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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, GQEBERHA**

NOT REPORTABLE

Case No.: 4972/2024

In the matter between:

CHAVONNES BADENHORST SAINT CLAIR COOPER NO

Applicant/Plaintiff

and

DIETER BAUMANN

Respondent/Defendant

JUDGMENT

EKSTEEN J:

[1] The applicant, who is the plaintiff in the main action (the trustee), is the duly appointed trustee of the insolvent estate of one Reine Baumann (the insolvent). He

issued summons against the respondent (the defendant in the main action), Dieter Baumann (the defendant), for payment to the insolvent estate of R148 021.00 based on allegedly impeachable transactions in terms of the Insolvency Act, 24 of 1936 (the Insolvency Act).¹ The matter was opposed and pleadings were duly filed. On 12 August 2025 the trustee gave notice of his intention to amend his pleadings as set out later. The notice was met with an objection, hence this application to amend the particulars of claim followed.

[2] I pause to record that a similar claim was made against one Christina Maria Talifert Baumann in a separate action in which the pleadings were identical to this matter in every material respect, save for dates and amounts. A similar notice of intention to amend was delivered in that action and was met with an identical objection. The two actions have since been consolidated, however, two identical applications to amend were enrolled for hearing before me, and I was advised at the hearing that the parties have agreed that only one shall be argued and that the outcome thereof will be binding on the parties in the other. I shall accordingly deal herein only with one application.

[3] The insolvent was provisionally sequestrated on 6 September 2023 following a judgment obtained against him by his employer, D B Fine Chemicals Pty Ltd. The judgment followed from the alleged systematic theft by the insolvent from his employer over an extended period of time. The trustee issued summons contending that a series of payments made by the insolvent to the defendant over the period from 13 September 2021 to 24 August 2023 constituted impeachable transactions in terms of the Insolvency Act. Summons was issued on 13 December 2024 and the defendant entered an appearance to defend. The pleadings have closed.

[4] It is necessary to traverse briefly the contentious portions of the pleadings. As I have said the matter relates to impeachable transactions in terms of the Insolvency Act.

¹ The transactions are alleged to be impeachable as dispositions without value, in terms of s 26, alternatively, voidable preferences (s 29), alternatively, undue preferences (s 30), alternatively, collusive dealings before sequestration (s 31).

It is not contentious that it was required of the trustee to establish that the insolvent's liability exceeded his assets at the time of the disposition. In this respect the trustee pleaded:

'15. At the time of the dispositions by the insolvent to the Defendant, the insolvent's liabilities exceeded his assets in that, as far as known to the Plaintiff, the insolvent's assets and liabilities were as follows:

ASSETS	LIABILITIES
Nissan Qashqai: R175,000.00	Judgment debt in terms of court order dated 17 August 2023: R16,922,809.70
Miscellaneous movable assets: R50,000.00	Mortgage Bond registered over the Wierdapark property held at 2[...] H[...] Street: R808,300.17
Anuva Investment: R100,000.00	
Jou Afrikaans Digital Platform: R250,000.00	
Easy Equities Digital Platform: R1 000.00	
FedGroup Impact Farming Portfolio: R350,000.00	
PPS Retirement Annuity R447,353.00	
Liberty Life Cover: R3,687,765.99	
Wierdapark property held at 2[...] H[...] Street property: R2,100,000.00	
Total asset value: R7,161,118.99	Total liabilities value: R17,731,109.87

16. It is evident that, at the time the disposition above was made to the Defendant the insolvent's liabilities exceeded his assets in the amount of approximately

R10,569,990.88 (ten million five hundred and sixty nine thousand nine hundred and ninety nine Rand and eighty eight Cents), meaning that the insolvent was factually insolvent at the time of the above pleaded dispositions.'

[5] In his plea the defendant did not address these paragraphs separately and pleaded:

'AD PARAGRAPH 15 TO 16

12. The contents hereof are denied.
13. In amplification of the above denial, it is specially pleaded that, on the Plaintiff's own version, when the alleged disposition (sic) were made, the judgment debt in terms of the court order dated 17 August 2023 did not exist (as pleaded in paragraph 4 of the Particulars of Claim).
14. On the Plaintiff's own version, as pleaded in paragraph 7 and 10 of the Particulars of Claim, at the time when the alleged dispositions were made, the insolvent's assets totaled approximately R7 161 118.99, whereas his total liabilities totaled a mere R808 300.17.'

[6] This prompted a replication. The material portion thereof records:

'AD PARAGRAPH 12 TO 14

2. The contents of these paragraphs are denied as if specially traversed and the Defendant is put to the proof thereof. Without derogating from the generality of the aforesaid denial, ...
 - 2.2 The date upon which the insolvent (Reine Baumann) is deemed to have been factually insolvent is the 10th of December 2019.'

