

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No.: 570/2014

In the matter between:

ARNOLD DU PLESSIS

Plaintiff

and

HENDRIK JOHANNES STANDER

Defendant

JUDGMENT BY: MBHELE, AJ

HEARD ON: 13 JUNE 2014

DELIVERED ON: 03 July 2014

[1] The defendant has filed an exception to the plaintiff's particulars of claim on the basis that they are vague and embarrassing.

[2] The plaintiff's cause of action is based on defamation, it being alleged:

“On several occasions during or about the period 2010 to 2011 (the plaintiff is not aware of the exact dates and is therefore unable to be more specific) and in Bloemfontein, Free State Province, defendant stated to and/or within earshot of various people, *inter alia* Sandra Venter and/or MAM Smith of and concerning plaintiff that:

- While his wife was still alive, he had an extra marital affair with Felicity De Freitas.
- The plaintiff for the first time during the second half of February 2011 became aware that the defendant has made the aforementioned statement.”

[3] Before dealing with the grounds for exception it is necessary to summarise applicable principles as laid out in Erasmus, Superior Court Practice at B1-154 to B1-154A.

[4] An exception that a pleading is vague and embarrassing will not be allowed unless the excipient will be seriously prejudiced if the offending allegations will not be expunged.

(a) In each case an *ad hoc* ruling must be made as to whether the embarrassment is so serious as to cause prejudice to the excipient if he or she is compelled to plead to the pleading in the terms to which he or she objects, A point was be of the utmost importance in one case, and the omission thereof may give rise to vagueness and embarrassment, but the same point may in another case be only a minor detail.

(b) If there is vagueness in this sense the court is then obliged to undertake a quantitative analysis of such embarrassment as the excipient can show is caused to him or her by the vagueness thereof.

(c) The ultimate test as to whether or not the exception should be upheld, is whether the excipient is prejudiced.

- (d) The onus is on the excipient to show both vagueness amounting to embarrassment and embarrassment amounting to prejudice.

[5] The defendant based his exception on the following grounds:

That it cannot be determined from the particulars of claim:

- (i) On which specific date the defamatory statement was made;
- (ii) On which specific occasion the defamatory statement was made;
- (iii) Where in Bloemfontein the defamatory statement was made.

That it cannot be determined from the particulars of claim whether the plaintiff was informed of the defamatory statement by the two persons stated in paragraph 3 of the particulars of claim or other persons.

[6] High Court Rule 18(4) provides that every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.

[7] The defendant's counsel referred to the matter of **Atlantis Corporate Travel (Pty) Ltd v Marc Scharli** 2012/9344 South

Gauteng High Court. I must hasten to say that it is important to make a distinction between the aforementioned case and the matter before me. In **Atlantis Corporate Travel (Pty) Ltd v Marc Scharli** *supra* the defamatory statements were alleged to have been made to entities and not to natural persons.

- [8] The plaintiff in his particulars of claim states that the alleged defamatory statements were made in Bloemfontein during or about the period 2010 to 2011, within earshot of various people *inter alia* Sandra Venter and/or MAM Smith.

- [9] The alleged defamatory statement was alleged to have been made in the presence of two natural persons. The plaintiff has qualified the omission of the exact dates on the particulars of claim.

- [10] In **Lockhat and Others v Minister of Interior** 1960 (3) SA 765 (N) at page 777 the court said:

“As long as the declaration reasonably states the nature, extent, and grounds of the cause of action, the court will not as a rule, strike out paragraphs as vague and embarrassing.”

A pleading may be vague if it is either meaningless or capable of one meaning, or if it lacks the particularity and clarity necessary to inform the other party of the case to be answered.

[11] I am not of the view that the particulars of claim are so wanting in clarity and particularity that the defendant should have difficulty pleading thereto. I am satisfied that the assailed paragraphs of the particulars of claim are not of such a nature that the excipient would be prejudiced if they are allowed to stand. I am also of the view that the Plaintiff has set out material facts on which he will rely with sufficient clarity and particularity so as to enable the Defendant to plead thereto.

[12] The particulars of claim as they stand do not prevent the defendant from putting his version. Defendant may deny defamation. The detail relating to exact dates, place and persons who informed Plaintiff about the alleged defamatory statements, in my view, do not form part of the *facta probanda*, they are matters of evidence. The oral evidence at the trial will be able to clarify the dispute. In the result I am of the view that exception cannot be upheld.

[13] I therefore make the following order:

Exception is dismissed with costs.

N.M. MBHELE, AJ

On behalf of the plaintiff: Adv D. de Kock
Instructed by:
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On behalf of the defendant: Adv W. A. van Aswegen
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