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

Reportable / Not reportable

Case no: 3955/2019

In the matter between

PHILIPPUS JOHANNES JACOBUS CRONJE	**1st APPLICANT**
ADOLF JOHANNES DE BRUYN N.O.	**2nd APPLICANT**
PHILIPPUS JOHANNES JACOBUS CRONJE N.O.	**3rd APPLICANT**
CECILE CRONJE N.O.	**4th APPLICANT**
ANDRIES GUSTAV LE GRANGE N.O.	**5th APPLICANT**
(In their capacity as trustees of the PC Trust)	
DIE CRONJE SEUNS BOERDERY CC	**6th APPLICANT**
HENDRIK BERNARDUS CRONJE N.O.	**7th APPLICANT**
HESTER CRONJE N.O.	**8th APPLICANT**
(In their capacity as trustees of the Hendrik Cronje Family Trust)	

and

FIRSTRAND BANK LIMITED t/a FIRST NATIONAL BANK	**RESPONDENT**

Neutral citation: *Philippus Johannes Jacobus Cronje & Others v Firstrand Bank Limited t/a First National Bank (3955/2019)*

Coram: Mpama J

Heard: **21 November 2024**

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be on **05 March 2025** at **15H00**.

Summary: *Application in terms of Rule 21 of Uniform Rules of Court – court to determine whether particulars requested by the applicant are necessary for the purposes of trial.*

ORDER

1. The application to compel the plaintiff to provide further particulars is dismissed.

2. The defendants are ordered to pay costs on Scale C as contemplated in rule 67A of the Uniform Rules of the Court, jointly and severally, one paying the other to be absolved.

JUDGMENT

Mpama AJ

[1] This is an application for an order to compel the respondent to provide better and further particulars for trial brought by the applicants. The applicants are the first to eighth defendants in the main action instituted by the respondent (the plaintiff). For ease of reference, I will refer to the parties as they are referred to in the main action.

[2] The first defendant is a major farmer of the farm Dankbaar, Bultfontein. The second to fifth defendants are cited in their official capacity as trustees for the time being of PC Trust with registration number IT780/2011. The sixth defendant is a close corporation incorporated and registered in accordance with the statutes of the Republic of South Africa with chosen *domicilium citandi et executandi* at the farm Eldorado 508, Theunissen. The seventh and eighth defendants are cited in their official capacity as the trustees for the time being of the Hendrik Cronje Family Trust.

[3] What was once a happy marriage between the plaintiff and defendants has now turned into an acrimonious relationship. The plaintiff and the defendants are embroiled in a legal dispute commenced in August 2019 when the plaintiff issued summons against the defendants.

[4] The plaintiff's case, gleaned from the amended particulars of claim is that:

(a) Claim 1: On or about 22 August 2017, the plaintiff made available to the first defendant an amount of R13 500 000.00 as short-term working capital against security of, *inter alia*, various suretyship agreements and mortgage bonds. The first defendant breached the agreement and is in arrears. As at 1 May 2021 the defendant was in terms of this facility indebted to the plaintiff in the amount of R21 122 918.94.

(b) Claim 2: On or about 18 August 2009, the plaintiff entered into a written loan agreement with the first defendant in terms of which the plaintiff lent and advanced an amount of R1 320 000.00 to the first defendant. The defendant has breached the agreement and is in arrears.

(c) Claims against PC Trust: Claim 1: On or about 11 June 2012 the plaintiff lent and advanced an amount of R3 600 000.00 to the trust against security of, *inter alia*, a suretyship, a notarial bond and mortgage bonds over certain immovable properties. The trust has breached the agreement and is in arrears.

Claim 2: On or about 10 January 2014, the plaintiff lent and advanced an amount of R2 000 000.00 to the trust against security of, *inter alia*, suretyships, a notarial bond and mortgage bonds over certain immovable properties. The trust has breached the agreement and is in arrears. An amount of R1 890 823.91 is now due, owing and payable and the trust has failed and/or refuses to pay the plaintiff.

Claim 3: On or about 22 August 2017 the plaintiff lent and advanced an amount of R6 500 000.00 to the trust. The trust is in breach of the agreement and in arrears. An amount of R8 564 594.66 is now due, owing and payable but the trust has failed and/or refuses to pay despite demand by the plaintiff.

[5] At the time of the application, the defendants' debt, so alleges the plaintiff, amounted to R52.2 million as the amount attracts a monthly interest of R575 830.62.

[6] The plaintiff further alleges that the sixth defendant, Die Cronje Seuns Boerdery CC and the Hendrik Cronje Family Trust, bound themselves as sureties and co-principal debtors for some of the responsibilities by the first defendant towards the plaintiff. The first defendant bound himself as surety and co-principal debtor in respect of the PC Trust's obligations towards the plaintiff. Certain immovable properties belonging to the sixth defendant and PC Trust are mortgaged to the plaintiff in terms of the surety agreements and are now susceptible to execution. Lastly, the plaintiff alleges that the provisions of the National Credit Act 32 of 2005 (the NCA) are not applicable to these contracts as these are large contracts and some entered into with a juristic person, to wit, the trust. Nevertheless, it has duly complied with the NCA.

