page 2

⁹ Clause 6 of the conditions on page 13 of the Policy.

(approximately four months after the inception of the *Policy*), become aware that there 'might be' a large scale of collusion amongst its employees causing the loss, and in the circumstances it had as soon as reasonably practicable thereafter given notice thereof to Alexander Forbes; informed the police; and engaged private detectives and investigators to discover the guilty parties and to recover the stolen property.

[9] On 10 December 2008 Super Group submitted full details in writing of its claim to Chartis, and on 20 May 2009, Chartis rejected its claim. Because it was indemnified up to a maximum amount of R30 million rands in respect of the principal amount [*each and every occurrence in the annual aggregate*], and R500 000 rands each for substantiating its claim and costs incurred in the recovery of its loss, it claims a total amount of R31 000 000 from Chartis in terms of the *Policy*.

[10] In essence, Super Group has pleaded that it suffered a global undifferentiated loss of over R38 million rands in a period of two years from unparticularised thefts. No details of the thefts are provided, nor of the employees who committed such acts of theft. The only semblance of a suggestion that such loss may have been occasioned by a common actor or actors for the purposes of the aggregation clause, is the assertion in the particulars of claim¹⁰ that the loss was 'occasioned by a series of dishonest and fraudulent acts of a multiplicity of employees of the plaintiff [Super Group], acting in collusion'. But even that assertion is far from clear, and the next assertion that the theft was undertaken by a 'syndicate' is made by Super Group not in its reply to the request for further particulars, but in its answering affidavit to Chartis' application in terms of rule 21(4), in which it contends for the first time that:

'15 The theft was sophisticated and involved a great deal of co-operation to beat the security measures employed at the warehouse. It is for that reason that the plaintiff has pleaded in paragraph 10 of its particulars of claim that the loss was occasioned by reason of and was directly caused by a series of dishonest and fraudulent acts of a multiplicity of employees of the plaintiff acting in collusion. The losses were generally detected when stock counts of physical stock were undertaken in the warehouse. Goods had left the plaintiff's possession as with records being made over the removal. The effect of the theft that was taking place was being observed after the event rather than individual acts of theft.

.....

¹⁰ Para 11 of the particulars of claim.

17 The plaintiff engaged a firm of private detectives to attempt to identify the individuals that made up the syndicate perpetrating the theft on such a scale.'

[11] There are three immediate problems with the approach that has been adopted by Super Group. The first is that on a balance of probabilities, losses on the scale apparently suffered by Super Group over a period of approximately two years can hardly point to a single occurrence as defined in the aggregation clause, unless Super Group makes that contention unequivocally based on a clear set of facts which must necessarily include the allegation that these occurrences have a common actor or actors. Second, in adopting this equivocal approach, it is almost impossible to assess whether Super Group relies on a single occurrence or a series of occurrences of dishonest acts, and in doing so it skilfully avoids the issue of the application of the deductible clause¹¹ and its operation in the circumstances of this case. This is clearly inexplicable given that Super Group pleads that it is a term of the *Policy*, and that the amount of R750 000 must be deducted from each and every occurrence of financial loss, but fails to deal with precisely how that deductible applies to the facts of this matter. Thirdly, and perhaps most importantly, in so far as it relies on the aggregation clause, Super Group has not pleaded any facts which would bring its claim based on a single aggregated occurrence within the ambit of that proviso. In adopting this approach, Chartis is left guessing about the fundamental nature of its claim and precisely which clauses it relies upon for the purposes of establish Chartis' obligation to it in terms of the *Policy*. Simply put, Chartis does not know what case to meet.

