

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

Case number: 1965/2021

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

VERICRED BUREAU (PTY) LTD

Excipient

and

CENTLEC (SOC) LIMITED

Respondent

In RE:

Case number: 1965/2021

CENTLEC (SOC) LIMITED

(REGISTRATION NUMBER: 2003/0116124/07)

Plaintiff

and

VERICRED BUREAU (PTY) LTD

(REGISTRATION NUMBER: 1990/070325/07)

Defendant

HEARD ON:

06 MAY 2022

CORAM:

MATHEBULA, J

DELIVERED ON:

The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 19 AUGUST 2022. The date and time for hand-down is deemed to be 19 AUGUST 2022 at 09H30.

Introduction

[1] The defendant raised the exception on the general basis that the plaintiff's particulars of claim are vague and embarrassing thus lack averments which should enable the defendant to plead. The plaintiff is opposed to it.

Brief facts

[2] It is common cause that sometime in 2013 the plaintiff duly represented by M.P. Seboka in his capacity as the Chief Executive Officer and the defendant duly represented by J.L. Olivier concluded a written agreement. In terms of the written agreement the defendant was appointed as a service provider for the debt collection or recovery services on behalf of the plaintiff. The material express provisions alternatively implied terms of the written agreement are set out fully in paragraph 6 and succeeding paragraphs of the particulars of claim. I pause to mention that the defendant was tasked with the responsibility to collect and recover debt due to the plaintiff during the subsistence of the agreement.

[3] It is further averred by the plaintiff that the written agreement expired by effluxion of time on 22 October 2015. The defendant did not hand over the debtors' accounts to the plaintiff as required. Despite written request to comply with the provisions of the written agreement, the defendant failed to adhere to the hand-over of the Debtors Accounts and other particulars. That is the crux of the breach alleged

to have been committed by the defendant. As a result of the breach, the plaintiff claims damages in the staggering sum of R86,706,183.91.

[4] It is common cause that the defendant served and filed a notice of intention to defend. It is safe to assume that the main allegations constituting the claim are denied by the defendant. The defendant complained that it cannot plead. On the basis of these contestations, the plaintiff amended its particulars of claim and subsequently served and filed the amended papers. The pleadings have been properly amended. Despite the amendments, the defendant still insists that the pleadings are excipiable on the basis that the particulars of claim are vague and embarrassing.

Arguments

[5] The plaintiff argued that the exception should be dismissed with costs because it is bad in law. The reasoning behind it is that the defendant excepted to the particulars of claim pre-amendment. The order sought is as if the amendment did not occur or does not exist. In that case the exception constitutes an irregular step. In contrast, the defendant argued that the point relating to an irregular step is ill-advised and that the pleadings are still inadequate even after amendments.

[6] Nothing really turns on this argument. I agree with counsel for the defendant that this was ill-advised. The defendant's exception clearly refers to the amended particulars of claim. There can be no confusion that the defendant is excepting to the pre-amendment particulars of claim. I have no difficulty in disposing this point on behalf of the plaintiff and proceeding to the crux of the matter before court.

Legal position

[7] Exceptions in general are governed by the provisions of Uniform Rule 23 which reads as follows: -

“(1) Where any pleading is vague and embarrassing, or lacks averments which are necessary to sustain an action or defence, as the case may be,

the opposing party may, within the period allowed for filing any subsequent pleading, deliver an exception thereto and may apply to the registrar to set it down for hearing within 15 days after the delivery of such exception...

(2)(a) ...,

(b) the court shall not grant the application unless it is satisfied that the applicant will be prejudiced in the conduct of any claim or defence if the application is not granted.

[8] The applicable legal position was set out succinctly in the heads of argument by both counsel. It is trite that pleadings must be drafted in a lucid, logical and intelligible manner. This means that the cause of action must be clearly identifiable from the factual allegations made.¹ The purpose of this requirement is to avoid the element of surprise to the other side and curb what Wessels JA referred to as "... more in the nature of a rambling preview of the evidence proposed to be adduced at the trial than a statement of the material facts relied upon as a basis for the relief claimed by the appellant, as plaintiff in the action."²

[9] The onus squarely rests on the defendant to show that the particulars of claim upon every interpretation which the pleading can reasonably bear, the pleading is vague and embarrassing thus disclosing no cause of action. Further that such embarrassment will cause prejudice.³ That is trite in our law. The question to be asked is whether the plaintiff has not pleaded material facts in the summons which on every interpretation can be said to disclose no cause of action.

[10] There is no exhaustive test of what will constitute sufficient particularity. The requirement is that the complete cause of action must be pleaded clearly identifying the issues relied upon. Obviously a pleading will become excipiable if no admissible evidence led on the pleadings can disclose a cause of action.

¹ Trope v South African Reserve Bank and Another and 2 Other Cases 1992 (3) SA 208 (T) at 210G-H.

² Moaki v Reckitt and Colman (Africa) Ltd and Another 1968 (3) SA 98 (A) at 102A-B.

³ Eskom Holdings v Lesole Agencies CC *In re: Lesole Agencies v Eskom Holdings* (2555/2016) [2017] ZAFSHC 171 (28 September 2017).

Grounds of complaint

[11] The defendant raised many complaints/objections to the particulars of claim. One of the offending paragraphs against which the exception is raised is paragraph 3 which reads as follows: -

“At all material times hereto and during 2013, at Bloemfontein, the Plaintiff and the Defendant entered into written Debt Collection Agreement (hereinafter referred to as “the agreement”).”

[12] The core of the complaint is that the written agreement at the centre of this litigation is undated. Key reference is made to clause 25.6 which provides that the written agreement constitutes the entire agreement between the parties and supersedes all prior representations, negotiations, communications concerning the subject matter of the agreement.

[13] The defendant complains about paragraph 6 as if it seeks variation of the written agreement. I am of the view that this is a technical objection that is vague in itself. The pleading as it stands complies with the requirements of Uniform Rule 18(4). The averments made dealing with the existence of an agreement between the parties are made to sustain a cause of action. It cannot be said that the defendant is unsure of a case that it is called to meet.

[14] The approach adopted by the defendant is wrong by referring to certain paragraphs in isolation when it is clear that the entire document must be interpreted as it stands. At this stage, this court is not called up to adjudicate whether the agreement between the parties is valid or not. The objections seem to be that the facts pleaded are inconsistent with the provisions of the agreement. All objections which in my view go to the core of the interpretation of the written agreement are ill-founded. My take is that this will be arguable during the trial.

[15] The rest of the objections touches on the alleged breach and cancellation of the agreement. This goes to the core of the parties' rights and obligations as

stipulated in the agreement. This is a matter of argument than a pleading. There is a slight point referring to the further agreement. That can easily be dismissed on the basis that it is not the case for the plaintiff. The plaintiff has pleaded setting out the full details of the breach and cancellation as well as circumstances under which they took place. Anything further will be cleared by admissible evidence during the trial. The particularity required in the particulars of claim is beyond doubt.

[16] The court is unconvinced that the defendants have discharged the necessary onus and the exception ought to fail.

[17] The order is as follows: -

17.1. The exceptions are dismissed with costs.

M.A. MATHEBULA, J

On behalf of the excipient / defendant:

Instructed by:

Adv. S. Grobler SC

Cliffe Dekker Hofmeyr Incorporated

C/O Webbers Attorneys

BLOEMFONTEIN

On behalf of the respondent / plaintiff:

Instructed by:

Adv. C. Snyman & J.M.C. Johnson

Phatsoane Henney Incorporated

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