



IN THE HIGH COURT OF SOUTH AFRICA

DELETE WHICHEVER IS NOT APPLICABLE

(NORTH GAUTENG, PRETORIA)

(1) REPORTABLE: ~~NO~~ NO.

(2) OF INTEREST TO OTHER JUDGES: ~~NO~~ NO.

(3) REVISED.

2010.05.21

DATE

SIGNATURE

21/05/2010
CASE NO: 10222/2007

In the matter between:

OCKIE STRYDOM

Applicant

and

ENGEN PETROLEUM LIMITED

Respondent

J U D G M E N T

MAKGOKA, J:

[1] In this application the applicant, who is the defendant in the main action, seeks an amendment to his plea. The relief sought is opposed by the respondent, the plaintiff in the main action, on the basis that the intended amendment contemplates a withdrawal of an admission without a proper explanation. For convenience, I shall refer to the parties as the plaintiff and

defendant, respectively. There are also procedural aspects relating to the late filing of this application. I am satisfied with the explanation for the late filing, and accordingly grant condonation.

[2] The common cause factual matrix is briefly the following:

- (a) the plaintiff instituted action against the defendant on 16 March 2007.
- (b) the defendant filed his notice of intention to defend on 19 March 2007, and his plea on 22 May 2007.
- (c) on 27 February 2009 new attorneys came on record for the defendant.
- (d) on 26 May 2009 the defendant served the impugned notice of intention to amend, which the plaintiff objected to on 8 June 2009.

[3] To consider the matter in a proper context, it is prudent to have regard to the pleadings as they now stand, against the intended amendment. The plaintiff claims an amount of R3 065 251.00 from the defendant as the cessionary of Soutpansberg Petroleum (Pty) Ltd ("Soutpansberg Petroleum")

[4] The thrust of the plaintiff's claim is contained in paragraphs 8, 9 and 10 of the particulars of claim, which read as follows:

"8. *The defendant is indebted to Soutpansberg:*

8.1 *as at 28 February 2003 in the amount of R266 667.00;*

8.2 *as at 29 February 2004 in the amount of R1 074 870 .00;*

8.3 *as at 28 February 2005 in the amount of R1 980 391.00;*

8.4 *as at 28 February 2006 in the amount of R3 065 251. 00;*

9. *Consequently the Defendant is indebted to the Plaintiff in the amount of R3 065 251.00.*

10. *The Defendant has failed and/or neglected and/or refused to pay the Plaintiff the amount of R3 065 251.00 or any amount whatsoever".*

[5] The said paragraphs are dealt with as follows in the defendant's plea (in its present form).

6.1 *The Defendant admits that it refuses to pay to the Plaintiff the amount of R 3 065 251.00 or any amount whatsoever.*

6.2 *The defendant avers that:*

6.2.1 *that dates and amounts referred to are reflected in Soutpansberg's respective yearly financial statements as a loan receivable by it from the Defendant;*

6.2.2 *no terms of repayments have been determined by Soutpansberg and the amount of R3 065 251.00 is accordingly not payable;*

6.2.3 *The Defendant therefore denies any consequent indebtedness to Plaintiff as well as the remainder of the allegations contained in these paragraphs."*

[6] In his notice of intention to amend, the defendant seeks to amend paragraph 6 of his plea in the following respects:

6.1 *The Defendant admits that it refuses to pay to the Plaintiff the amount of R3 065 251.00 or any amount whatsoever, but pleads that it is not indebted to the Plaintiff at all;*

6.2 *Save as aforesaid the Defendant denies each and every allegation herein and puts the Plaintiff to the proof thereof;*

6.3 *The Defendant specifically denies the correctness of the financial statements of Soutpansberg, more specifically the reflection of the Defendant's alleged loan account, as reflected in the financial statements and set out in paragraph 8.1 to 8.4 of the Plaintiff's particulars of claim;*

6.4 *in the event that the Plaintiff succeeds in proving the correctness of the Defendant's loan account in the financial statements of*

Soutpansberg, as set out in paragraphs 8.1 to 8.4 of the Plaintiff's particulars of claim, the Defendant pleads as follows:

6.4.1 The dates and amounts referred to are reflected in Soutpansberg respective yearly financial statements as a loan receivable by it from the Defendant;

6.4.2 No terms of repayments have been determined by Soutpansberg and the amount of R3 065 251.00 is accordingly not payable;

6.4.3 The Defendant therefore pleads that the Plaintiff's action was instituted prematurely."

[7] As stated earlier, the plaintiff contends that paragraph 6.2 of the defendant's plea (in its present form) amounts to an admission of the defendant's indebtedness to Soutpansberg Petroleum. I think this is in reference to paragraph 6.2.1. To the extent that the defendant is argued to have admitted the loans receivable by him as reflected in the financial statements of Soutpansberg Petroleum, I agree with the plaintiff's contention. Where I part ways, is the assertion that, that admission, qualifies as an admission of indebtedness to Soutpansberg Petroleum. The admission of the loan is qualified in sub-paragraph 6.2.2, which states the basis of denial of the defendant's indebtedness, namely, that the amount, despite the loan having been advanced, was not due and payable.

[8] Paragraph 6.3 of the contemplated plea seeks a withdrawal of the admission relating to the correctness of the loan amount as reflected in

financial statements of Soutpansberg Petroleum. There is no proper or adequate explanation how the admission was made, except a bald assertion that the plea was drafted contrary to the defendant's instructions. To that extent, that portion of the contemplated plea should not be allowed. It should be so, in light of the fact that reference to the financial statements of Soutpansberg Petroleum, was introduced by the defendant himself. He was a director of Soutpansberg Petroleum, so the correctness of the amounts would have been within his knowledge and therefore, the admission was well informed. It follows then that paragraph 6.4 thereof falls away, as it is dependent on, and ancillary to, paragraph 6.3.

[9] The question of the defendant's indebtedness, on the other hand, stands on a totally different footing. In the plea (as it stands) the defendant has expressly denied this, in paragraph 6.2.3. What paragraphs 6.1 and 6.2 of the intended plea seeks to do, is to reinforce the point. They do not, as contended, amount to a withdrawal of anything, but rather an emphasis of a point already made in the plea. There could consequently be no prejudice attendant on the plaintiff as a result of the contemplated amendment.

[10] In summary, the defendant should be granted leave to amend his plea in accordance with his notice of intention to amend, save for paragraphs 6.3 and 6.4 thereof.

[11] Lastly, the issue of costs. In matters of this nature, the key question is always whether the opposition was unreasonable. In my view the plaintiff's

opposition was not unreasonable, as reflected in the brief analysis of the facts. At the end, each party has been partially successful in their respective arguments. The fairest and just order with regard to costs, in my view, is that each party pays its own costs.

[12] I therefore make the following order:

1. The defendant is granted leave to amend his plea in accordance with paragraphs 6.1 and 6.2 of his notice of intention to amend dated 21 May 2009;
2. Leave to amend in accordance with paragraphs 6.3 and 6.4 of the said notice, is refused;
3. Each party shall pay its own costs.



T M MAKGOKA
JUDGE OF THE HIGH COURT

DATE HEARD	12 MAY 2010
JUDGMENT DELIVERED	21 MAY 2010
FOR THE APPLICANT (DEFENDANT)	ADV. APJ ELS
INSTRUCTED BY	SCHABORT INC, PRETORIA
FOR THE RESPONDENT (PLAINTIFF)	ADV P L CARSTENSEN
INSTRUCTED BY	SNYMAN DE JAGER, PRETORIA