'Act' or 'Occurrence'

[12] Many of the issues that have given rise to the application in terms of rule 21(4), and indeed in terms of rule 33(4), emanate from Super Group's reluctance to formulate its claim in terms of the relevant provisions of the *Policy*, and it does so deliberately in an effort to avoid any debate about its interpretation of the difference, if any, between the meaning of the terms 'act' and 'occurrence'. Given its approach, it is necessary to enter that debate, even if to do so would constitute a peripheral attempt to give meaning to those terms for the purposes of the two interlocutory applications. For its part, Super Group contends that the term 'occurrence' is not defined in the *Policy* and has not ventured an interpretation save to say that it will be a matter for legal argument¹². This approach, in my view, lies at the heart of its refusal to tie itself down

¹¹ Clause 7 of the Schedule on page 2 of the *Policy*.

¹² Paragraph 19 of the answering affidavit to the rule 21(4) application.

to whether the 'series of dishonest and fraudulent acts of a multiplicity of employees acting in collusion' constitutes one or more occurrences of theft. Chartis on the other hand takes the view that every incident of theft or fraud constitutes an 'occurrence' as that term is used in the *Policy*¹³. In entering this debate, I do not intend to resolve the issue as to whether an 'act' of theft or fraud constitutes an 'occurrence', but some thoughts on the issue would be prudent in the circumstances of determining the outcome of the rule 21(4) application, and indeed of the rule 33(4) application. My views are, I stress, not dispositive of the issue, and the outcome of that debate must be dealt with at trial.

[13] It is apparent from the *Policy*, that the terms 'act' and 'occurrence' are used interchangeably, and sometimes either of these terms is used to make grammatical sense of the context in which they are used. Examples of the latter are reflected in the schedule to the *Policy*¹⁴, where the term 'occurrence' is used to describe the extent of the cover, being 'R30 000 000 each & every occurrence' and in the same vein the term 'occurrence' is used to describe the application of the deductible clause to 'each & every occurrence'. In addition, the term 'act', it appears, is used in the *Policy* to describe the conduct of the actor in an occurrence. So for instance, clause A of the insuring clauses¹⁵, provides cover where loss is suffered '*by reason of and directly caused by one or more dishonest or fraudulent acts of any of the employees of the insured*'. The logical corollary of this observation is that it makes grammatical sense to say that a dishonest or fraudulent act constitutes an 'occurrence'.

[14] As indicated earlier, the *Policy* also uses these terms interchangeably and this is borne out by clause 7 of the exclusions¹⁶, for example, which excludes any liability for loss '*arising out of any circumstance, occurrence or act*' described therein. In this context, the plain and ordinary meaning of these terms appears to be that they mean one and the same thing. This approach is supported by the Oxford Dictionary definition of 'occurrence' which is defined as '*the act or an instance of occurring, an incident or event*'. This definition not only accord's with Chartis' interpretation of the *Policy* but it is congruous with the principle of the ordinary and popular meaning of the language of the contract (or in this case, the *Policy*) articulated by the Supreme Court of Appeal in *Mutual & Federal Insurance v Gouveia*¹⁷. A similar approach to the meaning of an

¹³ Para 12.2 of Chartis' plea.

¹⁴ Pages 2 and 3 of the *Policy*.

¹⁵ Page 4 of the *Policy*.

¹⁶ Page 11 of the *Policy*.

¹⁷ 2003 (4) SA 53 (SCA) at para 9.

'occurrence' is adopted by the High Court of Australia in *Government Insurance Office of New South Wales v Atkinson-Leighton Joint Venture*¹⁸, and by the Court of Appeal (UK) in *Philadelphia National Bank v Price*¹⁹. In applying this definition, the Policy does make one exception for the benefit of the insured in the aggregation clause, in which a series of dishonest or fraudulent acts will be considered to be one occurrence if the insured is able to establish the common denominator of the same actor in each such occurrence. The aggregation clause is clearly advantageous to the insured so that it can aggregate the various occurrences into one occurrence in order to show that its loss exceeds the limit of the deductible clause. But irrespective as to one agrees with this point of view or not, it is far from clear whether Super Group intends to rely on a series of acts or occurrences, or on the aggregation clause to establish its claim in terms of the Policy, and it is for that reason that Chartis simply does not know what case to meet.

