



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

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>17/06/2021</u> Date	
 Signature	

Case no: 31868/2019

In the matter between:

STANDARD BANK OF SOUTH AFRICA

Plaintiff

and

JAWIKLANE (PTY) LTD

First Defendant

DANKIE BELEGGINGS (PTY) LTD

Second Defendant

GABRIEL JOHANNES PRETORIUS

Third Defendant

NICOLAAS JACOBUS PRETORIUS

Fourth Defendant

ADRIANA CATHARINA LAMPRECHT

Fifth Defendant

CORNELIA MARIA SCHUTTE

Sixth Defendant

NICOLAAS JACOBUS PRETORIUS N.O

Seventh Defendant

MARTHA PRETORIUS N.O.

Eighth Defendant

JACOBUS JOHANNES LE ROUX N.O.

Ninth Defendant

GABRIEL JOHANNES PRETORIUS N.O.

Tenth Defendant

IRENE ELSA PRETORIUS N.O.

Eleventh Defendant

JACOB JOHANNES LE ROUX N.O.

Twelfth Defendant

JUDGMENT

GOODMAN, AJ:

- [1] This is an interlocutory application brought by the Plaintiff in the main proceedings, seeking further particularity from the Defendants in respect of their counterclaim.
- [2] In the main action:
- [2.1] The Plaintiff sues the First Defendant for (a) an amount of R4 907 491.92, plus interest, allegedly owing under an overdraft agreement concluded during November 2016, and (b) an amount of R1 496 000.00, plus interest, allegedly owing under a medium-term loan agreement concluded in April 2014. The Plaintiff pursues claims against the remaining Defendants as alleged sureties for those debts. The Defendants all dispute their liability to pay the Plaintiff the amounts claimed.
- [2.2] The Defendants have brought a counterclaim for an amount of R9 509 975.00, which they claim are the damages that they have suffered as a result of the Plaintiff's alleged failure properly and timeously to consider an application by the First Defendant to be granted a production facility by the Plaintiff. The Plaintiff has defended the counterclaim.
- [3] During August 2020, the Plaintiff filed a lengthy request for particulars, in terms of Rule 21, in respect of both the Defendants' plea and their counterclaim.

- [4] The Defendants replied to that request in September 2020. Their response made a handful of admissions but, for the most part, the requests for particularity were declined on the basis that the issues raised were matters for evidence.
- [5] The Plaintiff then brought an application to compel the provision of further and better particulars, in terms of Rule 21(4). It sought to compel answers only in respect of seven paragraphs of its original request – namely, paragraphs 17 to 21, 23 and 24 (and each subparagraph thereof). Those enquiries all related to the Defendants' counterclaim.
- [6] The Defendants oppose the relief sought. Although they have provided some explanation of their case in the answering affidavit in the application to compel, their primary position is that their case is adequately pleaded to enable the Plaintiff to prepare for trial. They say that the Plaintiff improperly seeks further particular only to force concessions out of them or unfairly to narrow the ambit of the case they can run at trial.

THE ROLE OF FURTHER PARTICULARS

- [7] Rule 21 affords parties to action proceedings a mechanism to procure particularity in order to prepare for trial. Such particularity is intended to “*fill in the picture*” of the cause of action pursued,¹ and thus to prevent surprise at trial.² But a requester is entitled only to those particulars that are “*strictly necessary*” to enable it to prepare for trial.³ A request cannot be used to tie the claimant down to a narrower case than has been pleaded, or unfairly to limit the case to be run at trial.⁴

¹ *Thompson v Barclays Bank DCO* 1969 (2) SA 160 (W) at 165B.

² *De Kock v Minister of Public Works* [2004] 1 All SA 282 (Ck) 296-297.

