

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NUMBER: 40185/09

In the matter between:

PETRUS JACOBUS NEL

and

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES ~~YES~~/NO
(3) REVISED ☒
DATE 27/07/16
PLAINTIFF
SIGNATURE

30/7/2010

STEVEN MARTIN TSAI	1 ST DEFENDANT
IRENE MARGARET TSAI	2 ND DEFENDANT
M & T DEVELOPMENT (PTY) LTD	3 RD DEFENDANT
SUNRISE MORELETAPARK PROPERTIES (PTY) LTD	4 TH DEFENDANT
WING TAI DEVELOPMENT (PTY) LTD	5 TH DEFENDANT
ERF 68 ERASMUS KLOOF EXTENSION 3 (PTY) LTD	6 TH DEFENDANT
ERF 105 ERASMUS KLOOF EXTENSION 3 (PTY) LTD	7 TH DEFENDANT
JR 209 INVESTMENTS (PTY) LTD	8 TH DEFENDANT
FAERIE GLEN WATERPARK (PTY) LTD	9 TH DEFENDANT
CENTURION VISION DEVELOPMENT (PTY) LTD	10 TH DEFENDANT
ERF 1836 GARSFONTEIN EXTENSION 8 CC	11 TH DEFENDANT
FAERIE GLEN EXTENSION 28 CC	12 TH DEFENDANT

ERF 87 ERASMUSKLOOF EXTENSION 3(PTY) LTD	13 TH DEFENDANT
MORELETA PARK PROPERTY 3 (PTY) LTD	14 TH DEFENDANT
M & T DEVELOPMENT – PROPERTY MARKETING (PTY) LTD	15 TH DEFENDANT
STEVEN MARTIN TSAI N.O.	16 TH DEFENDANT
IRENE MARGARET TSAI N.O.	17 TH DEFENDANT
JAMES BARRY MUNNIK HERTZOG N.O.	18 TH DEFENDANT

JUDGEMENT

GOODEY AJ:

[1] INTRODUCTION:

- 1.1 This matter concerns two exceptions raised by the Defendants to the Plaintiff's particulars of claim in that, first, it lacks the necessary averments to sustain a cause of action against the Defendants and secondly, that it is vague and embarrassing to the extent that the Defendants are unable to properly plead thereto.

1.2 The Defendants set out six bases upon which the exceptions are founded. These (according to the Defendants) can be summarized as follows:

1.2.1 **First Basis:**

Paragraphs 29.1 to 29.6 of the particulars of claim list the express terms of the employment agreement as they appear in clauses 1 to 9 (excluding clauses 6 and 7) thereof. Although clauses 1 to 5 and 8 and 9 of the letter of appointment are paraphrased in paragraphs 29.1 to 29.6 of the particulars of claim they clearly denote, in no uncertain terms, the express terms of the employment agreement.

1.2.2 **Second Basis:**

The relief which the Plaintiff seeks in regard to the alternative claim is the delivery of accounts, the debatement of such accounts and payment to the Plaintiff of any amounts found to be owing to the Plaintiff. The Defendant further submit that in

total contradistinction to the clear terms of paragraph 5 the Plaintiff alleges in paragraph 30 that the obligation there pleaded is a once-off obligation and not a continuous obligation as provided for in clause 5 of the letter of appointment.

1.2.3 **Third Basis:**

The Plaintiff's allegations that he is entitled to 10% of the nett asset value of each of the Third to Fifteenth Defendants are obviously predicated upon the allegations made in paragraph 30 of the particulars of claim. The argument continues that this in contradiction with paragraph 30 of the particulars of claim.

1.2.4 **Fourth Basis:**

This pertains to paragraph 32 of the particulars of claim which was conceded during argument and therefore needs not further consideration.

1.2.5 **Fifth and Sixth Bases:**

These pertain to paragraph 34 of the particulars of claim which was also conceded by the Plaintiff during argument and does not need further consideration.

[2] **WHAT REMAINS?:**

2.1 After various concessions made during argument by Mr Arnoldi SC, what remains is in essence that the Plaintiff persists that the so-called "Letter of Appointment" is susceptible for more than one interpretation. It is therefore argued that a trial Court will allow and accept evidence pertaining to an implied term.

2.2 The nett result is that the Defendants expect this Court at this stage to interpret the "Letter of Appointment" as only susceptible to one interpretation only.



LEGAL PRINCIPLES IN RESPECT OF AN EXCEPTION:

3.1 It is trite law that a Court will not easily settle questions of interpretation at the exception stage.

In this regard the following is said.

3.1.1 An exception is generally not the appropriate procedure to settle questions of interpretation because, in cases of doubt, evidence may be admissible at the trial stage relating to surrounding circumstances, which evidence may clear up the difficulties.

Murray & Roberts Construction Ltd v Finat Properties (Pty) Ltd [1991] 1 All SA 382 (A), 1991 (1) SA 508 (A)

Sun Packaging (Pty) Ltd v Vreulink 1996 (4) SA 176 (SCA)

Similarly, whether a contract is void for vagueness does not readily fall to be decided by way of exception.

Lewis v Oeanate (Pty) Ltd [1992] 2 All SA 498 (A), 1992 (4) SA 811 (A) 817-818

**SEE: *Amler's Precedents of Pleadings*
(7th Edition)**

3.1.2 Also see: ***Herbstein and Van Winsen [Civil Practise] (Fifth Edition)***

On p636:

"An exception that a pleading is vague and embarrassing ought not to be allowed unless the excipient would be seriously prejudiced if the offending allegations were not expunged. A pleading will not cease to be prejudicial merely because it is possible to draft an unexcipiable."

On p637:

The excipient has the duty to persuade the court that upon every interpretation which the pleading

can reasonably bear, no cause of action or defence is disclosed. Courts are reluctant to decide upon exception questions concerning the interpretation of a contract where its meaning is uncertain. When the exception is based upon an interpretation of a contract, it is necessary for the excipient to demonstrate that the contract is unambiguous." (my underlining) "

- 3.1.3 I have been referred to various authorities by both counsel which do not detract from the aforesaid principles.

[4] **CONCLUSION:**

In view of the foregoing, I am not convinced that the "Letter of Appointment" is totally unambiguous.

[5] **COSTS:**

As I have indicated various concessions were made on behalf of the Plaintiff.
The nett result is that both parties were partly successful.

In the result I am of the opinion that costs should be costs in the cause.

I therefore make the following order:

1. The exception is dismissed;
2. Costs are costs in the cause.



GOODEY AJ