

SOUTH AFRICA / JUDGMENT

Leithcon Earthmoving CC v Matlala and Another (2015/82835) [2017] ZAGPPHC 257 (7 June 2017)

[2017] ZAGPPHC 257

COURT

North Gauteng High Court, Pretoria

BEFORE

L Adams

CASE / FILE NUMBER

2015/82835

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

CASE

NO: 2015/82835

Reportable:

No
Of
interest to other judges: No
Revised.
7
June 2017
In the

matter between:

LEITHCON
EARTHMOVING
CC Plaintiff
/ Respondent
- and -
MATLALA,
HOSEA
LAYTON First
Defendant / Excipient
H L
MATLALA PROPERTIES t/a
GOROGANG
PLANT
HIRE Second
Defendant / Excipient

JUDGMENT

ADAMS J:

[1]. The defendants except to the plaintiff's particulars of claim, in respect of the alternative 'cause of action' against both defendants jointly and severally, on the grounds that it is vague and embarrassing and lack averments necessary to sustain a cause of action. The particulars upon which the exception was based were set out in 'clear and concise terms' as required by the Rules of Court and were stated to be firstly that the allegations made by the plaintiff in its particulars of claim does not set out facts in support of a conclusion that the second defendant was party to the agreement with the plaintiff. Secondly, the plaintiff does not make the necessary averments to support its claim, which is founded in terms of the provisions of section 63(a) of the Close Corporation Act, 69 of 1984 ('the Act'), read with section 22(1) of the Act).

[2]. The plaintiff's alternative action is founded on section 63(a) of the Close Corporation Act, 69 of 1984 ('the Act'). This section goes under the heading: 'Joint liability for debts of corporation', and provides as follows:

'Notwithstanding anything to the contrary contained in any provision of this Act, the following persons shall in the following circumstances together with a corporation be jointly and severally liable for the specified debts of the corporation:

(a) Where the name of the corporation is in any way used without the abbreviation as required by section 22(1), any member of the corporation who is responsible for, or who authorized or knowingly permits the omission of such abbreviation, shall be so liable to any person who enters into any transaction with the corporation from which a debt accrues for the corporation while that person, in consequence of such omission, is not aware that the person is dealing with a corporation;

(b)'

[3]. The sum total of the allegations in support of a claim against the second defendant is to be found in paragraph 19 of the plaintiff's particulars of claim, which reads as follows:

'In the alternative and if the Court find (sic) that the agreement was concluded with the Second Defendant, then and in that event, the Plaintiff pleads that the First Defendant is jointly and severally liable for the debt of the Second Defendant in circumstances where the First Defendant used the name of the Second Defendant corporation without abbreviation as required by section 22(1), read with section 63(a) of the Close Corporation Act, Act 69 of 1984'.

[4]. The plaintiff does not plead facts on which liability on the part of the second defendant can be founded. The plaintiff also does not plead any facts in support of the claim that the first defendant is personally liable for the debts of the second defendant.

[5]. An exception that a pleading is vague or embarrassing will not be allowed unless the excipient will be seriously prejudiced if the offending allegations were not expunged. In *Levitan v Newhaven Holiday Enterprises CC*, 1991 (2) SA 297 (C), the principles relative to exceptions on the basis of a pleading being vague & embarrassing are enunciated as follows:

‘It has been stated, clearly and often, that an exception that a pleading is vague or embarrassing ought not to be allowed unless the excipient would be seriously prejudiced if the offending allegations were not expunged.

An excipient must satisfy the Court that he will be substantially embarrassed, i.e. prejudiced, if the offending pleading is allowed to stand.

While it could happen that the only possible response to an embarrassing declaration would be a plea which itself would be embarrassing, I venture to think that a defendant's problem would sooner be inability to foresee how the plaintiff will play his hand at the trial and what must be done to meet it. Prejudice to a litigant faced with an embarrassing pleading must ultimately lie in an ability properly to prepare to meet his opponent's case. Embarrassment may, as in this case, also occur where, although the plea itself might be unobjectionable, the admission of allegations in the plaintiff's particulars of claim or declaration destroy the plaintiff's cause of action. A plaintiff's particulars of claim or declaration must be framed in such a way that an admission by the defendant of the crucial allegations in it contributes to the success of the plaintiff's claim, not to its failure.

So, even though it might be possible to draft an unobjectionable plea to an objectionable declaration, this might lead nowhere because the pleadings, read together, must contain the outlines of a triable case. It is the resolution of the parties' dispute that matters. If the effect of the plea is that no intelligible dispute remains there is nothing on which a court can sensibly adjudicate. If a defendant pleads to a plaintiff's particulars of claim in such a way that the remaining disputed facts no longer sustain the plaintiff's claim, there is something seriously wrong with the particulars of claim. This creates embarrassment for a defendant who is now obliged to proceed to trial on a claim which he knows to be bad in law, but to which he cannot except as disclosing no cause of action. Of course, he could at the trial apply to argue the point in terms of Rule 33 (4), but this might not protect him from incurring the costs of preparing for trial in case the point is decided against him’.

[6]. Applying these principles, I am of the view that there is merit in the objection of the defendants to the plaintiff's particulars of claim relating to the alternative claim. The particulars for the above reasons are both vague and embarrassing and do not disclose a cause of action.

[7]. For these reasons, I am of the view that the exception of the defendants should be upheld on both grounds, and the cost should follow the suit.

order

Accordingly, I make the following order:

1. The exception of the first and second defendants to the plaintiff's particulars of claim relating to the alternative claim as contained in paragraph 19 is upheld.
2. The plaintiff is afforded 10 (ten) days from date of this order within which to amend its particulars of claim.
3. The plaintiff shall pay the first and second defendants' cost of the exception.

L ADAMS

Judge of the High Court

Gauteng Division, Pretoria

HEARD ON: 5th June 2017 JUDGMENT DATE: FOR THE PLAINTIFF: 7th June 2017 Adv W T F
Youngbluth INSTRUCTED BY: Elsa Du Plessis Attorneys FOR THE DEFENDANTS: Adv W T F
Youngbluth INSTRUCTED BY: Barnard Incorporated

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Prepared on 13 October 2026 · Esheria