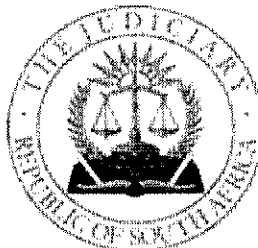


REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 40409/2020

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<u>17/05/2021</u> DATE	<u>[Signature]</u> SIGNATURE

In the matter between:

METAL TANK INDUSTRIES (PTY) LTD

Excipient

and

INTROWELD CC

Respondent

In re:

INTROWELD CC

Plaintiff

and

METAL TANK INDUSTRIES (PTY) LTD

Respondent

Delivered. This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand down is deemed to be 10h00 on 17 May 2021.

JUDGMENT

SKOSANA AJ

[1] In this matter, the defendant took an exception against the plaintiff's particulars of claim on the basis that such particulars of claim do not disclose a cause of action or alternatively are vague and embarrassing.

[2] The plaintiff's particulars of claim relate to a claim by the plaintiff against the defendant based on a contract of sale for payment of goods sold and delivered as well as services rendered. The relevant paragraphs of such particulars of claim state:

"4.1 During or about September 2016, the Defendant as represented by ..., requested to purchase welding related goods and/or services from the Plaintiff, from time to time;

4.2 The Plaintiff, as represented by ..., accepted the Defendant's request to supply the Defendant with welding related goods and/or services, from time to time;

- 4.3 The Defendant subsequently submitted a 'Debtors Master Capture Form' to the Plaintiff on or about 25 September 2016, which contained the information of the Defendant. The 'Debtors Master Capture Form' is attached and marked hereto as annexure "W2" and the Honourable Court is requested to read it herewith as if specifically incorporated.
- 4.4 The agreement was entered into in Johannesburg and was partly verbal, partly in writing; the written part being **Annexure W2** annexed hereto.

5.

Although Annexure "W2" contains no terms and conditions related to the supply of the welding goods and/or services, it was verbally agreed between the parties that payment of all invoices issued by the Plaintiff to the Defendant for goods sold and delivered and/or services rendered, would become due and payable by the Defendant within 30 days from the last day of the month in which such goods and/or service were rendered by the Plaintiff to the Defendant;

6.

- 6.1 *In accordance with agreement as referred to above, the Plaintiff sold and delivered goods and/or rendered services to and/or on behalf of the Defendant between September 2016 and July 2019.*
- 6.2 *The Defendant initially made regular payments in accordance with the agreement between the parties. The Defendant has however failed and/or neglected to make any payment due to the Plaintiff since April 2019 and at present the Defendant is still indebted to the Plaintiff, the outstanding amount of **R 1,000,263.16 (One Million Two Hundred and Sixty Three Rand and Sixteen Cents);***
- 6.3 *The Plaintiff's statement of account which indicates the different unpaid sale order from the 1st of August 2018 up to the 23rd of July 2019 with the*

*relevant dates of the sales Orders the reference numbers and the amounts due in terms of the Sales Order is annexed hereto as **Annexure W3** and the Honourable Court is requested to read it herewith as if specifically pleaded.*

6.4 *Plaintiff had fully complied and performed in terms of the agreement with the Defendant.*

[3] The defendant who is also the excipient, based his exception on the complaint that the subject-matter of the alleged sale (*merx*) has not been properly described in the particulars of claim, nor are the terms of the agreement properly set out or the price of the goods alleged in a fixed or determinable amount. The dates of sale or service or collection are also not specified.

[4] The plaintiff on the other hand contends that the contractual terms which were verbal are those that were accepted verbally in terms of paragraph 4.2 of the particulars of claim. The plaintiff's counsel further argued that the goods have been sufficiently identified as welding goods in the particulars of claim read with annexure "W3" thereto.

[5] In my view, the particulars of claim fall short of the appropriate standard for such pleading and cause of action. The goods are simply referred to as welding related goods. The Debtor Master Capture Form simply describes the nature of business of the plaintiff as supplier of stainless steel and steel vessels. The statement annexed as "W3" contains a list with the headings such as "date", "reference", "description", "debit", "credit" and "balance". Under date there are

dates from 27 August 2018 up to 01 August 2019 alongside invoice numbers as well as amounts for each of those goods and the increasing balance for every debit. There is no description of any of the goods sold. Under description the words 'sales order' appear for all items. There is also an amount due reflected at the end of each page, being R1 000 263-16.

[6] There is no description of the goods therefore reflected on the particulars of claim read together with the annexures thereto. Possibly, some light could have been shed by cross reference to the invoices whose numbers appear on the statement (annexure "W3"). However, that would require the defendant to secure copies of such invoices keeping in mind that a request for further particulars can only be made after the close of pleadings in terms of Rule 21. That in my view, already demonstrates that the defendant will not be able to plead to the particulars of claim as they stand.

[7] I also agree with the defendant that it is not clear as to which portion of the agreement was in writing and what the terms of such agreement were, which fall under the written portion thereof. If the terms and conditions were verbally agreed as alleged in paragraph 5 of the particulars of claim then the written portion of the agreement, if any, had no role or such role is not pleaded. This too renders the particulars of claim vague and embarrassing.

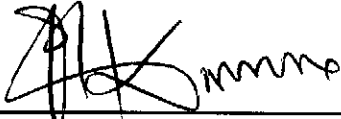
[8] Further, there is no allegation as to when exactly the goods were delivered to the defendant. The dates on the statement do not specify if they are dates of purchase or delivery. In addition to the fact that the goods are not individually described nor are the invoices attached, the alleged dates of sale and/or delivery cover a period of over 3 years and for about 206 undescribed and unidentified items. In other words, the defendant cannot determine from the particulars of claim as to what was sold to it on the alleged dates and what was and was not received.

[9] Another defect is that the allegations in paragraphs 6.2 and 6.3 read with annexure "W3" thereto are contradictory and further contradict the rest of the pleading. Paragraph 6.2 alleges that the defendant failed to make any payments due to the plaintiff since April 2019 totalling the claimed amount of R1 000 263-16. Paragraph 6.3 alleges that the statement reflects unpaid amounts from 01 August 2018 to 23 July 2019 to the total of R1 000 263-16. This also render the particulars of claim vague and embarrassing.

[10] Furthermore, the particulars of claim refer to services rendered but such services are not described anywhere. This aspect was not dealt with at all by plaintiff's counsel in argument. It unquestionably adds to the vague and embarrassing state of the pleading.

[11] In the circumstances, the exception is well taken.

[12] I therefore make an order in terms of the draft order which I have marked "XYZ".



DT SKOSANA (AJ)
Acting Judge of the High Court
Pretoria

Date of hearing: 10 May 2021

Date of judgment: 17 May 2021

Appearance:

For Excipient/Defendant:

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