



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

Case No: **064154/2023**

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHERS JUDGES: NO  
(3) REVISED

[Redacted Signature]

07 AUGUST 2024

SIGNATURE

DATE

In the matter between:

**CART BLANCHE MARKETING SERVICES (PTY) LTD**

Excipient

and

**METAL TECHNICS (PTY) LTD**

Respondent

In re:

**METAL TECHNICS (PTY) LTD**

Plaintiff

and

**CARGO DAWN (PTY) LTD**

First Defendant

**CART BLANCHE MARKETING SERVICES (PTY) LTD**

Second Defendant

*This judgment is prepared and authored by the Judge whose name is reflected as such and is handed down electronically by circulation to the parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 07 August 2024.*

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## JUDGMENT

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### **INTRODUCTION**

[1] The excipient, the second defendant in the main action, Cart Blanche Marketing Services (Pty) Ltd [Cart Blanche] raises an exception to the plaintiff's, Metal Technics (Pty) Ltd [the plaintiff], amended particulars of claim [particulars]. The exception is raised on grounds that the particulars are vague and embarrassing, rendering it unable to plead thereto and/or that such particulars fail to sustain a cause of action in delict as pleaded.

[2] For the sake of procedural clarity, Cart Blanche on 25 July 2023, served its first rule 23(1) notice alleging that the unamended particulars were vague and embarrassing. This triggered the plaintiff to effect an amendment on 4 September 2023. The amendment, however, did not satisfy Cart Blanche who then served a further rule 23(1) notice alleging again, that the particulars were still vague and embarrassing. No complaint on notice was raised that the particulars did not disclose a cause of action as is now raised, by way of exception.

[3] To deal with the grounds raised, requires this Court to consider the applicable general principles distilled from case law and to grasp of the plaintiff's pleaded case, particularly in delict which is not a model of perfection. According to the particulars, the plaintiff claims damages for the loss of its goods caused whilst they were being transported. The damages claimed are framed in contract as against the first defendant, Cargo Dawn (Pty) Ltd [Cargo Dawn], alternatively framed in delict as against Cargo Dawn and Cart Blanche jointly and severally. Both claims arise from the alleged same conduct, that of Mr Ranwedzi who, according to the particulars

drove a freightliner truck [vehicle] negligently in adverse wind conditions. The negligent conduct is based on Mr Ranwedzi's failure to prevent the vehicle from overturning in such prevailing weather conditions, such conduct allegedly causing the damage to the plaintiff's goods. The plaintiff alleges that at the material time, Mr Ranwedzi was employed by or was a contractor appointed by Cart Blanche's unidentified agent [agent].

[4] Cargo Dawn has not raised an exception to the claims brought against it, including where it is held jointly and severally liable with Cart Blanche in delict. Furthermore, the facts in the particulars, in support of the delictual claims as against both Cargo Dawn and Cart Blanche, are not dealt with separately by the plaintiff and the allegations are intertwined.<sup>1</sup> Both factors for consideration when dealing with the relief sought by Cart Blanche who prays for the exception to be upheld and the particulars to be set-aside. This in circumstances when both the claims against Cargo Dawn remain unchallenged. Both Counsel failed to deal with the effect of the relief having regard to the issues raised herein.

[5] Be that as it may, Cart Blanche raises 6 (six) grounds of exception. The first and fourth ground strikes at the heart of the complaint, namely that having regard to the alleged facts, if assumed to be proved, such are not susceptible in law of sustaining a claim in delict as pleaded. The remaining grounds deal with the complaint that certain allegations are vague and cause embarrassment resulting in prejudice. From the argument presented by the Counsel acting for Cart Blanche, grounds 1 and 4 constituted the nub of the complaint.

## **GROUND**

### **Grounds 1 and 4**

[6] Ground 1 essentially deals with the complaint that as a result of a lack of allegations the plaintiff has failed to establish the conclusion that Cart Blanche, as a principal, is vicariously liable for the conduct of its sub-contractor in law.

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<sup>1</sup> **Barclays National Bank Ltd v Thompson** 1989 (1) SA 547 (A) at 553F.

Expanded, in the absence of allegations that it was at fault (presumably negligence), no cause of action is disclosed in delict [negligence complaint]. Whilst in ground 4, Cart Blanche complains that no facts are pleaded to support the conclusion that it owed the plaintiff a legal duty of care to prevent the goods from being damaged, nor how it breached such duty of care [wrongfulness complaint].

[7] Both grounds of exception are raised on the basis that no cause of action has been established as a result of the lack of facts pleaded to sustain the claim in law. However, in ground 4, Cart Blanche also alleges, in the alternative, that the absence of facts pleaded renders the particulars vague and embarrassing calling for clarity.

