



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NUMBERS: 37050/2019

37051/2019

40808/2019

37304/2019

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED. ✓
4-2-20 DATE SIGNATURE	

In the matter between:

COMPENSATION SOLUTIONS (PTY) LTD

Plaintiff

and

THE COMPENSATION COMMISSIONER

First Defendant

**DIRECTOR-GENERAL OF THE DEPARTMENT
OF LABOUR OF THE NATIONAL GOVERNMENT
OF THE REPUBLIC OF SOUTH AFRICA**

Second Defendant

JUDGMENT

AVVAKOUMIDES, AJ

1. The four actions under the above case numbers against the first and second defendants are based on the same cause of action. The plaintiff claims payment of moneys by way of summary judgment, pursuant to a written cession of all rights, title and interest in and to the accounts of the relevant medical service provider, which accounts have been factored to the plaintiff.
2. The particulars of claim include annexure "POC1" which comprises a court order, by agreement between the parties, issued by a previous court. Court orders bind all to whom they apply, including organs of state. See: section 165 (5) of the Constitution of the Republic of South Africa, 1996.
3. The defendants have defended the actions and the plaintiff seeks summary judgment in all four applications. All four summary judgment applications have to be decided with reference to rule 32, in its amended form. The defendants filed a plea in each case which is essentially one of denial and do not contain material facts upon which the defendants rely for a defence. Rule 32 (3) (b) of the uniform rules of court provides that the opposing affidavit must disclose fully the nature and grounds of the defence and the material facts relied upon therefor with reference to the defence as set out in the plea. The pleas do not raise any issue for trial.
4. The purpose of a summary judgment application is to allow the court to summarily dispense with actions that should not proceed to trial because the defendant has

not raised a genuine triable issue. Once an application for summary judgment is brought, the applicant obtains a substantive right for that application to be heard, and bearing in mind the purpose of summary judgment, that hearing should be as soon as possible. That right is protected under section 34 of the Constitution. See *Raumix Aggregates (Pty) Ltd v Richter Sand CC* GJ Case Number 8153/2019, a full court decision dated 4 October 2019.

5. It is thus appropriate to set out the chronology in all the cases to show, *inter alia*, the conduct of the defendants in the litigation, as follows:

- 5.1 29 May 2019 the summons was served;
- 5.2 3 July 2019 the defendants filed a notice of intention to defend;
- 5.3 1 August 2019 the plaintiff filed a notice of bar;
- 5.4 8 August 2019 the defendants filed their plea;
- 5.5 29 August 2019 the plaintiff filed the application for summary judgment;
- 5.6 25 September 2019 the defendants filed notice of intention to amend the plea;
- 5.7 30 September 2019 the defendants filed a notice of their intention to oppose the summary judgment application;
- 5.8 30 September 2019 the plaintiff filed objection to the proposed amendment of the plea;

- 5.9 9 October 2019 was the last day to file the opposing affidavit;
- 5.10 11 October 2019 the plaintiff filed a supplementary affidavit detailing therein all payments made by the defendants after the summons was served;
- 5.11 14 October 2019 the defendants filed an application for leave to amend the plea;
- 5.12 16 October 2019 the defendants opposing affidavit was delivered out of time;
- 5.13 6 November 2019 plaintiff filed its opposing affidavit to the defendants' application for leave to amend.
6. The plaintiff's counsel submitted that the court must consider whether the defendants' opposing affidavit complies with rule 32 (3) (b) and, in the light of the proposed amendment to the plea, whether the defendants have, with reference to the proposed amendment of the plea, disclosed a *bona fide* defence, and, lastly, whether the opposing affidavit discloses fully the nature and grounds of the intended defence and material facts relied upon therefor.
7. I have had regard to the proposed amendment to the plea. The issues raised therein are issues that have been adjudicated upon in previous cases in this division. These, together with the contents of the opposing affidavit, do not set out a defence, as is required, to avoid summary judgment.

8. The defendants' counsel submitted that the application ought to be postponed so that the proposed amendment may be argued first and thereafter the summary judgment application may be enrolled for hearing. In the ordinary course of events I would be inclined to agree and postpone the application accordingly, however the defences sought to be raised in the proposed amendment have been dealt with by previous courts. See *Compensation Solutions (Pty) Ltd v The Compensation Commissioner and Director General of the Department of Labour of the Republic of South Africa*, under case numbers 69562/2018; 90457/2018 and 80277/2018, all heard in the Gauteng Division, Pretoria.
9. Moreover, rule 32 does not provide a procedure envisaged by the defendants, i.e. to oppose a summary judgment application based on proposed amendments of the pleas, which may or may not be admitted or rejected by a court hearing such application to amend. The defendants filed an affidavit in support of the application to amend the pleas. If, after noting the defendants' proposed amendments, I were to have regard to the contents of such affidavit, the plaintiff would be prejudiced in that such affidavit does not form part of the summary judgment proceedings before me. The critical issues are that the defendants seek to introduce amendments which have already been pronounced upon by this division and the absence of any explanation as to why the defendants continue to make payments to the plaintiff after issuing of the summonses.
10. The opposing affidavits do simply not comply with the provisions of rule 32 (3) (b). The Supreme Court of Appeal, in *NPGS Protection and Security Services CC v*

