

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 2023-110116

|            |                                                                                   |
|------------|-----------------------------------------------------------------------------------|
| (1)        | REPORTABLE: YES / NO                                                              |
| (2)        | OF INTEREST TO OTHER<br>JUDGES: YES/NO                                            |
| (3)        | REVISED. YES/NO                                                                   |
| 21/08/2025 |  |
| DATE       | SIGNATURE                                                                         |

In the matter between:

**ANNA GAVRIELIDES**

First Applicant // First Plaintiff

**CONSTANDINOS GAVRIELIDES**

Second Applicant // Second Plaintiff

and

**SYMEON THEODOROU**

Defendant

---

**COURT ORDER**

---

- A. The applicants' application for amendment in terms of Rule 28(4) in respect of their particulars of claim, is dismissed with costs, counsel's fees to be at Scale C.

- B. The plaintiff is granted leave to file a new notice of amendment of particulars within 21 (twenty-one) days from the date of this order.

---

## **JUDGEMENT**

---

### **INTRODUCTION**

- (1) This is an opposed interlocutory application in terms of Rule 28(4) by the first and second applicants to effect substantive amendments to particulars of claim in an action they instituted against the respondent.
- (2) The respondent opposes the amendments that the applicants (who are the plaintiffs in the action), wish to effect on various grounds set out in the defendant's notice to remove the causes for complaints to the plaintiffs' particulars of claim in terms of Rule 23(1).
- (3) Due to the court's view of the proposed amendments and the more concise arguments presented by Ms Goodenough on behalf of the defendant at the hearing, I will only deal with the most important objections to the amendments. It is not the function of the court to draw the particulars of claim for the plaintiffs/applicants.

## THE PLAINTIFFS' CLAIMS

- (4) The action instituted claimed relief on various causes of action based on an oral agreement with the respondent to effect additions and improvements to the plaintiff's home in Sandown.<sup>1</sup> Relief was claimed under three claims viz Claim A for work paid for but not completed,<sup>2</sup> Claim B for damages allegedly caused by the respondent,<sup>3</sup> and Claim C for payments made for no work undertaken and misappropriation of various items (taps and tiles).<sup>4</sup> An amount was stated to be claimed in respect of each of the three claims.

## NOTICE IN TERMS OF RULE 23(1)

- (5) The respondent gave notice of his intention to defend the action.
- (6) On 11 December 2023 the respondent delivered the notice to remove the cause of complaint in terms of Rule 23(1) already referred to above.<sup>5</sup> This notice set out in detail the respondent's objections to the particulars of claim.

## NOTICE OF AMENDMENT

- (7) On 15 February 2024 the applicants served a lengthy application for leave by the court in terms of Rule 28(4) to be granted to amend the

---

<sup>1</sup> Caselines, Particulars of Claim (POC), para 5, 01-6.

<sup>2</sup> Caselines, para 13.1, 01-13.

<sup>3</sup> Caselines, para 13.2, 01-13 to 16.

<sup>4</sup> Caselines, para 13.3, 01-16 to 17.

<sup>5</sup> Caselines, 02-5 to 02-28.

particulars of claim as sought in the notice of intention to amend dated 18 January 2024.<sup>6</sup>

- (8) It is this application to amend in terms of Rule 28(4) which is now before the court on an opposed basis.
- (9) Both the applicants and the respondent filed extensive heads of argument.

### THE AMENDMENTS SOUGHT

- (10) The applicants submitted that the respondent raised many frivolous and unreasonable grounds, especially insofar as the respondent alleged that particulars were vague and embarrassing and submitted that the respondent required of the applicants to plead evidence. The applicants have maintained that a plaintiff is only required to plead *facta probanda* and to ensure a proper ventilation of the issues.<sup>7</sup> Reference was made to the provisions of Rule 18(4) which obliges a plaintiff to plead with sufficient particularity to enable the defendant to reply to the allegations raised. While there is no exhaustive test to determine whether a pleading contains sufficient detail or particularity, it remains an issue of fact. In this respect the case law has helped to clarify that a pleading contains sufficient particularity if the issues are identifiable and defined

---

<sup>6</sup> Caselines, 03-2 to 03-30.