#### Negligence complaint

[8] Cart Blanche in ground 1, argued the point on the basis of a premise it set out in paragraph 1 of its exception. Applying such premise, and in paragraph 2 in ground 1, Cart Blanche concludes that there are insufficient facts to establish the conclusion that it is liable to the plaintiff for the damages ostensibly sustained as a result of the alleged conduct of its sub-contractor and/or the driver, Mr Ranwedzi.

[9] In argument and due to the lack of Cart Blanche taking issue with the pleaded facts in the particulars which attempt to establish the nature of the relationship between the Mr Ranwedzi, the alleged wrongdoer, and Cart Blanche's sub-contractor at paragraph 11.4 thereof. This Court accepts that for purposes of the argument, the facts at 11.5 were accepted.

[10] In paragraph 11.5 of the particulars, the plaintiff alleges that when the accident occurred, the goods were transported by Cart Blanche's agent who was as a sub-contractor. These facts are echoed in paragraph 1.2 of the exception.

[11] The premise relied on in paragraph 1 in the exception stated, *inter alia*:

“1.2      *When the accident occurred, the goods were being transported by an unidentified party appointed as a Sub-contractor of the Second Defendant (“the subcontractor”).*

1.4 *The Second Defendant is vicariously liable to the First Defendant for the alleged negligent conduct of the subcontractor and the driver of the vehicle used to transport the goods.*

1.5 *The First Defendant is vicariously liable to the plaintiff for the alleged negligent conduct of the Second Defendant and/or the subcontractor.”*

[12] This too must now be considered against the pleaded facts in the particulars at paragraph 11.3 in which the plaintiff alleges that:

“11.3 *The Second Defendant appointed a subcontractor whose details are unknown to the Plaintiff, (“the Second Defendant’s subcontractor”), as its agent to transport the Plaintiff’s goods. The Second Defendant’s subcontractor, acted as the agent to the Second Defendant, alternatively, it acted within the furtherance of the interests of the Second Defendant. (own emphasis)”*

[13] As this Court understands the argument in ground 1, it centres around the plaintiff’s claim against Cart Blanche based on no more than the allegation of vicarious liability perpetrated by its sub-contractor in law.<sup>2</sup> A sub-contractor as argued, being one who takes on a portion of the contract from the principal contractor and not as an employee. Cart Blanche correctly relies on the principle that a principal is not vicariously liable in delict perpetrated by its sub-contractor nor as a result of servants of such sub-contractor.<sup>3</sup> Although the general principle of immunity of liability exists there are exceptions. The general principle is rather that a principal is not liable for the wrongs of such sub-contractor or its employees except

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<sup>2</sup> **Street Pole Ads Durban (Pty) Ltd and Another v eThekweni Municipality** 2008 (5) 290 (SCA, [28].

<sup>3</sup> **Colonial Mutual Life Assurance Society v MacDonald** 1931 AD and at para 412 and 427.

where the principal is at fault.<sup>4</sup> The particulars do not allege any facts to support that Cart Blanche's conduct was negligent.

[14] According to the particulars the plaintiff relies solely on the negligent conduct of Mr Ranwedzi. A concession relied on by the plaintiff's Counsel too in argument. The plaintiff's Counsel argued that the plaintiff's claim is based on the positive negligent conduct of Cart Blanche's employee and/or agent and/or contractor based on vicarious liability and the negligent breach of a legal duty by, *inter alia*, Cart Blanche. The plaintiff's Counsel argues that it does not have to allege fault (negligence) on behalf of Cart Blanche as the principal on a claim based on vicarious liability for the delict of its sub-contractor. This stance by Cart Blanche's Counsel reinforces Cart Blanche's failure to deal with the negligent conduct of Cart Blanche itself. The facts call out for the application of the general principle. In the absence of facts to support the exception to the general principle, the general principle applies and the element of fault absent.

[15] The argument advanced by Cart Blanche's Counsel was at variance with the general principle and was advanced without relying on authority in its heads of argument in support thereof. The plaintiff's complaint possesses merit. This would explain why Cart Blanche deemed it necessary to expand its argument in paragraph 3 in the ground 1, to demonstrate the foreseeability test as explained by the Supreme Court of Appeal to be applied in these circumstances.<sup>5</sup>

[16] However, the complaint in ground 1 was raised and confined to Cart Blanche's agent, a sub-contractor. Paragraph 11.3 of the plaintiff's particulars invites the proposition of another relationship in the alternative, namely an agent acting in the furtherance of Cart Blanche's interests. This alternative was not specifically dealt with in ground 1 and as such the proposition remains unchallenged. Cart Blanche is confined to the manner in which the complaint is framed in the exception.