³ *Ibid.*

⁴ *Thompson v Barclays Bank DCO* 1965 (1) SA 365 (W) at 269B; *Gentiruco AG v Firestone SA (Pty) Ltd* 1968 BP 8; *Gentiruco AG v Firestone SA (Pty) Ltd* 1972 (1) SA 589 (A) at 639

[8] In considering an application to compel brought in terms of Rule 21(4), then, the Court must consider which side of the line a request for particularity falls. If the particularity sought is required for the requester properly to prepare for trial, then its production must be ordered; if it is not, then the particulars requested can legitimately be withheld.

[9] A question that arose in this matter, is whether a party can invoke the Rule 21 process to seek admissions. The Defendants' counsel, Mr Wannenburg, argued that admissions can only be called for in terms of Rule 37(4), and could not competently be required under Rule 21. I do not agree. There is no reason, in principle, why a request for particularity cannot be framed as a request for an admission. If the admission is necessary for the requester to prepare for trial, it will have to be answered; if not, the counterparty can decline to make the admission sought. That is particularly so because the processes envisaged by Rule 21 and Rule 37(4) are different. As was explained in *Kriel v Bowels*.⁵

"It is so that rule 37 is intended primarily to curtail the duration of a trial, narrow down issues, cut costs and facilitate settlements. Parties are required to attempt, in a bona fide manner, to reach settlement either on issues which could serve to shorten the proceedings or resolve the main issues.

A party can however not be compelled to agree to anything during the course of rule 37 proceedings. This much is evident from the fact that rule 37(8)(c) provides that, even in a case where a conference had been convened before a judge in chambers, the judge may give directions which might promote the effective conclusion of the matter, but only with the consent of the parties. . . . I am in agreement with Mr Nepgen's submission that these enquiries should have been contained in a request for particulars for trial in terms of rule 21. It is abundantly clear from rule 37(4) that a formal request in the form served and filed by the Plaintiff in this matter is not contemplated. What is contemplated is a list to be provided to the other party not later than 10 days before the pre-trial conference, inter alia, of enquiries which he will direct and which are not included in the request for particulars for trial and other matters regarding preparation for trial which he will raise for discussion. The list of enquiries is therefore intended to relate to matters which will be discussed at the pre-trial conference. The remedy therefore available to any party who is frustrated by a lack of co-operation or bona fides on the part of his opponent, is to request that a conference be held before a

⁵ 2012 (2) SA 45 (ECP) at paras 15-16.

judge in chambers. The rule clearly does not envisage a formal request to which there must be a formal reply.”

[10] Put differently, Rule 37(4) provides an informal process for narrowing down the issues for trial shortly before the hearing is due to commence. It does not permit a party to compel the admissions sought or otherwise to force its counterparty to participate in curtailing the issues for trial.⁶ It follows that if a party believes a particular admission is necessary for it to prepare for trial, it must invoke the Rule 21 process to procure such admission. Rule 37(4) does not afford it equivalent relief.

[11] I am therefore satisfied that admissions can permissibly be sought in these proceedings – although the Plaintiff must still show that they are needed to prepare for trial.

[12] Against that background, I turn to assess the requests made. For convenience, I deal with them thematically.

REQUESTS RELATING TO THE LEGAL DUTY

[13] The Defendants’ counterclaim is a delictual claim for pure economic loss. It is well established that to succeed in such a claim, the claimant must plead and prove that the counterparty was under legal duty that it breached, thereby causing the claimant foreseeable loss.⁷

[14] A number of the Plaintiff’s requests for particularity were, by its account, necessary for it to ascertain the basis on which the Defendants alleged it, the Plaintiff, owed them a legal duty, and what the contours of that duty was. Thus, the Plaintiff enquired:

- whether it was the Defendants’ case that the Plaintiff acted wrongfully in breach of an alleged legal duty by declining the application for production facilities on 20

⁶ *Paterson NO v Kelvin Park Properties CC* 1998 (2) SA 89 (E) at 104A-E.

⁷ *Fourways Haulage v SA National Roads Agency* 2009 (2) SA 150 (SCA) at para 12; 32.