The request for further and better particularity ('the request')

Paragraphs 7.1 to 7.3 and 9 to 12 of the request

[15] Against the background of the debates set out above, the particularity provided by Super Group about the nature of its claim must be assessed. In paragraph 10 and 11 of the particulars of claim, Super Group has pleaded that it has suffered loss resulting from the theft of its clients' goods whilst in its possession over a period of some two years. In describing the conduct that caused the loss it alleges that –

'The said financial loss was occasioned by reason of and directly caused by a series of dishonest and fraudulent acts of a multiplicity of employees of the plaintiff, acting in collusion'²⁰.

[16] In response to this short and sharp description, and in the absence of any further particularity as how or why this claim falls within the ambit of the Policy, Chartis has sought in paragraphs 7.1 to 7.3, and paragraphs 9 to 12 of its request for further and better particulars ('the request') responses to questions aimed at determining whether Super Group relies upon a single occurrence to which one deductible of R750 000 would apply, or a series of separate occurrences to each of which the self deductible would apply. As indicated earlier, apart from an assertion of 'collusion' between

¹⁸ (1980) 31 ALR 193.

¹⁹ [1938] 2 All ER 199.

²⁰ Para 11 of the particulars of claim.

employees who are alleged to have committed the dishonest acts, no further response in respect of these enquiries are made. The assertion that a 'syndicate' occasioned such loss does not take the matter any further, and in any event, it is not made in the pleadings for trial but rather in this interlocutory application. In these circumstances, and in order to inform Chartis of the case it is required to meet, Super Group is obliged to provide particularity as to the case which it intends to pursue at trial. It either relies on a series of acts or occurrences or one act or occurrence, it simply cannot be both.

Paragraph 22 of the request

[17] The request in this paragraph is aimed at obtaining further particularity in respect of paragraph 14 of the particulars of claim in which Super Group contends that pursuant to the loss suffered by it as a result of the theftuous activities of its employees it is obliged to pay to its clients the loss consequently suffered by them, in the following terms –

'The above sum is made up of the undermentioned amounts which the plaintiff is obliged to pay to its clients, less recoveries made, and calculated as follows:

Colgate	-	R14 766 602, 82
Kimberly-Clarke	-	R16 659 392, 59
Unilever	-	R11 169 488, 49
SUB-TOTAL		R42 595 483, 90
LESS RECOVERIES		R 3 854 379, 62
TOTAL		R38 741 104, 28.

[18] In relation to the formulation of this allegation, Chartis seeks further and better particularity as to when the obligation to pay its clients arose, what the 'causa' for the obligation is and whether Super Group has paid these amounts to its clients and if so

when payment was made and in respect of what goods. These questions are aimed, in my view, at establishing whether and on what basis Super Group's liability to its clients arose, and the extent thereof, particularly in the context of the first paragraph of the Policy²¹ which provides cover '*for financial loss suffered by the insured, or a third party to whom the insured became legally liable, on or subsequent to the retroactive date and prior to the termination of the policy and discovered by the insured during the period of the Policy, or within 12 months of termination of the Policy*'. In response Super Group has, apart from an assertion that it undertook the risk of loss or damage to such goods, refused to provide a response to this request.

- [19] The answers to these questions are clearly relevant to the case that the defendant has to meet, and must in the circumstances be provided by Super Group.

Paragraphs 23 to 25 of the request

- [20] The request in paragraphs 23 to 25 of the request are based on Super Group's formulation of its financial loss as articulated in paragraphs 10 to 12 of the particulars of claim, particularly its grammatical use of the singular term 'loss' as opposed to 'losses' and whether this has any bearing as to whether Super Group intends to run its case on one act or occurrence of theft or many acts or occurrences of theft. These particulars are necessary for the same reasons that are applicable to paragraphs 7.1 to 7.3 and 9 to 12 of the request.

