IN THE HIGH COURT OF SOUTH AFRICA
(EAST LONDON CIRCUIT LOCAL DIVISION)

CASE NO: EL33/2020
Date heard: 11/03/2021
Date delivered: 23/03/2021

In the matter between

LEGEND MOTORS (Pty) Ltd **Plaintiff**

and

OAKHURST INSURANCE COMPANY LTD **Defendant**

JUDGMENT

SMITH J:

[1] The plaintiff has filed an exception to the defendant's plea on the grounds that it is vague and embarrassing and does not disclose a defence. It has previously filed two other exceptions to the plea, and on each of those occasions the defendant has amended its plea to address the criticisms. On this occasion, however, the defendant has decided to batten down the hatches and defend its plea.

[2] The plaintiff contends that the plea, when read in its totality, contains averments which are confusing, meaningless or contradictory, and in some instances do not raise a proper defence to its claim. It contends, in particular, that the special plea raised by the defendant in respect of the court's jurisdiction, is vague and embarrassing and contradicts other averments contained in the plea. In this regard it contends that the objection to the court's jurisdiction is based on the acceptance that a binding contract had been entered into between the parties, while in other parts of the plea this averment has been denied.

[3] The plaintiff also asserts that the special plea raised in respect of its *locus standi* does not disclose a defence and contradicts other averments contained elsewhere in the plea. These averments have not been pleaded in the alternative and the plea is accordingly rendered vague and embarrassing. In this regard also the plaintiff contends that the assertion that it lacks *locus standi* is incompatible with the defendant's acceptance elsewhere in the plea that a valid contract of insurance had been concluded between the parties.

[4] In addition, the plaintiff contends that;

(a) some allegations in the plea are contradictory to each other and have not been pleaded in the alternative;

(b) some allegations are vague and embarrassing, do not support the contents of the plea and does not justify the conclusions sought to be drawn from them;

(c) the defendant seeks to rely on documents annexed to its plea which either contradict the contents of the plea, or do not support some of the assertions contained therein;

(d) the defendant alleges that it (the plaintiff) may have been dishonest in claiming from it in terms of the agreement, but provides no particulars on which this averment is based. This criticism apparently refers to the defendant's averment that the plaintiff did not have an insurable interest in the insured vehicle; and

(e) the special pleas in respect of jurisdiction and *locus standi* contradict each other in that in the jurisdiction plea the defendant pleads that it entered into an agreement with Monolite CC, while in the *locus standi* special plea it appears to aver that it did not conclude an agreement with the plaintiff. These averments are not pleaded in the alternative and accordingly render the plea vague and embarrassing.

[5] I must say at the outset that on my first reading of the defendant's plea, I was able to discern its pleaded defences without any difficulty whatsoever. In contradistinction, the plaintiff's notice of exception made for difficult reading. My attempt to summarise the contents of the exception in a coherent and concise manner above, belies the fact it is unnecessarily prolix and drafted in a ponderous style that makes it difficult to discern the grounds relied upon.

[6] In order to demonstrate that the abovementioned criticisms are not unjustified, it is perhaps necessary for me to put the pleadings in their proper context.

[7] The plaintiff, who is described in the particulars of claim as Legend Motors (Pty) Ltd, issued summons against the defendant, a registered Financial Service Provider who carries on the business of a registered insurance company, for damages pursuant to a contract of insurance allegedly entered into between the parties in East London on 5 December 2018. It is perhaps necessary also to mention that in the Schedule of Insurance, which is annexed to the particulars of claim, the insured is stated to be "Legend Motors t/a Monolite CC".

[8] The plaintiff contends that in terms of the aforesaid contract of insurance the defendant undertook to insure comprehensively the plaintiff's motor vehicle, which is described a Volkswagen Golf V2 2.0 TSI. The insurance cover included the risk of loss or damage to the vehicle because of fire.

[9] It avers that on the 22nd of February 2019, and in East London, the vehicle spontaneously caught fire, resulting in it being damaged beyond repair. The value of the vehicle, calculated on the basis provided for in the schedule to the insurance agreement, was stated to be R647 800.

[10] After the plaintiff had duly notified the defendant of the incident and submitted its claim in accordance with the agreement, the defendant repudiated the claim.

[11] The plaintiff accordingly seeks an order compelling the defendant to comply with the terms of the insurance agreement by making payment for the full insured value of its vehicle, and ancillary relief.

[12] The defendant raised two special pleas, namely that the court does not jurisdiction to hear the matter and that the plaintiff lacks the necessary *locus standi* to institute the claim.

[13] In respect of the jurisdiction plea the plaintiff takes the point that the defendant is situated in George, Western Cape, and the underwriting managers, who entered into the agreement with Monolite CC on behalf of the defendant, is situated in Johannesburg. It accordingly pleads that the insurance contract, which was annexed as Annexure "A" to the particulars of claim, was not entered into within the jurisdictional area of this court. It avers furthermore that the plaintiff also did not lodge its claim within the jurisdiction of this court and neither did the defendant's repudiation of the claim occur within the court's jurisdiction. It asserts that there is accordingly no valid basis upon which this court has the necessary jurisdiction to entertain the action.

