

SOUTH AFRICA / JUDGMENT

Blackberry Limited and Another v Silver Meadow Trading 257 (Pty) Ltd t/a Phat Concepts and Others (50304/14) [2015] ZAGPPHC 323 (11 May 2015)

[2015] ZAGPPHC 323

COURT

North Gauteng High Court, Pretoria

BEFORE

J W Louw

CASE / FILE NUMBER

50304/14

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REPUBLIC

OF SOUTH AFRICA

IN

THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

CASE

NO: 50304/14

DATE

HEARD: 7 May2015

DATE:

11 MAY 2015

In

the matter between:

BLACKBERRY

LIMITED.....First

Plaintiff

BLACKBERRY

MOBILE SOUTH AFRICA (PTY)

LTD.....Second

Plaintiff

and

SILVER

MEADOW TRADING 257 (PTY) LTD

t/a

PHAT

CONCEPTS.....First

Defendant

CHRISTOPHER

SHAUN DE
BOD.....Second
Defendant
RICO
WESSELS.....Third
Defendant

JUDGMENT

J W LOUW, J

- [1] This is an exception by the defendants against claim A of the plaintiffs' declaration as being vague and embarrassing.

The relevant allegations in the declaration are the following:

"7. The first defendant performed certain marketing activities for and on behalf of the plaintiffs since 2009.

8. In 2009

Tot par. 13

- [2] The defendants' complaint is that it was not clear what the legal basis was of the plaintiffs' claim, i.e. whether the claim was based on contract or delict. In this regard, Adv. Arnoldi SC, who appeared with Adv. Uys for defendants, submitted that it was not clear whether the "assistance of certain employees of the plaintiff" referred to in par. 8 occurred with or without the plaintiffs' authority. If the assistance was with the plaintiffs' authority, the claim would be a contractual one. If it was without the plaintiffs' authority, the claim would be delictual. It was pointed out in this regard that the allegation in para 9 that the fund was "off-balance sheet in the sense that, to the knowledge of the defendants, it was not reflected in plaintiffs' books of account, but only in the first defendant's books of account" seemed to indicate that no authority was given by the plaintiffs, i.e. that the first defendant created and irregular fund with the

assistance of the plaintiffs' employees. On the other hand, the allegations in par. 12 of the particulars of claim

suggested that there was authority and that a contract was therefore concluded between the plaintiffs and the first defendant which

contained the terms pleaded in this paragraph.

- [3] I agree with these submissions. It was, however, submitted by Adv Van Eeden SC, who appeared for the plaintiffs, that the plaintiffs' claim was neither contractual nor delictual, but that it was a quasi-vindictory claim. It has been recognised by our courts that where a particular fund has been earmarked as belonging to someone, it can be recovered with a

quasi rei vindicatio. It was submitted by Mr. Van Eeden that the necessary allegations to sustain a quasi-vindictory claim have been made in the particulars of claim, viz. that the plaintiffs were the beneficial owners of the fund as it comprised of money that had to be repaid to the plaintiffs, that the defendants controlled the fund, that the plaintiffs demanded repayment and that the defendants refused to pay same to the plaintiffs.

- [4] If those were the allegations that had to be made, it is difficult to understand why, in particular, the allegations in paras. 8, 9, 10 and 12.2 to 12.4 needed to be made. It was submitted by Mr. Van Eeden that those allegations simply provided background relating to how the plaintiffs obtained quasi-ownership of the fund and how the defendants came into possession or control of the money. That may be correct as far as paras. 8 to 10 are concerned, but it is certainly not correct in respect of paras. 12.2 to 12.4. Those paragraphs have nothing to do with a quasi-vindictory claim and can only be indicative of a contractual claim.

The vagueness and ambiguity therefore remain.

- [5] I conclude, therefore, that the exception should be upheld and accordingly make the following order:

(a) The defendants' exception is upheld.

(b) The plaintiffs are afforded 10 days from date of service of this order to amend their particulars of claim, failing which they will ipso facto be barred from doing so.

(c) The plaintiffs are ordered, jointly and severally, to pay the defendants' costs of the exception, including the costs of two counsel.

Counsel for defendants: Adv. AF Arnoldi SC; Adv. PL Uys

Instructed by: Hills Incorporated, Pretoria

Counsel for plaintiffs: Adv. H Van Eeden SC

Instructed by: Hogan Lovells South Africa, Johannesburg

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Prepared on 11 October 2026 · Esheria