[7] As I have said, on 12 August 2025 the trustee delivered a notice on intention to amend.² The effect of the intended amendment was to remove the references to the insolvent's PPS Retirement Annuity (R447 353.00) and his Liberty Life Cover (R3 687 765.99) from his list of assets set out at paragraph 15 of the Particulars of Claim, and to add a further asset being, 3[...] S[...] Avenue, Jeffreys Bay, Eastern Cape, with a value of R2 475 000.00 at the time of the impugned transactions. Thus, the

² An identical notice had previously delivered on 26 March 2025. It was met with an objection and was pursued further at the time.

result of the proposed amendment would be to reduce the alleged asset value of the insolvent and to increase the disparity between assets and liabilities at the time of the impugned transactions.

[8] As a consequence of this proposed amendment a further notice of intention to amend was delivered in respect of the replication so as to amend the alleged date of factual insolvency as recorded in the replication to 10 March 2021. There was no objection to the amendment to the replication and it has been effected.

[9] The trustee explained in the application for amendment that at the time of the original pleading he had in his possession an affidavit provided by the insolvent for purposes of the insolvency, from which the information contained in paragraph 15 of the Particulars of Claim was obtained. However, in the course of his investigation into the affairs of the insolvent, in March 2025, an insolvency inquiry was held in terms of s 152 of the Insolvency Act. The insolvent was subjected to cross-examination and significant information emerged from his responses. This prompted the proposed amendment.

[10] That brings me to the objection. It is convenient to quote the objection in full, as follows:

- ‘1.1 Pursuant to the plaintiff’s un-amended particulars of claim, the Plaintiff conceded and/or admitted, respectively, the assets and liabilities of the insolvent at the time of the alleged dispositions.
- 1.2 This concession and/or admission was specifically accepted by the defendant (unequivocally so), the defendant having pleaded: *“On the Plaintiff’s own version, as pleaded in paragraphs 7 and 10 of the Particulars of Claim, at the time when the alleged dispositions were made, the insolvent’s asses totalled approximately R7 161 118.99 ...”*.
- 1.3 In terms of the proposed amendment, the plaintiff seeks to withdraw the stated concessions and/or admissions, not only insofar as the insolvent’s total asset value, but also the total liabilities value (thereby increasing the insolvent’s alleged insolvency by R1 660 118.99).
- 1.4 Over and above that, the plaintiff seeks to withdraw the plaintiff’s previous concessions and/or admissions that the insolvent’s PPS Retirement Annuity (in an amount of

R447 353.00) and the insolvent's Liberty Life Cover (in an amount of R3 687 765.99) did not constitute assets of the insolvent at the time of the alleged dispositions (despite this concession having been accepted by the defendant).'

The legal principles

[11] Generally, the court has a wide discretion to allow an amendment of pleadings at any stage before judgment.³ The discretion must, of course, be judicially exercised. But the aim must be to do justice between the parties. In the context of amendments, a mistake, or neglect on the part of one of the parties ought not to stand in the way of ventilating and deciding the true issues between the parties.⁴ In *Moolman*⁵ the court set out the general approach to the amendment of pleadings that has been consistently followed for the past century, as follows:

'... the practical rule adopted seems to me to be that amendments will always be allowed unless the application to amend is mala fide or unless such amendment would cause an injustice to the other side which cannot be compensated by costs, or in other words unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which it is sought to amend was filed.'

[12] It is appropriate to refer, too, the remarks of Wessels J in *Whittaker*⁶ where he said:

'This Court has the greatest latitude in granting amendments, and its very necessary that it should have. The object of the Court is to do justice between the parties. It is not a game we are playing, in which, if some mistake is made, the forfeit is claimed. We are here for the purpose of seeing that we have a true account of what actually took place, and we are not going to give a decision upon what we know to be wrong facts.'

[13] However, an amendment is not there for the mere asking and some explanation must be offered as to why the amendment is required.⁷ I referred earlier to the

³ *Trans-Drakensberg Bank Ltd (under judicial management) v The Combined Engineering (Pty) Ltd and Another* 1967 (3) SA 632 (D) at 640A.

⁴ *Trans-Drakensberg* at 638.

⁵ *Moolman v Estate Moolman* 1927 CPD 27.

⁶ *Whittaker v Roos and Another; Morant v Roos and Another* 1911 TPD 1092 at 1102.

explanation provided in the application, which seems to me to be a satisfactory explanation of the circumstances in which the original pleading was framed and the reasons for the amendment required. I think that it raises an issue deserving of consideration.

