IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 3557/2005

In the case between:

SUID-AFRIKAANSE STAMBOEK- EN VEEVERBETERINGSVERENIGING — Applicant

and

STATE INFORMATION TECHNOLOGY AGENCY (EDMS) BPK — Respondent

JUDGMENT: RAMPAI, J

HEARD ON: 27 OCTOBER 2005

DELIVERED ON: 9 FEBRUARY 2006

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[1] These proceedings are concerned with the furnishing of further particulars. Under case number 3811/2003 the respondent as the plaintiff sues the applicant as the defendant for the payment of the sum of R1 180 764,85 and ancillary relief. This claim, the respondent alleges, is the balance of the original debt of R1 680 764,85. The respondent acquired the debt through cession from the

Central Computer Services, a business unit of the Department of State Expenditure. The action is defended. The defendant's plea has been delivered. The further particulars have been requested and furnished.

[2] Notwithstanding the furnishing of the further particulars by the plaintiff, the defendant brought an application on the 18^{th} August 2005 by way of motion proceedings for an order to compel the plaintiff to furnish proper and complete answers to the defendant's request dated the 20^{th} July 2005. On the 11^{th} October 2005 the plaintiff delivered supplementary answer to amplify its original answer dated the 15^{th} of August 2005. The defendant's application is opposed by the plaintiff. Henceforth I shall refer to the parties as cited in the motion proceedings. Adv. A. F. Jordaan SC argued the matter on behalf of the applicant and Adv. T.J.B. Bokaba argued it on behalf of the respondent.

[3] The allegations contained in paragraphs 5.2, 7, 8 and 10 of the respondent's declaration are the pillars of the respondent's claim. When these allegations are considered against the backdrop of the counter-allegations as set out in paragraph 16 and 18 of the applicant's plea, it becomes clear and obvious that in order to succeed the respondent has to prove the following in respect of each particular service rendered: Firstly, the nature of each service; secondly, the extent of the utilization thereof; thirdly, the approved tariff applicable to each service rendered and fourthly, proof that the approved tariff applicable to each service is reasonably market related.

[4] As regards each alleged service rendered, the applicant as the defendant is entitled to know what the respondent's case is in respect of the important aspects mentioned in the aforegoing paragraph in order to prepare for trial. To ascertain whether or not the applicable rates are reasonably market related as alleged by the respondent, the applicant requires sufficient particulars to enable it to appoint an expert witness to investigate that aspect, to advise the applicant, to prepare himself for trial and to testify for the applicant.

The principles governing the furnishing of further particulars were eloquently summarised by Botha, J in **SOUTH**

<u>AFRICAN RAILWAYS & HARBOURS v DEAL ENTERPRISES (PTY) LTD</u> 1975 (3) SA 944 (WLD). See the synopsis at 944B – 945B.

[5] In its summons, the respondent declares as follows:

> ¡°On or about 1 April 1999 the Plaintiff and the Central Computer Services ("CCS"), a business unit of the Department of State Expenditure, duly represented by their authorised representatives and acting pursuant to Section 20 of the Act, entered into an oral agreement of cession in terms whereof CCS ceded and/or transferred to the Plaintiff certain contracts and assets, including the business agreement concluded between the CCS and the Defendant."

[6] In its request for further particulars, the applicant wanted to know who represented the Central Computer Services and who represented the respondent during the business negotiations which led to the conclusion of an agreement of cession. In its answer the respondent merely stated that the representatives of the Central Computer Services acted on its behalf as the cedent and that the representatives of

the respondent acted on its behalf as the cessionary. In its supplementary answer the respondent amplified its previous answer by stating that Central Computer Services and SITA, in other words the respondent, were represented by their duly appointed officials.

[7] It will be readily appreciated that the respondent relies on a contract. Now in terms of rule 18(6) Uniform Rules of Court a party who, in his pleading, relies upon a contract shall state, among others, by whom such contract was concluded. In a case where the plaintiff, as in the instant matter, relies upon a contract, particularly an unwritten one, he is bound by the peremptory requirements of the sub-rule, and is obliged, if possible, to give the information required in precise terms. See Erasmus: Superior Court Practice, page B1-132 and **VORSTER v HESSELMAN** 1982(4) SA 857 (O) at 861 F-H per M.T. Steyn, J.

[8] Both in its original answer and supplementary answer the respondent has failed to identify the agents of either the

cedent or the cessionary. To allege merely that the "representatives" of the respective businesses enterprises or their appointed officials acted on their behalf is certainly not enough. For instance, were such representatives' employees, directors, liquidators, trustees, consultants or whatever of the contractants? The descriptive phrase duly appointed officials is equally vague. I hasten to point out that it is not the respondent's case that, for one or other reason, it is now impossible for it to identify such agents or representatives by their names. The applicant is entitled to such information as of right. To the extent that the respondent's declaration did not contain such information, it was an incomplete and improper pleading. The applicant is therefore entitled to demand that the defect be remedied by the furnishing of the missing information so that the declaration is made a complete and proper pleading it should have been from the outset.

