

10/9/2010

IN THE NORTH GAUTENG HIGH COURT, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE (REPUBLIC OF SOUTH AFRICA)

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

CASE NUMBER: 37401/09

DATE

9/8/10

In the matter between:

SIGNATURE

FAST AND EASY DEVELOPERS CC

Plaintiff/Respondent

and

CITY OF TSHWANE

(ENERGY AND ELECTRICITY DIVISION)

Defendant/Excipient

JUDGMENT

GOODEY AJ:

[1] INTRODUCTION:

- 1.1 The defendant has taken an exception to the plaintiff's amended particulars of claim on the grounds thereof that such

particulars of claim lack the necessary averments to sustain a cause of action and are vague and embarrassing.

2] THE EXCEPTIONS:

2.1 AD: Paragraph 3 of the amended particulars of claim

At the commencement of argument, Mr Tokota SC (on behalf of the excipient) indicated that he would not proceed with this exception.

2.2 AD: Paragraph 4 of the amended particulars of claim

This is a complaint that there is no compliance with Rule 18(4) of this court.

The excipient puts it as follows in paragraphs 5.2, 5.3 and 5.4 of the exception.

"5.2 The plaintiff has failed to identify the portions on which reliance for its cause of action is placed on the annexures referred to in this paragraph.

5.3 *Consequently, the plaintiff's amended particulars of claim are vague and embarrassing.*

5.4 *Furthermore, the plaintiff has failed to identify the persons who allegedly represented the defendant in this paragraph so as to establish vicarious liability of the defendant."*

2.3 Furthermore, the excipient complains in paragraphs 5, 6 and 7 of his exception that the defendant unilaterally cancelled the agreement between the parties. Thus, says the defendant, the gist of the complaint is that the plaintiff has not alleged anywhere in its amended particulars of claim when, how and in what manner did the parties agree on the cancellation of the contract.

[3] The counsel for the plaintiff dealt mostly with the law pertaining to exceptions and his argument that there was no prejudice to the defendant.

[4] **THE LAW:**

The law pertaining to exceptions is well established. In this regard it is not necessary to refer to more than the following:

- 4.1 *"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 Oneanate (Pty) Ltd [1992] 2 All SA 498 (A), 1992 (4) SA 811 (A) 817-818 1)

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



4.2^{cc} For the purpose of deciding an exception, the court thus takes the facts alleged in the pleading as correct. It has been held, however, that the principle that a court is obliged to take the pleadings as they stand for the purpose of determining whether an exception to them should be upheld is limited in operation to allegations of act, and cannot be extended to inferences and conclusions not warranted by the allegations of fact. This principle does not oblige a court to stultify itself by accepting facts which are manifestly false and so divorced from reality that they cannot possibly be proved.

An exception may not be taken against an alternative claim arising out of the same cause of action but may be taken against an alternative cause for the same claim."

See: *Herbstein and Van Winsen [latest ed, p633]*

[5] **CONCLUSION:**

Having perused the amended particulars of claim carefully, I find the argument on behalf of the excipient persuasive and consequently the exception should succeed. Therefore, I make the following order:

1. The exception is upheld with costs including the costs of two counsel; 2.
2. The Plaintiff is granted 20 days within which it has the opportunity to amend its particulars of claim.


GOOBEY AJ 9/9/10

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