<sup>7</sup> **Nedbank Limited v RVI Consulting CC and Another** (2015/24887) [2020] ZAGPJHC 263 (28 October 2020) at [11].

in a manner which enables a defendant to determine what they are and the case that it is required to meet.<sup>8</sup>

- (11) The defendant in his heads of argument relied on the requirement for a mandate given to an architect and the *facta probanda* that must be pleaded in an action for damages by his employer.<sup>9</sup> Although the defendant is an architect and is so cited in the particulars of claim, it is clear from Annexure "POC1" to the notice of amendment that he received architectural drawings and quoted to effect the alterations and additions to the residence of the applicants as a "turn-key" contractor.<sup>10</sup> This type of contract is an example of the common-law contract *locatio conductio operis*.<sup>11</sup> This cause of action would only apply to Claim A, and not to the other two claims.
- (12) At the hearing Ms Goodenough, who appeared for the respondent, handed in, with leave, supplementary "short heads".<sup>12</sup> In these heads the respondent summarised and dealt with three categories of objections. These should be considered against the background of the provisions of Rule 18(6). This subrule provides as follows:

*"A party who in his or her pleading relies upon a contract shall state whether the contract is written or oral and when, where*

<sup>8</sup> Applicants Heads of Argument, Caselines 02-170; **Nasionale Aartappel Koöperasie Bpk v Price Waterhouse Coopers Ing** 2001 (2) SA 790 (T) at 789 F- 799 J.

<sup>9</sup> Respondent's Heads of Argument, para 15, Caselines 03-189.

<sup>10</sup> Caselines, Annexure "POC1", 02-67 to 68. There is no allegation that the respondent prepared the drawings.

<sup>11</sup> Amlers Precedents of Pleadings p96-p100.

<sup>12</sup> Caselines 19-2 to 19-9.

*and by who it was concluded, and if the contract is written a true copy thereof or of the part relied on in the pleading shall be annexed to the pleading”.*

- (13) The application for amendment does attempt to comply with Rule 18(6) in that it relies on a contract which is partly in writing and partly oral. The respondent referred in argument to a number of the proposed amendments that are non-compliant with Rule 18(6). These are:

- (13.1) in paragraph 9.3 of the proposed amended particulars of claim it is alleged only that “... *the scope of work to be provided by the defendant was supplemented by further oral additions.*”

The respondent submits that, in violation of the requirements of Rule 18(6), no allegation is made as to when those oral additions were made, nor as to which persons represented the respective parties in agreeing those oral additions, nor as to where this supplementary set of oral additions were agreed to.<sup>13</sup>

- (13.2) Paragraph 12 of the proposed amendment also does not comply with the provisions of Rule 18(6) as it does not state whether the alleged variations were made orally or in writing, nor when they were made as it only states “*During October*

---

<sup>13</sup> Supplementary Short Heads, Caselines para 2, 19-3.

2020 to December 2020", and where these variations were agreed to.<sup>14</sup>

(13.3) Paragraph 21 of the proposed amended particulars of claim alleges that the parties concluded a "*further agreement*" but it is not stated whether the alleged further agreement was written or oral or partly written and partly oral.<sup>15</sup>

(14) The respondent submitted that to grant the said proposed amendments referred to above would be to give the court's blessing to an irregular step. It was pointed out that Rule 18(12) provides that if a party fails to comply with any of the provisions of this rule, such pleading shall be deemed to be an irregular step and the opposite party shall be entitled to act in accordance with Rule 30. Rule 30(1) provides for a remedy in that the court can set an irregular step aside. The respondent submitted that the court will not allow an amendment that would result in the taking of an irregular step. The court agrees with this submission. Every variation and addition is in itself an agreement which should comply in all respects to Rule 18 and its subrules.

(15) The next category of non-compliance raised by the respondent is non-compliance with Rule 18(4) which provides that every pleading shall contain a clear and concise statement of material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the

---

<sup>14</sup> Supplementary Short Heads, Caselines, para 3, 19-3.

<sup>15</sup> Supplementary Short Heads, Caselines, para 4, 19-3.

case may be, with sufficient particularity to enable the opposite party to reply thereto.<sup>16</sup>

(16) Examples referred to by the respondent of non-compliance with this legal requirement are:

(16.1) The inappropriate use of "*inter alia*" in paragraph 9.3 of the proposed amendment. The phrase "*inter alia*" is contradictory to the allegation what the "*full scope*" of the works was, and is then followed by "*inter alia*". These are irreconcilable phrases. The use of such phrase indicates that there were further terms of the contract which the plaintiffs did not mention in the amended particulars of claim. In an action for damages for breach of contract the plaintiffs would then have failed to plead all the *facta probanda* in respect of their cause of action. The respondent submits that the use of the phrase "*inter alia*" can create an escape route whereby the plaintiffs can in future allege further material terms and thereby take the defendant by surprise at the trial.