August 2017 and, if so, why their conducted it alleged to have been wrongful (para 17.1 of the request);

- whether it is the Defendants' case that the Plaintiff was in breach of any agreement by declining the application for production facilities on 20 August 2017 and, if so, the terms of such agreement(s) (para 17.2);
- whether is it the Defendants' case that the Plaintiff was legally obliged to grant the First Defendant's application for production facilities instead of rejecting it and, if so, the particulars of such legal obligation (para 18.1);
- whether the alleged conditional counterclaim of the second to twelfth Defendants, and the relief sought by them in prayer B of the counterclaim, is based on an alleged breach by the Plaintiff of an alleged legal duty owed to the second to twelfth Defendants, seemingly arising from the Plaintiff's alleged delay in approving, and an alleged delay in paying out, the production loan to the First Defendant (para 24.1).

[15] The Plaintiff's counsel, Mr Coertzen, argued that without such particularity, the Plaintiff was unable to understand and assess the elements of wrongfulness and causation in the Defendants' claim. He submitted, moreover, that the crucial question at trial would be whether the Plaintiff was under an obligation to grant the production facility since, if it wasn't, the claim would fail.

[16] For their part, the Defendants contended that the duty, and its relationship to the Defendants' alleged loss, had been adequately and unequivocally pleaded. The duty they relied upon was alleged, in paragraph 10, to be *"a duty to the Defendants, when considering the First Defendant's application for production facilities for the upcoming crop season of the First Defendant, to not act wrongfully and negligently, to act in a bona fide manner, to not act capriciously and to act timeously, in either approving or disapproving the First Defendant's and/or Second Defendant's application for such*

facilities". The existence of that duty had to be assessed, according to Mr Wannenburg, on the facts set out in paragraph 9 of the counterclaim which alleged, in essence, that the Plaintiff had special knowledge of the circumstances of, and inter-relationships, between the Defendants by virtue of its past relationship with them. Causation was pleaded in paragraph 19, which alleged that as a result of the Plaintiff's breach of its legal duty, the First Defendant earned a reduced income because it could not plant a maize crop and instead had to plant a sunflower crop.

[17] I am satisfied that the duty, and its relationship to the alleged loss, are adequately pleaded for the Plaintiff to prepare for trial. Properly construed, the Plaintiff's questions are directed not at ascertaining the factual basis on which the duty is said to be based, but rather at interrogating whether the duty pleaded can sustain the Defendants' cause of action. Indeed, that is demonstrated by Mr Coertzen's argument that the answers to the questions posed would, in the Plaintiff's view, be dispositive of the counterclaim. But whether the pleaded duty can found or sustain a claim is not an issue that the Court can determine at the particularity stage, nor is it an issue in respect of which the Defendants are required to provide particularity. It is matter to be determined either at exception or at trial in due course.

[18] Relatedly, in paragraph 21, the Plaintiff requests particularity regarding "*when, according to the Defendants, was the Plaintiff legally obliged to approve the production loan facility and in terms of what was the Plaintiff so obliged*". That enquiry is made in response to the averments, in paragraphs 15 and 16 of the counterclaim, that the Plaintiff granted a production loan facility and made payment in terms of it during December 2017 and, in paragraph 17, that "*the approval by the Plaintiff of the First Defendant's production loan facility and/or payment in terms thereof when each of these events occurred was, to the knowledge of the Plaintiff, too late for the First Defendant to timeously and in the proper manner plant any of the seasonal crops which the First Defendant intended planting viz. soya bean and maize crops*".

