

**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable: NO
Of Interest to other Judges: NO
Circulate to Magistrates: NO
Case No: 1109/2023

In the matter between:

SIYABONGA SHEZI

Plaintiff

and

SANTAM LIMITED

Defendant

HEARD ON: 17 NOVEMBER 2023

JUDGMENT BY: MHLAMBI, J

DELIVERED ON: 16 February 2024

- [1] The plaintiff instituted an action against the defendant for the payment of the amount of R 385 573.16 together with interest in respect of damages caused to his motor vehicle, a Mercedes Benz, which was involved in a collision on 26 February 2022 with another motor vehicle at the corner of Victoria Road and Elar Street, Bloemfontein. His vehicle was insured by the defendant.
- [2] The defendant excepted to the plaintiff's particulars of claim on the basis that they lacked averments necessary to sustain a cause of action against the defendant.
- [3] The factual background is largely common cause. The plaintiff and the defendant entered into a policy contract on 01 October 2021. In terms of the insurance contract:

3.1 The defendant would provide a comprehensive insurance cover of R 644 556.00 over the plaintiff's motor vehicle, a 2021 Mercedes Benz A200 Automatic with registration number EVG [...];

3.2 The plaintiff would pay the defendant a monthly premium of R 3 341.99 for the comprehensive cover over the motor vehicle;

3.3 Upon occurrence of an event resulting to a claim, the plaintiff would submit a claim in writing to the defendant within 30 days after such event occurred.

[4] The plaintiff had to comply with certain time limits in terms of the contract which were set out as follows:

"Time limits

(a) If we reject your claim or dispute the amount of your claim, which decision was communicated to you in writing, you may within 90 days from the date of our communication make a written representation to us.

(b) If we still reject your claim or dispute the amount of your claim despite your written representation, you may institute legal proceedings against us within six months from the date we communicate to you the rejection of your written representation.

(c) We are not liable after 12 months from the date of the event that gives rise to a claim unless the claim is the subject of pending court action or arbitration or for amounts of which you may become legally liable."

- [5] On 03 March 2022, the plaintiff lodged a claim with the defendant for the damages caused to his motor vehicle. The defendant rejected the claim on 06 April 2022 on the basis that the information provided by the plaintiff was not true, not complete and was fraudulent. The plaintiff lodged an internal appeal with the defendant which was dismissed on 07 May 2022. The plaintiff issued summons against the defendant for the payment of the damages caused to his motor vehicle.
- [6] In its notice of exception, the defendant stated that the plaintiff did not comply with his obligations in terms of the policy contract upon which he relied in that he did not allege that he complied with the time limit requirements of the policy contract set out in annexure “SS1” to the particulars of claim. A period of more than six months had lapsed between the rejection of the written representation for the internal appeal (07 May 2022) and the issue of the summons on 02 March 2023. Service was only effected on/or about 26 April 2023.
- [7] More than 12 months had elapsed since 26 February 2022 when the collision occurred. The summons was issued and served more than six months after the rejection of the plaintiff’s written representation. The plaintiff failed to comply with the time limit conditions reflected in the policy contract that excluded the defendant’s liability.
- [8] The plaintiff contended in his heads of argument that he complied with the provisions of Rule 18 of the Uniform Rules of Court in that he pleaded the facts he intended to rely on in the trial as well as annexed a copy of the policy contract to the pleadings. The plaintiff’s particulars of claim made out a cause of action in that his claim was based on a motor collision and the vehicle was insured by the defendant who declined to pay the claim. He contended that the

defendant was wrong by suggesting that he should have pleaded the time frames contained in the contract. Such an assertion should be dismissed as it is wrong in fact and law.

- [9] He contended furthermore that the exception should not be entertained as the issuing of the summons outside the prescribed period did not equate to prescription; evidence could be adduced in due course explaining why the late filing should be condoned. The plaintiff relied on *Sun Packaging (Pty) Ltd v Vreulink*¹ and *Rahim Khan N.O. v Max Prop Holding (Pty) Ltd and another*.² The principle was mentioned in the former case that an excipient had the duty to persuade the court that upon every interpretation which the pleading in question, and in particular the document on which it is based, can reasonably bear, no cause of action is disclosed; failing which, the exception ought not to be upheld.³ In the latter case, it was stated that an exception that the cause of action is not disclosed by a pleading, cannot succeed unless it is shown that, *ex facie* the allegations made by the plaintiff and any document upon which the cause of action may be based, the claim is bad in law.

- [10] The defendant contended that an exception is a useful mechanism for weeding out cases without legal merit, however, they must be dealt with sensibly.⁴ Where an exception is raised that a pleading lacks averments that are necessary to sustain an action, the purpose of such an exception is to dispose of the matter without leading evidence at the trial. Consequently, such an exception must go to the root of the claim.⁵

¹ 1996 (4) SA 176 (A).

² (084/2018) ZASCA 171 (30) November 2018.

³ *Lewis v Oneanate (Pty) Ltd and another* 1992 (4) SA 811 (A).

⁴ *Telematrix (Pty) Ltd t/a Metrix Vehicle Tracking v Advertising Standards Authority of South Africa* 2006 (1) SA 461 (SCA) para 3.

⁵ *Vermeulen v Goose Valley Investment (Pty) Ltd* 2001 (3) SA 986 (SCA).

[11] In its heads of argument and oral address, the defendant moved for an order that the exception be upheld and the plaintiff granted a period of 20 (twenty) days to amend its particulars of claim, failing which, leave be granted to the defendant to enrol the matter for the dismissal of the claim or the granting of absolution from the instance. The defendant also sought a costs order for the exception.

[12] The plaintiff contended that it was trite that courts were reluctant to decide upon exception questions concerning the interpretation of a contract. The defendant was dragging the court to look into whether the parties' contract allowed the plaintiff to issue the summons. In *Sun Packaging*⁶, it was stated that even though, as a rule, courts were reluctant to decide upon such questions, this was only where the meaning was uncertain. The terms of the contract in the present case are neither difficult to interpret nor ambiguous. The terms relating to the claim procedure to be followed and the exclusion of liability are not difficult to understand. The disagreement of the parties does not render the meaning uncertain.

[13] Consequently, I make the following order:

Order:

1. The exception is upheld.
2. The plaintiff is granted 20 days to amend his particulars of claim, failing which leave is granted to the defendant to enrol the matter to have the plaintiff's claim dismissed.

⁶ *Supra*, p186-187.

3. The plaintiff is to pay the costs of the exception.

MHLAMBI, J

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