(16.2) In paragraph 13 of the proposed amendment the word "*included*" is used instead of "*consisted of*" or "*comprised*". This reference in paragraph 13, which refers to the variation orders, cannot be stated to have "*included*" the following .....

---

<sup>16</sup> Supplementary Short Heads, para 8, 19-4. Refer: **Jowell v Bramwell-Jones and Others** 1998 (1) SA 836 (W) at 913 B-G.



The words "*comprised of*" convey a *numerus clausus* whereas "*concluded*" conveys that some, but not all, the terms are referred to. The effect thereof, so it was submitted, was that the plaintiffs failed to allege all of the material terms of the contract. An amendment such as this proposed amendment will render the particulars of claim expiable. A court should not grant such an amendment.<sup>17</sup>

(16.3) Another example of a word that is objectionable is the use of the word "*mostly*" in paragraph 17 of the proposed amendment, where it is stated that the scope of works was amended, "*mostly*" in manuscript. The use of "*mostly*" is vague as it does not clarify which terms were in manuscript and which were oral. This is non-compliance with the provisions of Rule 18(6), and allowing such amendment will render the amended particulars of claim in irregular step.<sup>18</sup>

(16.4) Another objection against the proposed amendment is that a material term as to the agreed or required date/s for completion of the work or the phases of work was not pleaded. This failure to allege a material term of the contract would render the amended particulars of claim to be expiable.<sup>19</sup> The material terms and material facts must

---

<sup>17</sup> **Varachia v Enver NO** (28658/2008) [2023] ZAGPJHC 878 (7 August 2023) [16].

<sup>18</sup> Supplementary Short Heads, para 11, Caselines 19-7.

<sup>19</sup> Supplementary Short Heads, para 12, Caselines 19-7.

include the alleged terms regarding the agreed or required completion date or dates.

- (17) The third category of objection on which the respondent relied is the apparent contradiction between allegations in the proposed amended particulars of claim and the content of annexures. An example is paragraphs 31 and 32 of the proposed amended particulars of claim which refers to Annexure "**POC5**". The plaintiffs allege that in "**POC5**" the defendant acknowledge his failure to carry out his obligations and accepted liability to effect repairs listed therein. On a proper reading of Annexure "**POC5**" it is not a letter addressed by the defendant to the plaintiffs. It rather is a letter addressed by the plaintiffs to the defendant. The annexures form part of the particulars of claim and are incorporated therein by reference. There is a material contradiction between the proposed amended particulars of claim and the annexure relied upon, which renders the particulars of claim expiable.
- (18) Ms Smith, on behalf of the plaintiffs submitted that the proposed amendments must not be read "*line by line*" but as a whole. The court finds that such reading as proposed will not remove the causes of complaint and objection as summarised above.
- (19) The proposed amendments which are the subject of the application and the opposition thereto, illustrates that such a complex project requires more than just some discussions and a "*handshake*". In my view it is

clear from Annexure "POC1"<sup>20</sup> to the proposed amended particulars of claim, which constitutes the (first) alterations and additions proposal, that it was based on Architectural Drawings given to the respondent. There can be no doubt that most number of the building and structural work would have required approved building plans.<sup>21</sup> Such plans would give baseline information as to what was agreed upon initially and what the effect of various variation agreements may have entailed. The further question is whether these drawings were ever approved to render the building and structural work lawful? In view of the order that the court will issue, this aspect could also be considered by the plaintiffs.

- (20) Consequently, it is found that the objections to the amendments are tenable and the application for amendment should be dismissed. I make the order that is set out above.

  
LM du Plessis  
Acting Judge of the High Court  
Gauteng Division  
Johannesburg

<sup>20</sup> Annexure "POC1", Caselines 02-66 to 68.

<sup>21</sup> See the definitions of "building" and "erection", read with section 4, of the National Building Regulations and Buildings Standards Act, 103 of 1977.

**REPRESENTATION**For the applicants

Counsel:

Attorneys:

**Adv CJ Smith.****Leoni Attorneys**Respondent

Counsel:

Attorneys:

**Adv D Goodenough****Mary Jardim**

Date of Hearing:

24 February 2025

Date of Judgement:

21 August 2025