- [19] The request is misplaced because the Defendants do not allege that the Plaintiff was “*legally obliged to approve*” the loan facility. Rather, their case is that the Plaintiff was obliged properly to consider and timeously to approve or disapprove the loan application. The Defendants are not required to answer questions relating to evidence that they do not intend to present.⁸
- [20] Similarly, in paragraph 20 of the request, the Plaintiff enquires “*when, according to the Defendants, the Plaintiff was obliged to make the first payment in terms of the production loan agreement*”. The enquiry is made in response to paragraph 16 of the counterclaim, which avers that “*the first payment to the Plaintiff to the First Defendant in terms of the production loan facility occurred on 22 December 2017*”, and paragraph 17 which pleads that “*the approval . . . of the First Defendant’s production loan facility and/or the payment in terms thereof when each of these events occurred was, to the knowledge of the Plaintiff, too late for the First Defendant to timeously and in a proper manner plant any of the seasonal crops that the First Defendant intended to plant*”. The material issue, for the Defendants’ purpose, is not when payment was due, but rather the delay in processing the loan application to finality and thus procuring timeous payment under it. Again, the Plaintiff seeks particulars from the Defendants that do not properly arise from their pleaded case.
- [21] I accordingly decline to compel a response to paragraphs 17.1, 17.2, 18.1, 20, 21 and 24.1 of the request.

REQUESTS FOR LEGAL CONCLUSIONS

- [22] As it clear from the section dealing with the role of particulars, a request can be made to adduce facts to clarify the cause of action pursued. A request should not call on a

⁸ See Harms Civil Procedure in the Superior Courts (Lexis Nexis, 2021) §B21.5.

party to make legal concessions or to admit legal conclusions. Those are issues for the Court to determine at trial.

[23] In my view, certain of the Plaintiff's requests impermissibly seek to compel the Defendants to make concessions or to admit legal conclusions. They are as follows.

[24] First, the Plaintiff advanced a request for particularity based on what it claimed was an apparent contradiction in the pleadings. Thus, in paragraph 17.3 of the request, it enquired whether it was the Defendants' case that "*the First Defendant could in fact provide the sufficient security to the Plaintiff to grant the production loan facility*". Mr Coertzen submitted that the query was made because of the apparent contradiction between paragraph 9.6 of the counterclaim – which alleged that the First Defendant "*had insufficient assets to provide security . . . for credit facilities*" – and paragraph 13 – which alleged that the Plaintiff acted wrongfully in concluding that the First Defendant "*had not and/or could not provide sufficient security . . . to grant the production loan facility*".

[25] I agree with the Defendants' submission that the Plaintiff's complaint is based on a selective reading of the counterclaim. Paragraph 9.6 indeed pleads that the First Defendant lacked the assets to provide the Plaintiff with security – but it goes on to allege that "*the Second Defendant had assets to provide security to the Plaintiff for credit facilities which the Plaintiff would grant to the First and Second Defendants with a view to ensure that the First Defendant would be able to conduct the First Defendant's farming activities, [and] thereby generate an income and be able to repay credit facilities granted by the Plaintiff to the First and Second Defendants*". Moreover, paragraph 9.7 avers that "*All of the Defendants besides the First Defendant . . . bound themselves or their property in one way or another to the Plaintiff solely with a view to provide security to the Plaintiff for the provision by the Plaintiff of credit facilities to the First Defendant*". And paragraph 9.12 alleges that "*The Plaintiff would, on an annual basis and with a view to the upcoming crop season review the*

First and/or Second Defendants' credit facilities . . . in light of the security provided by all of the Defendants to the Plaintiff'.

[26] The Defendants' case on how the anticipated production facility would be secured is, in my view, adequately pleaded: it is alleged that the First Defendant lacked assets but that it looked to the remaining Defendants to provide security for such facilities as the Plaintiff made available to it. The Defendants, in turn, anticipated relying on the First Defendant's future income stream to repay any debt. The question of whether that provided "*sufficient security*" to warrant the grant of a production facility by the Plaintiff is a question to be determined at trial.

