



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

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case No: 1455/2016

In the matter between:

AECOM (PTY) LTD

Plaintiff

en

FANTI BEKKER HATTINGH N.O.

First Defendant

STEPHEN FOUCHEE N.O.

Second Defendant

JOHANNES JACOBUS WOLHUTER N.O.

Third Defendant

CHARL PIERRE CELLIERS

Fourth Defendant

CANTON TRADING 17 (PTY) LTD

Fifth Defendant

FANTI BEKKER HATTINGH

Sixth Defendant

JOHANNES JACOBUS WOLHUTER

Seventh Defendant

CORAM:

HEFER AJ

HEARD ON:

29 JUNE 2017

JUDGMENT BY: **HEFER AJ**

DELIVERED ON: **6 JULY 2017**

- [1] The Excipients were joined as Third- and Fourth third Parties respectively in terms of Rule 13 of the Uniform Rules of Court.
- [2] The Excipients noted an exception to the Plaintiff's notice to Third Parties on the grounds that same is vague and embarrassing. The exception consisted of numerous grounds pertaining to vagueness and embarrassing. However at the hearing of the matter, it was indicated on behalf of the Excipients that argument should only be confined to the last ground of exception namely that one of the alternative amounts as claimed, being R688 114.57, which amount constitutes damages, is not set out in such a manner to enable the Excipients reasonably to assess how the *quantum* has been calculated or arrived at.
- [3] In terms of Rule 18(10), a Plaintiff suing for damages shall set them out in such a manner as to enable the Defendant reasonably to assess the *quantum* thereof. The requirements of this sub-rule and the purpose they serve are different from those of sub-rule (4) which requires the facts which make up a claim or defence to be set out with sufficient particularity to enable the opposite party to reply thereto.

[4] According to Dictionary of Legal Words and Phrases, Vol. 4, p. Q - 4, the meaning of “*quantum*” is the amount in fees, compensation, or damages to be determined by a Court. According to the Oxford Concise Dictionary “*quantum*” means the amount; share portion; required, desired or allowed amount.

[5] As stated the Third Parties’ complained that the amount of in particular R688 114.57 is not set out in such a manner to enable the Third Parties reasonably to assess how the *quantum* has been calculated or arrived at.

[6] The relevant paragraph in the Plaintiff’s Third Party Notice in regards to the latter amount referred to, reads as follows:

“As a result of the Third Parties representation, the Plaintiff has suffered damages in the amount of R688 114.57 being the cost incurred by the Plaintiff in rendering the professional services provided for in the agreement to the Defendants less an amount of R200 000.00 which was paid to it by the Defendants during or around July 2014.”

[7] As pointed out during argument this passage referred to, is indeed confusing or then for purposes of Rule 23(1) “*vague and embarrassing*” in that it would appear that the R200 000.00 which was paid during or around July 2014 was according to this paragraph paid by the Defendants in regards to costs incurred in regards to the professional services rendered. According to paragraph 17 of the amended particulars of claim however, it is alleged that during or around July 2014 the Defendants paid the Plaintiff an amount of R200 000.00 on account of the services

rendered by the Plaintiff in terms of the agreement. From these two passages it is not clear whether the R200 000.00 was indeed paid on account of the services rendered by the Plaintiff or indeed in regards to the cost incurred by the Plaintiff in rendering professional services. However, the Excipients did not rely on this ground as part of the exception raised by them.

- [8] *Mr Reinders*, on behalf of the Excipients, referred me amongst others, to the matter of **Sasol Industries v Electrical Repair Engineering 1992 (4) SA 466 WLD**, where Cloete J said the following in regards to the non-compliance of Rule 18 at p. 470 – H - J:

“In my view, if a pleading does not comply with the sub-rules of Rule 18 requiring specified particulars to be set out, prejudice has, prima facie, been established ... It is no answer for a Plaintiff to say, as was submitted on the Plaintiff’s behalf in argument, that the Defendant has sufficient information to plead. If the Defendant invokes Rule 30 because he has not been given the information which the Plaintiff is obliged to give him in terms of Rule 18(6), and if the Plaintiff has not excused, is non-compliance with the sub-rule, this Court should come to the Defendant’s assistance.”

- [9] It was however repeated in **Francis v Sharp and Others 2004 (3) SA 230 CPD**, with reference to **Levitan v Newhaven Holiday Enterprises CC**, that an exception that a pleading is vague and/or embarrassing ought not to be allowed unless the Excipient would be seriously prejudiced if the offending allegations were not expunged.

- [10] Prejudice to a litigant faced with an embarrassing pleading must ultimately lie in an inability properly to prepare to meet the opponent's case (See: Herbstein & Van Winsen, The Civil Practice of the High Courts of South Africa, 5th Ed, Vol. 1, p. 637.
- [11] With reference to the amount of R688 114.57, the Plaintiff alleged in the Third Party Notice that it was *in casu* costs incurred by the Plaintiff in rendering the professional services provided for in the agreement less an amount of R200 000.00 paid to it by the Defendants during or around July 2004. In my view the Plaintiff has through these allegations complied with the provisions of Rule 18(10) in that the *quantum* has been provided by the Plaintiff. The *quantum* may indeed be reasonably assessed.
- [12] Even if it is found that there was indeed non-compliance with the provisions of Rule 18(10), I am still not convinced that the Excipients or any other party may be prejudiced in that they may not be able to properly prepare to meet the Plaintiff's case. I am therefore in respect in disagreement with Cloete J in Sasol Industries (supra). The Excipients know exactly the case which has to be met in regards to the amount of the *quantum* referred to. They are therefore at this stage, able to plead to such allegations in order to meet the Plaintiff's case.
- [13] Of importance in this regard is that the Uniform Rules of Court in particular further refer to the remedy as contained in Rule 21 being a request for further particulars in preparation for trial. After the close of pleadings a party may request such particulars to enable

him to prepare for trial. If necessary the Excipients may request such particulars at that stage. However, they are able at this stage to plead to the allegations referred to.

[12] In view of the above the following order is made:

ORDER:

1. The exception is dismissed with costs.

J.J.F HEFER, AJ

Appearance:

On behalf of Excipients: Advocate S J Reinders

Instructed by: Rossouws Attorneys
119 President Reitz Avenue
Westdene
BLOEMFONTEIN

On behalf of Plaintiff: Advocate P Zietsman SC

Instructed by: Weavind & Weavind
c/o Honey Attorneys
Honey Chambers, Northridge Mall,
Kenneth Kaunda Drive
BLOEMFONTEIN