

SOUTH AFRICA / JUDGMENT

Atlantis Corporate Travel (Pty) Ltd v Scharli (2012/9344) [2013] ZAGPJHC 26 (20 February 2013) [2013] ZAGPJHC 26

COURT

South Gauteng High Court, Johannesburg

BEFORE

FHD Van Oosten

CASE / FILE NUMBER

2012/9344

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REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT

(JOHANNESBURG)

CASE NO: 2012/9344

DATE:20/02/2013

In the matter between

ATLANTIS CORPORATE TRAVEL (PTY) LTD.....PLAINTIFF

and

MARC SCHARLI..... DEFENDANT

Practice

- exception to particulars of claim - cause of action based on defamation - oral defamatory statement alleged to have been made to named entities - particularity concerning the date/dates on which the alleged statement was made as well as the person or persons to whom it was made lacking - particulars of claim vague and embarrassing - exception upheld.

J U D G M E N T

VAN OOSTEN J:

[1] This is an exception noted by the defendant to the plaintiff's particulars of claim on the basis that it is vague and embarrassing. Counsel for the plaintiff by way of a point in limine attacked the authority of the attorney who signed the notice of exception. Except that the point should have been raised under the Rule 30 procedure it was effectively laid to rest by a certificate of right of appearance of the attorney, handed in from the bar by counsel for the defendant.

[2] The plaintiff's cause of action is based on defamation, it being alleged:

'In and during November 2011 the defendant stated orally to clients of the plaintiff, being inter alia Geda Facett, ANC Woman's League, Gauteng Legislator, and Cadbury, that the plaintiff used black employees' credentials fraudulently to obtain its BEE certificate by faking promotions.'

The objection raised relates to this paragraph on the basis that it contains vague references to names without clarifying whether the reference is to legal entities or natural persons or individuals, and that the alleged oral statement, one must accept, would have been made to a person or persons and not the legal entity as such.

[3] The allegations contained in the paragraph under attack, in my view, are vague and embarrassing. The paragraph lacks particularity concerning the date/dates on which the alleged statement was made as well as the person or persons to whom it was made. The embarrassment is clearly prejudicial to the defendant who has to plead to these allegations. The defendant is entitled to know what the case against him is so as to properly plead thereto. Against the background of the requirements as to pleadings generally, provided for in Rule 18, the allegations we are here concerned with, clearly fail to meet the required standard of particularity. It follows that the exception must succeed.

[4] As to costs, the normal rule of costs following the event, applies.

[5] In the result the following order is made:

The exception to paragraph 3 of the plaintiff's particulars of claim is upheld and the paragraph struck out.

The plaintiff is granted leave to amend the particulars of claim within 15 days of the date of this order.

The plaintiff is ordered to pay the costs of the exception.

FHD VAN OOSTEN

JUDGE OF THE HIGH COURT

COUNSEL FOR PLAINTIFF : ADV L HOLLANDER

PLAINTIFF'S ATTORNEYS: ANTHONY HINDS

COUNSEL FOR DEFENDANT : ADV NM DA ROCHA

DEFENDANT'S ATTORNEYS: EHLERS ATTORNEYS

DATE OF HEARING: 19 FEBRUARY 2013

DATE OF JUDGMENT: 20 FEBRUARY 2013

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