[27] Second, the Defendants plead, in paragraphs 15 to 17 of the counterclaim, that the Plaintiff ultimately granted the First Defendant a production facility, albeit too late for the First Defendant to plant its crops as it had planned. In its plea to the counterclaim, the Plaintiff avers that it issued a facility letter on 15 December 2017 (annexure J to the plea) that set out the terms on which the Plaintiff was prepared to grant an agricultural production loan to the First Defendant, and that the Plaintiff and the First Defendant concluded a production loan agreement (annexure K to the plea) on 19 December 2019.

[28] In the request, the Plaintiff has sought particularity to ascertain whether the production facility that the Defendants aver was ultimately granted, is governed by the terms of annexures J and K. Thus, the Plaintiff enquired whether it is admitted that:

- the "*production loan facility*" referred to in paragraph 15 of the counterclaim was granted in terms of the written production loan agreement attached to the plea to the counterclaim as annexure K (para 19.1 of the request);
- the First Defendant accepted the terms and conditions of the facility letter (annexure J) on 19 December 2017 and at Vereeniging (para 19.3.1);

- the Plaintiff and the First Defendant, each duly represented, entered into the production loan agreement (annexure K) on the terms set out therein, read with the terms of the facility letter (para 19.3.2).

[29] Those requests seem to me to be properly made. They are designed to elucidate whether the basis on which the production facility was granted is common cause or in dispute. That is an issue of some importance because, as Mr Coertzen pointed out, the terms of the contract ultimately concluded between the parties may have a bearing on whether the Plaintiff's conduct prior to its conclusion was wrongful.⁹ I accordingly intend to order that those requests be responded to.

[30] But the Plaintiff then went on to seek a series of admissions regarding:

- whether the Plaintiff advised the First Defendant of the basis on which it was prepared to grant the loan facility (and thus regarding the Defendants' state of knowledge arising from the facility letter) (para 19.2.1 of the request);
- the pre-conditions to the grant and payment of the production facility, and whether or not these were met (paras 19.2.2 and 19.3.3); and
- the terms that the Defendants bound themselves to, in terms of the production loan agreement (para 19.3.4).

[31] Through those requests, the Plaintiff calls on the Defendants to admit elements of its defence. The Plaintiff bears the onus to prove those elements at trial. It cannot, through the particularity process, require the Defendant to admit them and thereby to relieve itself of its obligation to prove those issues at trial.

[32] Third, the Plaintiff enquires, in paragraph 24.2 of the request, whether the Defendants admit that the terms of the agreements of suretyship include that the liability of the

⁹ See in this regard, *Two Oceans Aquarium Trust v Kantey & Templer (Pty) Ltd* 2006 (3) SA 138 (SCA) at paras 21-23.

second to twelfth Defendants would not be affected by any loan or other facilities granted to First Defendant, or by any renewal, change or withdrawal of the First Defendant's facilities, or by any compromise or arrangement with the First Defendant, or by any indulgence or favour given to the First Defendant, or by any delay or omission in the enforcement of the Plaintiff's rights. But that is to call on the Defendants to admit the consequences of certain alleged terms of the suretyship agreement, when the Defendants have disputed their liability under the suretyship agreements *in toto*. That is a matter for trial. I cannot force the Defendants to take the terms and consequences of the suretyships out of dispute, by compelling them to make the admissions sought.

- [33] I accordingly decline to compel a response to paragraphs 17.3, 19.2.1, 19.2.2, 19.3.3, 19.3.4, and 24.2 of the request.

REQUESTS PROPERLY MADE

- [34] That said, there are certain requests for particularity that are, to my mind, properly made and ought to be answered.

- [35] First, it is alleged in paragraph 13 of the counterclaim that "*the Plaintiff capriciously, wrongfully and intentionally alternatively negligently, misinterpreted the information and concluded that the First Defendant had not and/or could not provide sufficient security for the Plaintiff to grant the production facility in accordance with the Plaintiff's normal and standard terms and conditions and considerations*". The Plaintiff has requested full particulars of those alleged "*normal and standard terms and conditions and considerations*", in paragraph 17.4 of the request.

