

IN DIE NOORD GAUTENG HOE HOF PRETORIA

(REPUBLIEK VAN SUID-AFRIKA)

SAAKNOMMER: 38798/2006

In die saak tussen:

30/7/2010

VERONICA KRETSCHMER

Applikant

en

BROLL PROPERTY MANAGEMENT (EDMS) BPK Eerste Respondent
(REGISTRASIENOMMER 1996/015132/07)

AKHONA-BROLL PROPERTIES (EDMS) BPK Tweede Respondent
(REGISTRASIENOMMER: 1991/004002/07)

In re:

Die saak tussen:

VERONICA KRETSCHMER

DATE WHENEVER IS NOT APPLICABLE
(1) REPORTABLE YES/NO
(2) OF INTEREST TO OTHER JUDGES YES/NO
(3) REVISED
DATE 27/07/10
SIGNATURE
Esers

en

BROLL PROPERTY MANAGEMENT (EDMS) BPK Verweerder
(REGISTRASIENOMMER 1996/015132/07)

UITSpraak

GOODEY WR:

[1] **INLEIDING:**

- 1.1 Hierdie is 'n aansoek deur die Eiser as Applikant om voeging van die Tweede Respondent as Tweede Verweerder in die hoofaksie.
- 1.2 Die Respondente opponeer die aansoek en hulle opponering kan soos volg saamgevat word:
 - 1.2.1 Die eis teen die Tweede Respondent het verjaar en sal tot niks lei nie;
 - 1.2.2 Betekening van die dagvaarding op die Eerste Respondent (wat skynbaar in dieselfde gebou as die Tweede Respondent is) het nie verjaring gestuit nie;
 - 1.2.3 Die Applikant betoog dat ek nou slegs die voeging moet oorweeg terwyl die Respondente verwag dat ek op die verjaringskwessie 'n bevinding moet maak, bevind dat die eis teen die Tweede Respondent verjaar het en die aansoek van die hand moet wys.

[2] **VOEGING:**

2.1 Dit is geykte reg dat:

2.1.1 Voeging nie sondermeer geweier word nie;

2.1.2 Voeging ook op gerieflikheidsgronde toegelaat word;

2.1.3 Dat 'n Hof hom op die voegingstadium nie maklik sal
inmeng met die meriete wat deur die verhoorhof beslis moet
word nie.

2.2 Beide advokate het uitvoering betoog oor al die aspekte en die
Hof ook met volledige betoogshoofde bygestaan.

2.3 Dit is onnodig om na al die gesag te verwys en kan volstaan word
met die volgende:

2.3.1 In ***Stroud v Steel Engineering Co Ltd & Another 1996 (4)***

SA 1139 (W) is op 1142C-G soos volg bevind:

"There remains the contention that because the claim is prescribed, it should not be allowed. I accept that the Court normally would not permit an allegation which has no possibility of advancing the situation of a litigant and can at best serve as basis for the need to hear evidence which leads nowhere. Accordingly it would make no sense to permit a claim which is known to have prescribed. But if the supervening of prescription is not common cause, the application for amendment (in casu die aansoek om voeging) is normally not the proper place to attempt to have that issue decided. Technically speaking, in fact, prescription is not an issue until it has been pleaded. I say 'normally' because there may be special cases, for example where only legal interpretation makes the difference to facts which are common cause. However, except in such special situations, once prescription is not common cause, the plaintiff should not be deprived of his chance to put his claim before the Court because of apparent probabilities at the time when amendment (in casu die aansoek om voeging) is considered. Considerations of effectiveness and fairness confirm that propriety. The present defendant ought to raise its proposed defence (prescription) in the same way that it would

raise any other defence which becomes appropriate after an amendment is granted. In the circumstances the defendant should not have opposed the amendment." (My onderstreping)

**Sien ook: Rand Staple-Machine Leasing v I.C.I (SA) Ltd 1977 (3) SA 199 (W) in die geheel daarvan, maar veral die gedeelte op 202A-H
Consol Limited Ltd t/a Consol Glass v**

Twee Jonge Gezellen (2) 2005 (6) SA 23 (C) op 39D-G

2.3.2 In ***Nedcor Investment Bank Limited v Visser NO & Others 2002 (4) SA 588 (T)*** is op 595B-C en E soos volg bevind:

"The defendants' next attack is that they will be deprived of the defence of prescription regarding a portion of the plaintiff's claim. Mr Strydom submitted that the amendment which is being sought by the plaintiff is merely to introduce a claim which has prescribed and ought not to be allowed. In support of his argument Mr Strydom relied upon certain authorities. In my view, they are not relevant at this

juncture. Suffice to say that such authorities can be invoked at an appropriate juncture in the development of the proceedings."

...

"The proper way to raise the issue of prescription is by way of special plea and not an interlocutory application for leave to amend."

2.3.3 In **Caxton Ltd & Others v Reeve Forman (Pty) Ltd & Another 1990 (3) SA 547 (A)** is op 565G-I soos volg bevind:

*"The correctness of the trial Judge's refusal of the amendment may be open to debate. Although the decision whether to grant or refuse an application to amend a pleading, rests on the discretion of the Court, this discretion must be exercised with due regard to certain basic principles. These principles are well summed up in the judgment of Caney J in **Trans-Drakensberg Bank Ltd (Under Judicial Management) v Combined Engineering (Pty) Ltd & Another 1967 (3) SA 632 (D)** at 640H-641C. In the portion of the passage referred to, Caney J states (at 641A):*

'Having already made his case in his pleading, if he wishes to change or add to this, he must explain the reason and show prima facie that he has something deserving of consideration, a triable issue; he cannot be allowed to harass his opponent by an amendment which has no foundation. He cannot place on the record an issue for which he has no supporting evidence, where evidence is required, or, save perhaps in exceptional circumstances, introduce an amendment which would make the pleading excipiable.'"

2.3.4 In *Ciba-Geigy (Pty) Ltd v Lushof Tums (Pty) Ltd 2002 (2)*

SA 447 (HHA) is op 462 J tot 463A soos volg beslis:

"Blykens die aangehaalde dicta kan 'triable issue' verstaan word in die sin van:

- (a) 'n geskilpunt wat, indien dit aan die hand van getuienis wat die applikant in sy aansoek in die vooruitstig stel bewys word, lewensvatbaar of relevant sou wees; of*

(b) 'n geskilpunt wat op die waarskynlikhede wat aldus in die vooruitsig gestel word, bewys sou wees." (my onderstreping).

[3] **SLOTSOM:**

In die lig van voormelde is ek van mening dat die aansoek moet slaag.

Gevolglik maak ek die volgende bevel:

"Bedes 1 en 2 van die kennisgewing van mosie word toegestaan."


G. J. M. van der Merwe