

SOUTH AFRICA / JUDGMENT

Dunne v Kroch Builders CC (89390/2015) [2017] ZAGPPHC 528 (22 August 2017)

[2017] ZAGPPHC 528

COURT

North Gauteng High Court, Pretoria

BEFORE

A Millar

CASE / FILE NUMBER

89390/2015

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA DIVISION)

Case

No. 89390/2015

Date:

21/8/2017

Reportable:

No

Of

interest to other judges: No

In

the matter between:

EE

DUNNE

PLAINTIFF/RESPONDENT

and

KROCH

BUILDERS

CC

DEFENDANT/APPLICANT

JUDGMENT

MILLAR,AJ

1. This is an application for the upholding of an exception taken against the particulars of claim filed by the Plaintiff in an action for damages against the Defendant.
2. There is also an application for an order for costs in respect of an application to strike out certain averments from the particulars of claim. The application to strike out became academic when the Plaintiff amended the particulars to delete the allegation complained

of. All that remains to be determined is the costs.

3. The Defendant delivered on the same day - 25 February 2016, both the application to strike out and a notice in terms of Rule 23 giving notice to remove a cause of complaint.
4. The exception to be delivered was delivered on 18 March 2016. The exception was taken initially on two grounds. It is only the first ground that requires determination, the second having been cured by an amendment effected by the Plaintiff on 22 November 2016.
5. The exception was framed as follows:

"The allegations made by the Plaintiff in paragraph 4.6 and 9 of the particulars of claim are contradictory in that the Plaintiff alleges that it was a term of the contract that the Plaintiff is required to "demand that the Defendant rectify the breach within a period no less than 7 days from date of receipt of such notice", whereas the Plaintiff thereafter alleges that the Plaintiff "demanded that Defendant remedy its above breach within a period of 7 days from date of receipt of the notice" (see Exception paragraph 5 page 67)

6. Essentially the complaint is that the precise wording of the contract - paragraph 11.3.2 of Annexure "A" pleaded at paragraph 4.6 of the particulars of claim does not accord strictly with the precise wording of the letter of demand - Annexure "C" pleaded in paragraph 9.
7. It is the case for the Defendant that the consequence of this is to render the Plaintiffs particulars of claim vague and

embarrassing and that the Defendant is unable to plead thereto.

8. The test to be applied in this regard was stated by Davis AJA in GENERAL COMMERCIAL AND INDUSTRIAL FINANCE COR, LTD v PRETORIA

PORTLAND CEMENT CO., LTD 1944 AD 444 at 454 as follows:

- a. "We have to look at the matter from the point of view of the party who is faced with a pleading of this nature. How is he to know what case he is called upon to meet?
9. The two allegations that are claimed to be contradictory are expressed in almost identical terms save that whereas the original

contract and paragraph 4.6 provide for "no less than" 7 days, the letter of demand and paragraph 9 provide for a period "of" 7 days. The former provides for a minimum period with the possibility of a longer period and the latter provides for the minimum period. The Plaintiff chose the minimum period which she was entitled to do in terms of the contract.

10. The Defendant knows the case it is to meet and nothing turns, in my view on the Plaintiff having elected to demand performance within the minimum period contemplated in the contract.
11. In regard to the Application to Strike out, it seems to me that notwithstanding the subsequent amendment the issue raised in that application, that is whether the Plaintiff was entitled to plead and rely on the letter of 8 November 2012 is one that is likely to be traversed during the course of the trial.
12. Having said that, the pleadings were subsequently amended to remove the allegation complained of and the Plaintiff subsequently tendered the wasted costs occasioned by the amendment. Both parties understood that the order was only for the costs of the amendment and not in regard to the application to strike out.
13. The two cannot be separated, the application precipitated the amendment. On this aspect, I find that the defendant was substantially successful and for this reason make the order that I do.
14. In the circumstances, it is ordered:
 - 12.1 The exception is dismissed with costs, such costs however limited to those incurred from 23 November 2016.
 - 12.2 The costs of the application to strike out are to be paid by the plaintiff.

A MILLAR

ACTING JUDGE OF THE HIGH COURT

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2017/528.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/dunne-v-kroch-unknown-topic-agpphc-2017>

Prepared on 24 October 2026 · Esheria