- [36] The Defendants' response in their answering affidavit was that they need not provide such particularity because the terms, conditions and considerations at issue are those of the Plaintiff and thus fall within its knowledge. But I do not think that an adequate answer. The Plaintiff is entitled to know the respects in which the Defendants allege

it fell short of its adhering to its normal terms, conditions and considerations. That is the case it is called to meet, and it needs to know those permutations in order properly to prepare.

[37] In argument, Mr Wannenburg submitted that non-adherence to the Plaintiff's normal terms, conditions and considerations was not an element of the Defendants' counterclaim and that that phrase was intended merely to qualify the terms on which the loan facility ought to have been granted. That is not clear from the pleading of the counterclaim and it is not the position in the answering affidavit. If that is indeed the Defendants' case, the Plaintiff is entitled to know as much. Either way, I consider that further particularity is warranted.

[38] Second, in paragraph 14 of the counterclaim, the Defendants pleaded that they "*made representations to the Plaintiff to reconsider the application for production facilities based on the correct information*". The Plaintiff enquired, in paragraph 18.2, whether further information and documentation was provided by the Defendants to enable such reconsideration and if so, what it was. The Defendant's answer, in its answering affidavit in the application to compel, was that it is implicit in a "*reconsideration*" that the same application would be considered again. But that is not axiomatically so. Decision-makers can and do reconsider applications that have been supplemented, and the Plaintiff is entitled to know whether that is what is alleged to have happened here. I consider the particulars requested to be appropriately sought.

[39] Third, in paragraph 14 of the counterclaim, the Defendants allege that the First Defendant did not accept that its loan application was properly rejected and that it therefore:

"made representations to the Plaintiff to reconsider the application for production facilities based on correct information. These representations consisted of, inter alia, meetings between Messrs Pretorius and Oelofse, representing the First Defendant, and Messrs Ndlovu and Simono and Ms Paul and Ms Selepe over the period August to November 2017, during which period it was represented to the First Defendant that the requested production loan facility would be granted to the First Defendant".

In the face of these allegations, the Plaintiff enquired, in paragraph 18.3 of the request, who represented to the First Defendant that the requested production loan would be granted, and called for particularity of such representations.

[40] The response in the answering affidavit was that paragraph 14 of the counterclaim pleaded who had represented the First Defendant. That misunderstood the question: the Plaintiff had not asked who had represented the First Defendant in the alleged engagements, but who had represented to it that it would be granted the loan facility.

[41] In argument, Mr Wannenburg's response was two-fold. He submitted, first, that paragraph 14 of the counterclaim alleged who had acted for the First Defendant and the Plaintiff, respectively, in their representations between August and November 2017. Second, he submitted that paragraph 15 of the counterclaim pleaded who had informed the First Defendant of the grant of the production loan.

[42] I do not regard either response as adequate:

[42.1] Paragraph 14 of the counterclaim pleads the persons who represented each of the parties in their "*representations*" between August and November 2017. I accept that the people who participated in those engagements are properly identified. But the Defendants go further and aver that it was positively represented to the First Defendant, during those engagements, that the production loan would be granted. The sting in that allegation, in the context of the claim as a whole, is that the Plaintiff knew that the production loan was eligible to be granted sometime between August and November 2017, but delayed in communicating that fact to the Defendants, to their detriment. If the Defendants intend to rely on such a positive representation, the Plaintiff is entitled to know who it was made by and when.

[42.2] Nor is that question answered by the allegations in paragraph 15 of the counterclaim. That paragraph avers that the grant of the production loan

facility was telephonically communicated to the First Defendant on 11 December 2017. But the positive representation referred to in paragraph 14 of the counterclaim is alleged to have occurred prior to that date, in the period August to November 2017.

[43] I accordingly find that the Plaintiff is entitled to the particularity sought in paragraph 18.3 of the request.