[14] In respect of the plaintiff's *locus standi*, the defendant avers that the former is cited in the summons as Legend Motors (Pty) Ltd, with registration number 2017\237140\07, while in the Schedule of Insurance, which is Annexure A to the particulars of claim, the insured is described as "Legend Motors t/a Monolite CC". Monolite CC is a registered close corporation with registration number 2009\086589\23, with the only active member being one Lauren Odendaal.

[15] The defendant accordingly asserts that the plaintiff was not the insured in terms of the insurance agreement and therefore did not have the required *locus standi* to institute and pursue a claim against it based on the terms of insurance agreement.

[16] In its plea-over the defendant furthermore avers that;

(a) the insured vehicle is not the plaintiff's property and it accordingly does not have an insurable interest as required in terms of the general conditions of contract. The defendant, however, clarifies that this averment is proffered in the event that the court finds that the insurance agreement was concluded with the plaintiff, as opposed to with Monolite CC; and

(b) in the event of the court finding that the plaintiff was indeed the insured party in terms of the agreement, the defendant pleads that the plaintiff breached certain conditions of the contract by, *inter alia*, overstating the claim.

[17] It is trite that in order to succeed with an exception based on the ground that a pleading does not disclose a defence, the excipient must persuade the court that on every reasonable interpretation, the plea does not disclose a defence to the plaintiff's claim. In other words, that no admissible evidence led on the pleadings as they stand, can establish a defence.

[18] And where an exception is taken on the ground that a pleading is vague and embarrassing, the court must first determine whether the pleading lacks particularity to the extent that, on a reasonable interpretation, the other party would be unable to distil from it a clear single meaning. This is, however, not the end of the enquiry. Once the court finds that the pleading is vague and embarrassing in this sense, it must determine whether the excipient has shown that it will suffer serious prejudice if the offending allegations are not removed. (*Francis v Sharp and Others* 2004 (3) SA 230 (CPD), at 240F-G).

[19] In my view, it is clear on a proper reading of the defendant's plea that it denies that an agreement was concluded with the plaintiff and pleads certain further defences in the event that the court find that the agreement had in fact been entered into between the parties.

[20] The objection to the court's jurisdiction raised by way of special plea, is based on concise averments which are clearly set out in the plea. These relate in particular to where the plaintiff, the underwriting managers, and the defendant are

situated; where the agreement was concluded; where the claim was lodged; and the repudiation occurred.

[21] In my view these averments were set out concisely and unambiguously and on a reasonable construction thereof, there can be little doubt as to the grounds on which the court's jurisdiction is challenged.

[22] The same goes for the plea in respect of the plaintiff's *locus standi*. That special plea also sets out in a crisp and unequivocal manner that the defendant avers that Monolite CC, and not the plaintiff, is the insured in terms of the agreement. In amplification of this assertion defendant makes reference to Annexure "A" to the particulars of claim which, at least in its view, bears out this inference.

[23] In my view the *facta probanda* pleaded in support of this special plea do not contradict any of the further averments contained in the plea. Any possible doubt in this regard has been avoided by the defendant's unambiguous qualification that the other defences are raised only in the event of the court finding that the plaintiff is indeed the owner of the vehicle and thus the insured. The factual grounds for the assertions contained in this special plea are also unambiguous and brook no other interpretation.

[24] The averment that the plaintiff had no insurable interest in the vehicle was also clearly stated to be on the ground that it was not the owner of the vehicle, that it thus did not suffer any losses and consequently has no claim in terms of the insurance contract. On a proper reading of this averment as well, the plaintiff contends that the defendant has no insurable interest in the vehicle based on its denial that the plaintiff was the owner of the vehicle.

[25] Mr *Kotzé*, who appeared for the defendant, has also correctly argued that it appears that the perceived ambiguity and vagueness of which the plaintiff complains, are based on its own insupportable inferences. Furthermore, they appear to be predicated on the erroneous assumption that where the assertions contained in the plea are at odds with its own averments contained in the particulars of claim or supporting documents, the plea is therefore rendered vague and embarrassing.

[26] It must have been abundantly clear from the aforementioned that there is no basis whatsoever for the contention that the plea does not disclose a defence. I am also of the view that the argument that the averments contained in the plea are so contradictory or vague that the plaintiff is left guessing as to the true meaning thereof or the defences on which the plaintiff rely, is also untenable. As I have mentioned above, the defendant has set out various defences in concise, clear and unambiguous terms, which if proved at a trial in due course, will constitute proper defences to the plaintiff’s claim. In the result the exception falls to be dismissed.

[27] Insofar as the question of costs is concerned, Mr *Kotzé* has submitted that this is an appropriate case where the court should order punitive costs, namely on the attorney and client scale. This assertion was based on the fact that the plaintiff had on two previous occasions raised exceptions to the defendant’s plea and has presumably abused the court processes. I am, however, of the view that there are no grounds for such a punitive costs order. The plaintiff was entitled to file exceptions to the pleas, and it was up to the defendant to decide whether or not to oppose them. The fact that those exceptions were not opposed, compels the inference that they had some merit. Costs must accordingly be awarded on the usual scale.

[28] In the result the following order issues:

(a) The plaintiff’s notice of exception is hereby dismissed, with costs.

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J.E. SMITH
JUDGE OF THE HIGH COURT

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