The application in terms of rule 33(4)

- [21] The parties seek a separation of issues in terms of the provisions of rule 33(4) which enjoins a court to order such separation on the application of any party, unless it appears that the questions cannot be conveniently separated. Ordinarily it is desirable in the interests of expedition and finality of litigation to have one hearing only at which all the issues are canvassed so that the Court, ceased of the matter, might after the conclusion of the trial, dispose of the whole of the case. Rule 33(4) was clearly conceived in the realisation that in some instances, it might serve the interests of justice by disposing of a particular issue or issues '*before considering other issues which, depending on the result of the issues singled out, might fall away or become*

²¹ Page 4 of the Policy.

*confined to substantially narrower limits*²². In the circumstances, I do not think that rule 33(4) could be decided solely on the convenience of one or both parties. In determining whether it would be 'convenient' to have the issues agreed upon (and the issue in respect of which there is disagreement) decided separately from others, there are two important considerations that must be factored into this determination. The first, is whether a preliminary hearing for the decision of such issues would materially shorten the proceedings. In that regard, the court in *Minister of Agriculture v Tongaat Ltd*²³ stated that:

'Ordinarily, if it were to appear to the Court that the duration of the trial would be substantially curtailed by a preliminary hearing to settle specific questions, it would probably grant the application, but even then it would not necessarily do so because the nature of the case may be such that proper consideration of overall convenience may involve factors other than those relating only to actual duration of the Court hearings.'

The word "convenient" in the context of Rule 33(4) is not used, I think, in the narrow sense in which it is sometimes used to convey the notion of facility or ease or expedience. It appears to be used to convey also the notion of appropriateness; the procedure would be convenient if, in all the circumstances, it appeared to be fitting, and fair to the parties concerned.'

[22] The second consideration is that raised by the Supreme Court of Appeal in *CNA v MTN*²⁴ where Navsa JA and Hurt AJA cautioned against piecemeal litigation, and indicated that before separation is ordered, the court must be satisfied that it is convenient and proper to do so. In that regard they stated that:

'This court has warned that in many cases, once properly considered, issues initially thought to be discrete are found to be inextricably linked. And even where the issues are discrete, the expeditious disposal of the litigation is often best served by ventilating all the issues at one hearing. A trial court must be satisfied that that it is convenient and proper to try an issue separately'.

[23] It is with these principles in mind that I proceed to deal with the application for separation by Super Group and a counter application for separation by Chartis. The parties are in agreement in respect of the majority of the defined issues which fall to be separated. In that regard, paragraphs 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.8 of Super

²² *Minister of Agriculture v Tongaat Group Ltd* 1976 (2) 357 (D&CLD) at 362H.

²³ 1976 (2) 357 (D&CLD) at 363.

²⁴ 2010 (3) SA 382 at 408 paras [89] and [90].

Group's notice of motion corresponds with the same numbered paragraphs in Chartis' notice of motion.

- [24] In summary, the issues that have been agreed upon are a reference to particular paragraphs in the particulars of claim and Chartis' response thereto in its plea. The parties have therefore agreed that: paragraph 5 of the particulars of claim (PoC) which deals with whether Super Group bore the risk of loss in respect of the stolen items; paragraphs 6 and 7 of the PoC which deal with the relevant provisions of the Policy; paragraphs 10 and 11 of the PoC which deal with the occurrence of loss and whether Super Group relies on one or more occurrences of loss; and paragraphs 12 and 15 of the PoC which deal with the allegation of collusion amongst those employees who were involved in the theftuous acts, as well as whether there was compliance by Super Group with the claims procedures in terms of the Policy – should be separated.
- [25] In addition thereto Chartis has pleaded certain material facts in paragraphs 12.1, 12.2, 12.4 and 13 which deal with its contentions that the loss, or part thereof was excluded by paragraph 7 of the Policy because Super Group knew of its existence prior to the inception of the Policy, or that the loss arose from multiple incidents of theft and that each incident attracts a deductible of R750 000. Broadly speaking, the agreed issues all deal, to a greater or lesser extent, with the issue of liability.
- [26] What is excluded by the parties by agreement, are the issues raised in paragraphs 13, 14, 16 and 17 of the PoC which essentially deal with quantum including the extent of the financial loss, whether and what amounts are payable to Super Group's clients, and the consequential losses, if any, suffered by it for the purposes of substantiating its losses and the costs incurred by it for the recovery or attempted recovery of its losses.
- [27] The only material issue upon which the parties disagree is whether or not the issues identified in paragraphs 12.3 and 12.5 of the Chartis' plea should form part of the separated issues. Paragraph 12 of Chartis' plea, as a whole, alleges the following –