[44] Finally, in paragraph 19 of the counterclaim, the Defendants plead their alleged loss. They aver that:

"the First Defendant suffered damages in the amount calculated of R9 509 975.00 calculated as follows:

19.1 But for the Plaintiff's aforementioned breach of the Plaintiff's legal duty, the First Defendant would have generated an income of R21 842 477.00 based on timeous planting of a maize crop.

19.2 Due to the late planting of the First Defendant's maize crop and the necessity because of the lateness to rather plant a sunflower crop on those portions of the First Defendant's farms which could not timeously be planted with a maize crop, the First Defendant achieved a total income of only R12 322 502.00 consisting of R1 787 625.00 in respect of the sunflower crop and R10 544 877.00 in respect of the maize crop at a reduced yield compared to the yield that would have been achieved if timeous planting had been achieved."

[45] In response, the Plaintiff requested "*a full and detailed breakdown of the alleged damages*", including the calculation of the amount and period in respect of which the alleged incomes would have been and were generated (para 23 of the request).

[46] The Defendants' response, in their answering affidavit and in argument, was that adequate information had been pleaded in the counterclaim. Further information would be forthcoming, according to Mr Wannenburg, from an expert in due course.

[47] That does not suffice. Rule 18(10) of the Uniform Rules requires a claimant to plead its damages "*in such a manner as will enable the defendant reasonably to assess the quantum thereof*". That entitles the Plaintiff to sufficient information to make its own

assessment of the damages sustained by the Defendants (if any).¹⁰ It is not required merely to sit passively by and to check whether the Defendants make out their claim when their evidence is led.¹¹

[48] The Defendants' pleading of their damages does not permit the Plaintiff to undertake their own assessment of the damages claimed. Among others, the counterclaim does not allege what period the "*income*" relates to, whether the "*income*" referred to comprises revenue or profit, and what costs – if any – have been taken into account. The Plaintiff is consequently unable itself to assess the reasonableness of the Defendants' quantification of their claim.

[49] Nor is it an answer for the Defendants merely to promise expert evidence in due course. A party is not entitled to refuse a request for particularity because it does not know the answer, if it can ascertain the answer from a witness it intends to call.¹² Simply put, if the Defendants wish to procure expert input to quantify their claim, they must do so now and use his or her inputs to provide the Plaintiff with the particularity it seeks.

[50] In sum, I consider the Plaintiff entitled to the particularity sought in paragraphs 17.4, 18.2, 18.3 and 23 of its request.

COSTS

[51] The Plaintiff has succeeded in compelling a response to some of its requests, but not others. Before me, counsel were in agreement that the party that was upheld on the majority of the points would have enjoyed substantial success in the application, and should be awarded the costs thereof.

¹⁰ *Cete v Standard and General Insurance Co Ltd* 1973 (4) SA 349 (W) at 354E-F.

¹¹ *Ibid.* See also *Thonar v Union and South West Africa Insurance Co Ltd* 1981 (3) SA 545 (W) at 551C.

¹² *Control Instruments Finance (Pty) Ltd v Mercantile Bank Ltd* 2001 (3) SA 645 (C) at 648E.

[52] On balance, the Plaintiff succeeded in compelling a response to fewer of the requests than were refused. I accordingly find that the Defendants were substantially successful in opposing the application and are entitled to their costs.

CONCLUSION

[53] In the circumstances, I make the following order:

- (a) The Defendants are ordered to provide further and better particulars to paragraphs 17.4, 18.2, 18.3, 19.1, 19.3.1, 19.3.2, and 23 of the Plaintiff's request for further particulars dated 18 August 2020.
- (b) The Plaintiff is ordered to pay the costs of the application.



I GOODMAN, AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

Appearances

Counsel for the Applicant: Adv Y Coertzen

Instructing Attorneys: Newtons Inc

Counsel for the First Respondent: Adv WF Wannenburg

Instructing Attorneys: De Klerk Vermaak & Partners Inc.

Date of hearing: 10 June 2021

Date of judgment: 17 June 2021