[14] The objection raised by the defendant is anchored in the allegation that the amendment seeks to withdraw an admission previously made. It has always been recognised that, although the approach to amendments withdrawing admissions is the same as that applied to other amendments, the withdrawal of an admission is usually more difficult to achieve. It involves a change of stance which requires a full explanation to convince the court of the bona fides thereof, and it is more likely to prejudice the other party, who had by the admission been led to believe that he need not prove the relevant fact and for that reason might have omitted to gather the necessary evidence.⁸ The difficulty, in this matter, is that Mr *Maritz*, for the defendant, has not been able to persuade me that there has been a formal admission in the pleadings that the trustee seeks to withdraw. An allegation contained in the particulars of claim cannot be an admission, because *ex hypothesi* particulars of claim is a document commencing proceedings and it cannot contain formal admission of facts alleged by the defendant. The trustee did not make any concession, or admission, in the particulars of claim. What he did was to allege facts that he would be required to prove at the trial. For that reason alone, I consider that the objection is ill-founded.

[15] The pleadings, in their original form, do not support the contention that the defendant has specifically, and unequivocally, accepted the averments contained in paragraph 15 of the particulars of claim. The confusion arises from poor pleadings. A defendant pleading to particulars of claim is required to deal specifically with every allegation of fact which he intends to put in issue. As De Wet J explained in *Hlongwane*⁹ the allegations in the plea must be of sufficient precision to enable the plaintiff to know what the case is he has to meet. The difficulty of course arises in

⁷*Trans-Drakensberg* at 641.

⁸ *President-Versekeringsmaatskappy Beperk v Moodley* 1964 (4) SA 109 (T) at 110H-111A.

⁹ *Hlongwane v Methodist Church of South Africa* 1933 WLD 165 at 169.

particular cases whether that precision is present, and the general rule to be deduced from the cases is that the denial of any particular paragraph in the declaration must not involve any ambiguity.

[16] I have set out earlier the pleading raised on behalf of the defendant. The pleader chose not to deal with each allegation in paragraph 15, or to deal with paragraph 15 separately. However, in paragraph 12 of the plea the defendant unambiguously denied the content of paragraph 15. It purports to deny each allegation contained therein.¹⁰ The question which arises then is what to make of paragraphs 13 and 14 of the plea. As read together with the express denial in paragraph 12 it seems to me to allege that, in the event that the plaintiff were to prove the allegations in paragraph 15 of the plea, which are denied, then, in any event, the defendant alleged that the judgment debt did not exist prior to the granting of judgment on 17 August 2023, with the result that the insolvent's assets totalled approximately R7 061 118.99 whereas his total liability totalled a mere R808 300.17. In the circumstances, on my understanding, there has been no acceptance, specifically or unequivocally, of the facts pleaded in paragraph 15 of the particulars of claim. Moreover, his interpretation of the trustee's pleading was denied in the replication and was at all times in dispute. For this reason, too, the objection based on the withdrawal of an admission is ill-founded and unwarranted.

[17] To summarise, I am satisfied that the applicant has adequately explained the reasons for the pleadings in their initial form and the need for the amendment. It is required in order to bring the pleadings in line with the evidence given at the enquiry. It seeks to define the real dispute between the parties. I am unable to discern any mala fides arising from the application. On behalf of the defendant, it has been suggested that mala fides should be inferred from the delay in bringing the application and from the failure to explain why the plaintiff did not pursue the earlier notice in terms of rule 28. I do not think that any inference can be drawn from the fact that an earlier notice of intention to amend was not pursued nor do I consider that it has any relevance which required explanation. In respect of the delay, it is not a factor which was raised in the

¹⁰ Para 23 of the plea.

objection and the trustee was not called upon to deal with it. In any event, I was advised during the hearing that the matter is enrolled for trial in September, some five months hence. There was no demonstrable prejudice established. For these reasons the amendment must be allowed.

[18] Mr *De Wet*, who appeared on behalf of the trustee, accepted that the applicant sought an indulgence and should bear the costs of the application on an unopposed basis. However, Mr *Maritz* contended that the opposition was reasonable and accordingly that the defendant should not be mulcted in costs occasioned by the opposition to the application. For the reasons set out earlier the submission cannot be sustained.

[19] Accordingly, I make the following order:

1. The applicant/plaintiff is granted leave to amend their particulars of claim in terms of the notice of intention to amend dated 12 August 2025.
2. The applicant/plaintiff is to deliver its amended pages within ten (10) days of this order, in terms of rule 28(6) of the Uniform Rules of Court.
3. The respondent/defendant is to file any consequential amendments within fifteen (15) days of the delivery of the substitute pages.
4. The respondent/defendant is to pay the costs occasioned by the opposition to the application for amendment, with counsel's fees to be taxed on scale B.

J W EKSTEEN
JUDGE OF THE HIGH COURT

Appearances:

For Applicant/Plaintiff:	Mr W de Wet
Instructed by:	W De Wet Attorneys Inc c/o Pagdens Attorneys Gqeberha
For Respondent/Defendant:	Adv D Maritz
Instructed by:	A H Stander & Agenbag Inc c/o Blanche Attorneys Gqeberha
Date Heard:	23 April 2026
Date Delivered:	05 May 2026