[7] The defendants' have raised several defences against the plaintiff's claims and, *inter alia*, that the first defendant to the knowledge of the plaintiff at all times relevant to this action operated the PC Trust as his alter ego, the *de facto* control of the PC Trust vested with the first defendant and consequently, the debt of the PC Trust must be added to the first defendant's debt, and he should be held liable for all the payment(s) of the plaintiff's debt. It is the defendants' case that due to the fact that the PC Trust did not enjoy any protection in terms of the NCA, it is just and equitable if the debt of the PC Trust added to that of the plaintiff who enjoy(ed) protection under the NCA and that the debt of the PC Trust considered when an affordability assessment of the first defendant is being considered.

[8] Moreover, the defendants pleaded that the implied material terms of the agreements with the first defendant were that the plaintiff would comply with all the necessary provisions of the NCA and the plaintiff failed to comply. It is their case that the credit advanced to the first defendant constitutes reckless lending in terms of section 80 of the NCA.

[9] The background of this application is that on 27 October 2020 the defendants filed a request for further particulars on. The plaintiff failed to reply to the request. On 30 May 2022, the plaintiff was ordered by the court to reply to the defendants' request for further particulars and indeed, on 24 June 2022, the plaintiff delivered its reply to the request. The defendants, dissatisfied with the response, approached the court and sought an order for the dismissal of the plaintiff's claim. However, the application was unsuccessful. On 16 May 2023 the plaintiff delivered a supplementary reply to the request for further particulars. On 4 June 2024, the matter was certified trial-ready and set down to be heard on 26, 27 and 29 November 2024. On 8 October 2024, the defendants' attorney addressed a letter to the plaintiff's attorney requesting the plaintiff to provide adequate answers to their request for further particulars, failing which an application will be launched to compel them. The plaintiff's response, through its attorney was that the defendants were not entitled to the particulars they sought since the plaintiff adequately replied to their request. On 30 October 2024 the defendants filed this application and sought an order to compel the plaintiff to provide them with better and sufficient particulars in order to prepare for trial. The defendants contended that the plaintiff's replies to their request for further particulars did not provide adequate answers and stand to be prejudiced during trial.

[10] The application is opposed by the plaintiff. First, the plaintiff bemoaned the timing of the application, which was only two days before the date of trial, it viewed this as the defendants' plan to circumvent the trial in order to frustrate the plaintiff. Second, the plaintiff's contention was that they have adequately responded to the defendants' request for further particulars.

[11] It is imperative that I refer to the general legal principles applicable to the proceedings. Rule 21 of the Uniform Court Rules provides:

'(1) Subject to the provisions of subrules (2) and (4) further particulars shall not be requested.

(2) After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him or her to prepare for trial. Such request shall be complied with 10 days after receipt thereof.

(3) The request for further particulars for trial and the reply thereto shall, save where the party is litigating in person, be signed by both an advocate and an attorney or, in the case of an attorney who, under section 4(2) of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), has the right of appearance in the High Court, only by such attorney.

(4) If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.'

[12] This application can be brought only after the close of pleadings and for such particulars as are strictly necessary to enable the party to prepare for trial. It is so that an applicant in these applications must set out information in its application to enable the court to consider whether or not to exercise its discretion in its favour.

[13] The purpose of permitting a party to call for particulars is (a) to prevent surprise (b) that the parties should be told with greater precision what the other party is going to prove in order to enable his opponent to prepare his case to combat counter allegations and (c) having regard to the aforegoing nevertheless not to tie the other party down and limit his case unfairly at the trial.[1]

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[1] Bertelsmann E and Van Loggerenberg D *Erasmus Superior Court Practice* 2ed (2) at D1-252.

The Application

[14] The defendants argued that that they require the further particulars in order to prepare for trial as the plaintiff failed to sufficiently respond to their request. In their oral arguments it was submitted that the application should succeed since the plaintiff has not raised that these particulars are irrelevant for the purposes of trial and it will be prejudiced if they are provided.

[15] On the contrary, the plaintiff argued that it has sufficiently provided the particulars, those not provided are not necessary for the purposes of preparing for trial, its reply to the request provided the defendants with sufficient particulars to enable them to prepare for trial.

[16] The defence raised by the defendants to the plaintiff's claims is that the *de facto* control of the PC Trust rests with the first defendant who should be held solely liable for all the payments due (including those of the trust) to the plaintiff, that NCA is applicable and the plaintiff failed to comply with the NCA (at the time the agreements were concluded and at the commencement of the action proceedings).