[9] The obligation which the sub-rule imposes on a respondent who relies on a contract for its claim is independent of the

enquiry whether the applicant as the plaintiff necessarily requires such information in order to prepare for the hearing. In the matter of **SOUTH AFRICAN RAILWAYS & HARBOURS v DEAL ENTERPRISES (PTY) LTD** 1975 (3) SA 944 (WLD) at 952H – 953C Botha, J observed:

> ¡°As to the first part, it seems to me that the framers of the Rules intended to prescribe pragmatically that certain classes of particulars, viz. those mentioned in sub-Rules (6), (8), (9) and (10) of Rule 18, should be contained in all pleadings, for the very purpose of eliminating disputes as to whether they were required to be supplied in terms of the general precept of Rule 21 (6) or not. The negative provision of Rule 18 (7) supports this conclusion. Since the prescribed particulars are required to be incorporated in the pleadings, it necessarily follows, in my view, that where they have been omitted the pleader can be compelled to remedy the defect by means of a request for those particulars by his opponent, and in such a case there is no room for an enquiry into the question whether the opponent requires the particulars in terms of Rule 21 (1) or not (cf. Van Tonder's case, supra at p. 193H, and Mavundla's case, supra at p. 28A). As to the second part of the argument, the suggested narrow interpretation of the expression "relies upon" appears to me to be

artificial and unwarranted. A plaintiff clearly "relies upon a contract" when he uses it as a "link in the chain of his cause of action" (Van Tonder's case, supra at p. 193H). He is accordingly obliged to furnish the particulars mentioned in Rule 18 (6) whenever the contract forms a part of the cause of action put forward by him, irrespective of whether the contract can aptly be described as the "basis" of the claim or not.

In my judgment, therefore, the principle to be applied may be formulated as follows:

9. Where a plaintiff relies upon a contract as part of the cause of action put forward by him, the defendant is entitled to the particulars mentioned in Rule 18 (6) as of right and independently of the application of the principles summarised in paras. 1 - 7 above."

[10] As regards the first leg of the applicant's complaint I find the respondent's summons to be incomplete and improper. Since the defect was not remedied by the original answer or the supplementary answer of the respondent I would grant the relief which the applicant now seeks.

[11] In its summons the respondent declares that:

> ¡°5.1 The Plaintiff was to render data processing services and application software development and maintenance services to the Defendant;"

[12] The aforegoing averment has to be read in connection with paragraph 6 of the respondent's declaration which reads:

> "During the period 1 April 1999 to November 2000 the Plaintiff, acting pursuant to the business agreement referred to above, provided data processing services and application software development and maintenance services to the Defendant."

[13] In paragraph 3 of its request the applicant requested for the following information in respect of the alleged services: a detailed description of the nature of each service rendered; when each such service was rendered and by whom each such services was rendered on behalf of the respondent.

[14] The respondent's answer to the above request is found in paragraph 8.

> ¡°Data processing services. Resource utilization is captured and accumulated by the Operating System Software with regard to Central Processor Unit utilization (CPU), Disk Storage utilization (DASD), Input/Output transactions generated (I/O), Memory usage and number of Print Lines generated. The utilization figures are then multiplied with the approved tariffs applicable to each unit of measure giving a monetary value for each unit for a particular month and then added together to give total amount due per Client. The service was rendered through the Pretoria office by a wide spectrum of Plaintiff's employees."

[15] In the first place the description of services was given. The services were described as data processing services. What followed afterwards from the words "resources" to the word "generated" appears to be an explanation of a data capturing process. No information relating to such explanation was requested. Besides data processing services, the respondent's answer is silent about the other services, if any, such as software development and maintenance services as alleged in paragraph 5.1 of the respondent's declaration.

[16] In the second place the respondent's answer is silent about the site(s) where each service was rendered. The place name Centurion appears under the heading service description on several invoices between page 23 and page 24 of the paginated court record. What that means I am uncertain. Counsel for the respondent stated from the bar that the respondent rendered services from its Pretoria office to the applicant's offices in Bloemfontein because the two were electronically linked together by a computer system. That may well be the case. It is unfortunate, however, to say that such an averment appears nowhere in the respondent's declaration or subsequent pleadings such as its original answer or supplementary answer.

[17] In the third place the respondent made no attempt to answer the applicant's question as to when each service was rendered. Granted the various invoices relied upon in support of the claim have different dates. But such invoices are somewhat vague. They do not say whether such dates are indicative of dates on which the services

were actually rendered or the dates on which the applicant was billed. The information provided is lamentably vague.

