

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 4106/2020

DATE: 2024-05-28

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 28 May 2024

SIGNATURE

10 In the matter between

MARIANNE RICHARDS N.O.

Plaintiff

and

RAMSAY WEBBER INC

Defendant

J U D G M E N T E X T E M P O R E

20 WILSON, J: The defendant, Ramsay Webber, seeks leave to amend its plea in this trial action. The trial action concerns a claim on behalf of the trust of which the two plaintiffs are trustees.

The plaintiffs say that they instructed Ramsay Webber to do work in connection with a loan they intended to advance to John Risley and Sons (Pty) Ltd. The essence of the claim is that because of Ramsey Webber's negligence

in the execution of its mandate an amount of R3-million was advanced to John Risley and Sons as a loan without proper security being put in place in the form, amongst other things, of a notarial bond over John Risley and Sons' movable assets.

In the plea as it presently stands, Ramsey Webber says there was not a mandate of the nature alleged by the trust but that it accepts that a loan in the sum of R3-million was advanced by the trust to John Risley and Sons.

10 Ramsey Webber also notes in its plea an allegation made in the particulars of claim that if there were a mandate between the parties there would be an implied term in the mandate that Ramsay Webber would execute the mandate with the appropriate diligence.

In an application for leave to amend its plea, Ramsey Webber wishes to do three things. The first thing it wishes to do is to introduce a special plea. I need say no more about that since the amendment to insert the special plea has been conceded.

20 The second thing Ramsay Webber wishes to do is amend paragraph 5 of its plea to deny the implied term that the plaintiffs say was in the mandate the trust gave to Ramsay Webber. At present, as I have said, the plea merely notes the allegations concerning the implied term.

The third thing that Ramsey Webber wishes to do is

to withdraw its admission that R3-million was advanced to the John Risley and Sons, to replace that admission with a denial that R3-million was advanced to the trust, and to aver that the trust, in fact, only advanced R1.4-million to John Risley and Sons, with the other R1.6-million making up the R3-million loan having been advanced by the first plaintiff, Ms Marianne Richards in her personal capacity.

With regard to the second amendment, I have no doubt that that amendment should be granted. The fact of
10 the amendment is to confirm what the parties understand the position to be in any event. What Ramsey Webber wishes to aver is that there was no implied term that it would act diligently because there was in fact no agreement into which that term could be implied. Therefore, it escapes me what prejudice there could be to the plaintiffs in allowing that amendment.

In relation to paragraph 7 of the plea, I should at the outset note an ambiguity in the amendment as it currently stands. It was not clear to me on the first reading
20 of the amendment that Ramsay Webber intended to suggest in paragraph 6.3.1 of the amendment that the first plaintiff transferred the sum of R1.6-million into John Risley and Sons' call deposit account in her personal capacity. I therefore suggested to counsel for Ramsay Webber, a suggestion that he gratefully accepted, that the amendment

be altered to read at paragraph 6.3.1 that:

“On or about the 2nd of September 2015 the first plaintiff, acting in her personal capacity, transferred the sum of R1.6-million into the company’s call deposit banking account.”

I intend to grant leave to amend and my order granting leave to amend ought to be understood as granting leave to amend with the insertion of the words “acting in her
10 personal capacity” in paragraph 6.3.1 of the amendment.

So phrased, the amendment of paragraph 7 of the plea amounts to the withdrawal of an admission. The plea, as it currently stands admits simply that the trust advanced a loan in the sum of R3-million to John Risley and Sons. What the plea will say after it is amended, is that in fact the trust only advanced R1.4-million to John Risley and Sons, the other R1.6-million being advanced by the first plaintiff in her personal capacity.

The effect of this is, of course, to withdraw an
20 admission that 3-million was advanced to the company and to replace it with an admission that only 1.4-million was advanced to the company.

Amendments, even amendments that withdraw admissions, will be granted if there is an explanation for the withdrawal of the admission that is in good faith and that is

adequate to allow the Court to understand why the admission is sought to be withdrawn.

It will also be required that the party against whom the amended pleading will be tendered will not suffer incurable prejudice as a result of the amendment. In this case I am satisfied that both of those conditions have been met.

The plea in its original form was based on information that was available to Ramsay Webber at the
10 time it was drafted. That information later changed and in the course of discussions between the parties and their representatives, and it became clear, at least to Ramsay Webber, that the true situation was that the trust only advanced a portion of the R3-million, the other portion being advanced by the first plaintiff in her personal capacity.

Whether that is true I need not decide. All I need be satisfied of is that the Ramsay Webber believes, in good faith, that this is the situation and that it wishes, in good
20 faith, to advance a version based on that information in its plea. There is no suggestion in this case that those conditions have not been fulfilled.

The plaintiffs could point to no prejudice that would result from the amendment other than perhaps the need to adduce additional evidence to deal with it. At this stage of

the proceedings that prejudice is plainly curable, there is no suggestion that the evidence is not readily available or that they will not be able to discover or adduce it before the matter comes to trial. For all of these reasons the amendments must be granted as prayed for.

On the question of costs, although it was mistaken, I am satisfied that the opposition to the application for leave to amend was reasonable. The amendment itself, as I discovered upon reading the file, is not always a model of
10 clarity. In the circumstances it seems to me that the costs of the application for leave to amend ought to be costs in the trial. For all of those reasons I make the following order:

1. The defendant is granted leave to amend its plea in the manner set out in its notice of amendment dated the 21st of August 2023 with the addition of the words, “acting in her personal capacity” between the words “plaintiff” and “transferred”, in the first line of paragraph 6.3.1.
- 20 2. The costs of this application will be costs in the trial.


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WILSON, J
JUDGE OF THE HIGH COURT
28 May 2024