[17] The court must determine whether the defendants are entitled to further and better particulars. In determining what particulars fall within the scope of the rule, one must look primarily at the pleadings. A synopsis of the further particulars required by the defendants reveal that a bulk of these particulars relate to whether the NCA is applicable to these agreements, how the affordability assessments were conducted by the plaintiff and whether the plaintiff complied with the NCA more specifically the service of the notices in terms of ss 129 and 130 of the NCA in relation to the different agreements. To illustrate for each and every contract subject of these proceedings, the particulars required go on like this:

'1 In what date was the affordability assessment, as provided for in section 81(2) of the National Credit Act (NCA) conducted.

2. By whom was the said affordability assessment conducted?

3. Was the information provided in compiling the affordability assessment requested from the first defendant?

4. In the event that any information relied on by the plaintiff, in compiling the affordability assessment, was requested from the first defendant:

4.1 Did the first defendant fully answer to such request?

4.2 Did the first defendant truthfully answer such request?

4.3 Does the plaintiff intend to establish, at trial that the first defendant failed to fully and/or truthfully answer any request for information made by the plaintiff as part of the assessment referred to?

5. What was the outcome of the affordability assessment?

6. According to the outcome of the affordability assessment was the first defendant over-indebted?

7. Would entering into the Overdraft Facility agreement make the first defendant over-indebted?'

[18] In relation to the s 129 notices in terms of the NCA, the plaintiff is asked to provide particulars relating to the service of the notice to the defendants in respect of each and every agreement. Some particulars required relate to the plaintiff's discovery and supplementary discovery affidavits. The plaintiff in respect of the discovery affidavits is questioned on the availability of the copies of the s 129 notices and proof of service thereof. In some instances, the plaintiff is required to respond to whether it admits that the de facto control of the PC Trust rested with first the defendant and whether the agreements amount to reckless lending. In relation to the mortgaged properties, the plaintiff is requested to provide details of how and from whom were the values of the mortgaged properties obtained.

[19] The request for further particulars relating to the plaintiff's discovery documents deserves no special mention. Rule 35 of the Uniform Court Rules deals with discovery. It makes provision for the viewing of the copies discovered by the other party and remedies available to the other party if there is non-compliance with the rule, therefore it is not necessary to request these particulars. Moreover, the particulars required relating to the plaintiff's discovered documents are not necessary for the purposes of preparing for trial. Resultantly, the defendants are not entitled to these particulars.

[20] As it appears above, most of the further particulars requested relate to how the first defendant conducted the businesses of the PC Trust, the application of the NCA to the contracts and the affordability assessment of the first defendant and the PC Trust. Considering the nature of the dispute between the plaintiff and the defendants, it appears that, amongst other things, the trial court will be required to determine whether the NCA

is applicable or not to these agreements, if so whether the plaintiff has complied with its provisions. The trial court will be called upon to determine whether the credit advanced by the plaintiff to the first defendant and the trust amounts to reckless lending as contemplated in s 80 of the NCA.

[21] Section 81 of the NCA provides for the duties of the consumer and the credit provider at the time the contract is entered into in order to prevent reckless lending. It provides:

"(1) When applying for a credit agreement, and while that application is being considered by the credit provider, the prospective consumer must fully and truthfully answer any request for information made by the credit provider as part of the assessment required by this section.

(2) A credit provider must not enter into a credit agreement without first taking reasonable steps to assess –

(a) the proposed consumer's –

(i) general understanding and appreciation of the risks and costs of the proposed credit, and the rights and obligations of a consumer under a credit agreement;

(ii) debt repayment history as a consumer under credit agreements;

(iii) existing financial means, prospects and obligations; and

(b) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.

(3) A credit provider must not enter into a reckless credit agreement with a prospective consumer".

It is my view that the plaintiff and defendants' conduct at the time they entered into the agreements and whether they acted diligently as expected in terms of s 81 of the NCA will be scrutinized and ventilated during trial. This is a matter of evidence.

[22] In some instances, the defendants demand that the plaintiff must make certain admissions in relation to the issues in dispute between the parties. The defendants cannot be allowed to misuse this application and elicit some admissions from the plaintiff.

[23] Having exercised my discretion I am satisfied that the plaintiff has adequately replied to the request for further particulars. The nature of the further particulars

requested by the defendants are all matters of evidence and not strictly necessary for purposes of trial. I am unable to find that the defendants are prejudiced by the plaintiff's conduct.

[24] The fundamental rule governing costs is that a successful party should be awarded costs. I have considered the intricate nature of the application and exercising my discretion award costs on Scale 'C' in accordance with rule 67A of the Uniform Rules of Court.

[25] Accordingly, I make the following order

1. The application to compel the plaintiff to provide further particulars is dismissed.

2. The defendants are ordered to pay costs on Scale C as contemplated in rule 67A of the Uniform Rules of the Court, jointly and severally, one paying the other to be absolved.

[redacted]

L. MPAMA, AJ

Appearances

For the plaintiff:	Adv S. Tsangarakis
Instructed by:	Symington & De Kok, Bloemfontein
For the 1st – 8th Defendants	Adv De Koning
Instructed by:	Christo Faber Attorneys c/o EG Cooper Majiedt Inc Bloemfontein