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<sup>4</sup> **Stein v Rising Tide Productions CC** [2002] 2 All SA 22 (C), 2002 (5) SA 199 (C); **Langley Fox Building Partnership (Pty) Ltd v De Valence** [1991] 3 All SA 736 (A), 1991 (1) SA 1 (A); **Chartaprops 16 (Pty) Ltd and another v Silberman** 2009 (1) SA 265 (SCA) para 28.

<sup>5</sup> *Supra*, as discussed by Goldstone AJA, as he then was in **Langley Fox Building Partnership (Pty) Ltd v De Valence** [1991] 3 All SA 736 (A) at 12H-J,

[17] In consequence, the attack not as effective, it failing to deal with the heart of the complaint as desired. However successful in part and to be upheld *pro tanto*.<sup>6</sup>

### Wrongfulness complaint

#### Ground 4

[18] In paragraph 11.8 the plaintiff pleads:

*“11.8 By virtue of the facts as set out supra the Defendants and/or its employees and/or agents owed the Plaintiff a legal duty to prevent the goods from being damaged whilst so conveyed or transported by the Second Defendant’s subcontractor.”*

[19] ‘The facts *supra*’ refer to the facts pleaded in paragraph 11.1-11.7 of the particulars which include that Cargo Dawn undertook to safely transport the plaintiff’s goods and that Cart Blanche acted as Cargo Dawn’s agent, alternatively acted in the furtherance of the interests of Cargo Dawn.

[20] Cart Blanche does not take issue with pleaded facts setting out the nature of the relationship between itself and Cargo Dawn, nor with their respective employees or their agents, all of which the plaintiff pleaded owed a legal duty to prevent the goods from being damaged whilst being conveyed.

[21] Accepting the truth of the facts establishing the respective relationships between the parties and all the facts relied on in support of establishing a legal duty, this complaint can’t be sustained.<sup>7</sup> Facts in support of the reasons why a legal duty

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<sup>6</sup> **Swadif (Pty) Ltd v Dyk N.O** 1978 (1) SA 928 (A).

<sup>7</sup> **BE obo JE v Member of the Executive Council for Social Development, Western Cape** [2021] ZACC 23; **Knop v Johannesburg City Council** (669/92) [1994] ZASCA 159; 1995 (2) SA 1 (AD); [1995] 1 All SA 673 (A) (18 November 1994) at para 30-33.

arose and such breach arising from the negligent conduct of Mr Ranwedzi, liability so arising vicariously sufficiently pleaded to establish wrongfulness.

### Grounds 2, 3 and 6

[22] In argument, the second, third and sixth grounds were argued together in that these grounds attack the confusion created in the body of the particulars and the prayers in respect of the alternate claims. This confusion Cart Blanche alleges, renders the particulars vague and embarrassing.

[23] Considering the particulars as a whole, including having regard to the distinct and clear headings introducing the alternate claims and considering the formulation of the prayers in the alternative, the alternate claims and the relief sought is clear enough, and, in consequence not vague causing an inability to plead and these grounds must fail.

### Ground 5

[24] The thrust of the complaint in this ground is that the plaintiff uses the words “*collision*” in certain paragraphs and then as an “*accident*” interchangeably. The word accident describing the negligent conduct of Mr Ranwedzi on 12 July 2020 in both the claims framed in delict and contract.

[25] However, Cart Blanche argues that at paragraphs 7 and 14 (although paragraph 14 incorrectly referred to as paragraph 4 at paragraph 13.3 of the exception) the plaintiff uses the term “*collision*”, and the particulars of such collision are not disclosed.

[26] Paragraph 7 is clear that it deals with the manner in which the goods were damaged aforementioned. Logically and reading the particulars as a whole the only conduct aforementioned relied on which caused damage to the goods is the accident clearly set out in the preceding paragraph 6.

[27] The same logical explanation follows in respect of paragraph 14. Although these particulars are not a model of perfection the only conduct relied on causing damage is the accident clearly set out in paragraph 6.3.1 and 11.5 of the particulars and in consequence not vague.

[28] Cart Blanche must fail on this ground.

### Costs

[29] There is no reason why costs should not follow the outcome, even if the outcome of the exception is upheld to the extent dealt with above. This Court in exercising its discretion also considered the procedural steps taken by the respective parties and the invitation to amend the particulars which was rejected by the plaintiff. Such failure triggering the necessity of the exception.

[30] The following order:

1. The exception is upheld in respect of ground 1 and dismissed in respect of grounds 2, 3, 4, 5 and 6.
2. The Plaintiff is ordered to pay the costs of the exception taxed on scale B.
3. The Plaintiff is granted leave to amend its particulars of claim within 14 (fourteen) days of this order.



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**L.A. RETIEF**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

**Appearances:**

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|--------------------------|-------------------------------------------------------------------------------|
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| Date of hearing:         | 05 June 2024                                                                  |
| Date of judgment:        | 07 August 2024                                                                |