FirstRand Bank Ltd, unreported, case number 314/2018, dated 6 June 2019, observed the following:

“[14] Indeed, the court would be remiss in its duties if such defences, clearly devoid of any bona fides, stand in the way of plaintiffs who are entitled to relief. The ever-increasing perception that bald averments and sketchy propositions are sufficient to stave off summary judgment is misplaced and not supported by the trite general principles developed over many decades by our courts. See for example, the well-known judgment of this court in *Maharaj v Barclays Bank Ltd* 1976 (1) SA 418 (A) where the proper approach to applications for summary judgments is stated.”

11. It would thus be contrary to a judicial approach to exercise discretion against a plaintiff and in favour of a defendant where there is an absence of the necessary allegations upon which a defence can be founded. See *He & She v Brand* 2019 (5) SA 492 (WCC) and *Pansera Builders Suppliers (Pty) Ltd v Van der Merwe (t/a Van der Merwe's Transport)* 1986 (3) SA 654 (C).
12. Consequently, I am satisfied that the plaintiff has, in each case, made out a proper case for summary judgment. Both parties employed senior and junior counsel. In my view the applications warranted the employment of senior counsel and the taxing master is guided accordingly. I thus make the following orders:

- 12.1 Under case number 40808/2019 summary judgment is granted in favour of the plaintiff and against the defendants, jointly and severally, the one paying the other to be absolved, for:
- 12.1.1 Payment in the sum of R6 842 714.10;
 - 12.1.2 Payment of interest on the amounts contained in each of the medical accounts listed in annexure "POC3" to the particulars of claim, at the prescribed rate of interest, calculated from the 76th day, to date of payment;
 - 12.1.3 Costs of suit including the costs of two counsel which costs shall include all previous reserved costs, where applicable.
- 12.2 Under case number 37304/2019 summary judgment is granted in favour of the plaintiff and against the defendants, jointly and severally, the one paying the other to be absolved, for:
- 12.2.1 Payment in the sum of R5 555 233.72;
 - 12.2.2 Payment of interest on the amounts contained in each of the medical accounts listed in annexure "POC3" to the particulars of

claim, at the prescribed rate of interest, calculated from the 76th day, to date of payment;

12.2.3 Costs of suit including the costs of two counsel which costs shall include all previous reserved costs, where applicable.

12.3 Under case number 37050/2019 summary judgment is granted in favour of the plaintiff and against the defendants, jointly and severally, the one paying the other to be absolved, for:

12.3.1 Payment in the sum of R5 950 655.31;

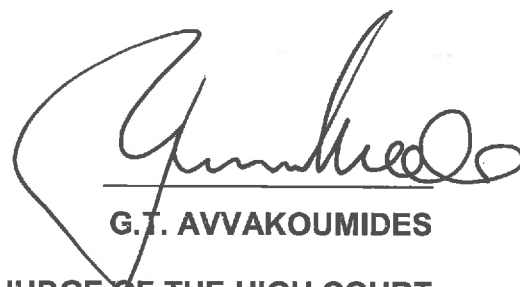
12.3.2 Payment of interest on the amounts contained in each of the medical accounts listed in annexure "POC3" to the particulars of claim, at the prescribed rate of interest, calculated from the 76th day, to date of payment;

12.3.3 Costs of suit including the costs of two counsel which costs shall include all previous reserved costs, where applicable.

12.4 Under case number 37051/2019 summary judgment is granted in favour of the plaintiff and against the defendants, jointly and severally, the one paying the other to be absolved, for:

12.4.1 Payment in the sum of R3 770 207.31;

- 12.4.2 Payment of interest on the amounts contained in each of the medical accounts listed in annexure "POC3" to the particulars of claim, at the prescribed rate of interest, calculated from the 76th day, to date of payment;
- 12.4.3 Costs of suit including the costs of two counsel which costs shall include all previous reserved costs, where applicable.

A handwritten signature in black ink, appearing to read 'G.T. Avvakoumides', is written over a horizontal line.

G.T. AVVAKOUMIDES
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Representation for Applicant: D. E. Van Loggerenberg SC

C. Welgemoed

Instructed by: Quiryn Spruyt Attorneys

Representation for Respondent: M.M. Rip SC

M. Makhubele

B. Kubeka-Manyelo

Instructed by: State Attorney