[18] In the fourth place the respondent gave an evasive answer to the questions as to who rendered the services on behalf of the respondents. The answer that the service was rendered ….. by a wide spectrum of the plaintiff's employees is incomplete and vague. It does not enable the applicant to identify the true identities of the people who rendered the services.

[19] As regards the applicant's second leg of the complaint I also find the respondent's summons to be incomplete and improper. In my view the information that the applicant requested in paragraph 3 is necessary to enable it to prepare for the hearing.

[20] In its declaration the respondent alleged in paragraph 5.2 that the cost of the service to be rendered by the plaintiff to the defendant was to be reasonably market related. In

paragraph 7 of the declaration the respondent alleged that the rates charged by the plaintiff for the services rendered to the defendant were in accordance with section 16 of the Act and that such rates were approved by the Department of Sate Expenditure. The approved tariff structure was annexed to the summons and marked annexure "A".

[21] In paragraph 5 of its request the applicant further required the respondent to furnish it, among others, with a breakdown of the amount claimed – vide paragraph 10 of the summons and annexure "B" thereto. Instead of furnishing the required information the respondent referred the applicant to paragraph 8 of its answer. The relevant portion of paragraph 8 is found in the middle of that paragraph and reads as follows:

> ¡°The utilization figures are then multiplied with the approved tariff applicable to each unit of measure giving a monetary value for each unit for a particular month and then added together to give total amount due per client."

[22] Counsel for the applicant contended that the above answer was so vague that, as the defendant, the applicant was not in a position to identify the required particulars and to consider them in order to prepare for the final hearing. The contention has substance. The formula is riddled with uneasy and technical phrases, for instance: the utilization figures", "the approved tariff" and "the unit of measure". The document marked annexure "B" is a composite document. It consists of various monthly totals extracted from various vouchers. However, those vouchers themselves do not indicate how a total for a particular amount was made up and calculated. No daily services, no basic unit charges, no daily monetary values and no daily subtotals are shown.

[23] All these details are necessary to enable the applicant to know what case it has to meet. I find the formula given in the respondent's answer, unhelpful. The formula, the annexures and the vouchers on which the respondent relies could not be sensibly figured out to distil the issue.

So intricate and incomprehensible are further particulars furnished in this regard that even counsel for the respondent himself was embarrassed. He frankly had to concede that he could not meaningfully use the information supplied by his own client to demonstrate by means of only one voucher as to how its gross sum total was quantified. It follows without saying that unless these monthly totals of the vouchers can be figured out the global claim cannot be properly quantified.

[24] It has to be borne in mind that annexure "B" is a summary of those obscure monthly totals. The contention by counsel for the respondent that the applicant has an in-house computer expert who understands the computation of these monthly sub-totals is a lame argument. The pleadings are not a commodity exclusively intended for consumption by the litigants only. It is as important for the court to understand the pleadings as it is for the litigant's adversary. At any rate, this court does not have such expertise of a computer expert.

[25] I hold the view that without adequate particulars in this regard the applicant cannot be in a position to prepare properly for the final hearing. Compelling the respondent to furnish proper and complete information will prevent eminent prejudice the applicant is likely to suffer as matters currently stand. Therefore I am inclined to uphold this third leg of the applicant's complaint as well.

[26] I have not said anything here about paragraph 5.1, 5.2 and 5.3 of the applicant's request. The general import of each of these sub-paragraphs is substantially the same as that of paragraph 3. My views there apply *mutatis mutandis* equally well here.

[27] The respondents did not have any objection to the applicant's request as contained in paragraph 10 of the Applicant's Heads of Argument. I mean such a prayer or request is a usual component of the relief saught in matters of this nature. I would therefore also grant such ancillary

relief in terms of Rule 21(4).

[28] Finally I can see no reason why costs should not follow success in this matter. No argument to the contrary was advanced.

[29] Accordingly I make the following order:

29.1 The respondent is directed to furnish the applicant with complete and proper answers to paragraphs 1.2, 1.3, 2.2.2, 3 and 5 of the applicant's request for further particulars dated 20.07.2005 which was filed under case number 3811/03 of this court.

29.2 The respondent is directed to pay the applicant's taxed costs, relating to this application on the scale as between party and party.

29.3 The respondent is directed to comply with clause 1 above within thirty days hereof.

29.4 The applicant is granted leave to approach this court on the same papers duly amplified wherever necessary to have the respondent's claim dismissed with cost should the respondent fail to comply with this order.

M.H. RAMPAI, J

On behalf of the applicant:	Adv. A.F. Jordaan SC Instructed by: McIntyre & Van der Post BLOEMFONTEIN
On behalf of the respondent:	Adv. T. Bokaba Instructed by: Mapitse & Khang Attorneys BLOEMFONTEIN

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