12 Alternatively, and in the event of it being found that the plaintiff has sustained financial loss by reason of and directly caused by one or more dishonest or fraudulent acts of its employees, then the defendant pleads as set out hereunder:

12.1 The financial loss suffered by the plaintiff arises from multiple incidents of theft by various employees of the plaintiff.

- 12.2 Each incident of theft constitutes an 'occurrence' as that term is used in the policy.
- 12.3 Each incident of theft resulted in financial loss of no more than R750 000,00.
- 12.4 Each incident of theft attracts a deductible of R750 000,00.
- 12.5 Accordingly the plaintiff is not entitled to indemnity in terms of the policy in respect of any incidents of theft, each one of them falling within the deductible specified in the policy.

[28] Super Group contends that paragraph 12.3 of Chartis' plea forms part of the issue of quantum²⁵ and will require detailed evidence regarding each incident of theft, and that its inclusion in the separated issues would defeat the purpose of this application. On the other hand, Chartis contends that whether or not the issue is relevant to the issue of quantum is of no moment and that the ultimate enquiry is to determine whether or not it is convenient to do so. They submit that the issue of the deductible is inextricably linked to the issue of liability, and that Chartis' liability does not arise if Super Group cannot prove that each occurrence of theft exceeded the self insured layer of R750 000.

[29] The issue raised by Chartis points to the fundamental difficulty with separating out the issues in this matter. The central point of dispute between the parties in this matter (although there are others) is whether the loss suffered by Super Group was occasioned by one dishonest act or occurrence or several such acts or occurrences. In the absence of the resolution of that matter, it is hardly appropriate to move on to the application of the deductible. Conversely however, once the issue is resolved, the application of the deductible must be applied to determine whether Chartis is liable, and if so to what extent. Given my views on the application in terms of rule 21(4), and for the purposes of compliance with the order granted in relation thereto, Super Group will be required to make a decision about its approach to this matter. If it relies on the aggregation clause for the purposes of its claim, then the deductible can be readily applied to the holistic claim of its loss in the amount stipulated in paragraph 14 of its PoC. If it relies on a number or a series of dishonest acts or occurrences, then it will in any event have to undertake an investigation or a process to determine the details of each such act or occurrence, and it is unclear to me why that process will not

²⁵ Para 18 of the FA to the Rule 33(4) application

simultaneously yield the value of goods stolen in respect of each such incident. In the circumstances, it seems to me that it is not possible at this stage, and in the absence of the further particulars, to determine whether it is 'convenient' to separate out the issues. In fact, the issues in this matter appear to be inextricably linked. Perhaps after Super Group's compliance with the outcome of the rule 21(4) application, the parties can reconsider their views on the appropriateness of separating out the issues.

[30] In the circumstances, and in relation to the Rule 21(4) application, it is ordered that:

- a) The Respondent/Plaintiff is ordered to furnish further and better particulars in terms of Rule 21(4) to paragraphs 7.1 to 7.3, 9 to 12, and 23 to 25 of the Applicant's/Defendant's request for particulars for trial served on 30 October 2013 within ten (10) days of the date of this order;
- b) The Respondent / Plaintiff is ordered to pay the costs of this application, such costs to include the costs of two counsel.

[31] In the circumstances, and in relation to the Rule 33(4) application, it is ordered that:

- a) Both the application and the counter application are dismissed.
- b) There is no order as to costs.

Appearances:

For the Applicant / Defendant: Adv. CDA Loxton SC / Adv. G.M. Goedhart

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Date of Hearing: 27 October 2014

Date of Judgment: 21 November 2014