

SOUTH AFRICA / JUDGMENT

Peulen v Lessing and Others (90199/2015) [2020] ZAGPPHC 625 (19 October 2020)

[2020] ZAGPPHC 625**COURT**

North Gauteng High Court, Pretoria

BEFORE

Ranchod

CASE / FILE NUMBER

90199/2015

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Source record**REPUBLIC****OF SOUTH AFRICA****IN THE HIGH COURT OF SOUTH AFRICA****GAUTENG****DIVISION, PRETORIA****(1)****REPORTABLE:**

NO

(2)

OF

INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

19/10/2020

90199/2015

In the

matter between:

JOHAN MARIE

JOSEPH PEULEN

Applicant

and

PHILLIP

LESSING

First Respondent

DU PLESSIS

LESSING BRITS

ATTORNEYS

Second Defendant

DLBM

INCORPORATED ATTORNEYS

REGISTRATION

NUMBER: 99/14933/21
Third
Respondent
THE
LAW SOCIETY OF THE NORTHERN
PROVINCES
Fourth Respondent
In

re: JOHAN MARIE
JOSEPH
PEULEN
Plaintiff
PHILLIP
LESSING
First Defendant
REGISTRATION

NUMBER: 99/14933/21
Third
Defendant
PROVINCES
Fourth Defendant
Delivered.
This
judgment was handed down electronically by circulation to the
parties' representatives by email and will be released
on
SAFLII. The date and time for hand down is deemed to be 10h00
October 2020

JUDGMENT

RANCHOD, J

[1] This application is the third attempt by the Applicant (Plaintiff in the action) to amend his particulars of claim. The previous two applications were either abandoned or withdrawn. In this third

application he seeks to replace the particulars of claim in its entirety.

[2] For the sake of convenience, I will refer to the parties as plaintiff and defendants. The first defendant is a practicing attorney and a director of the third defendant. The second defendant apparently no longer exists. The plaintiff says the fourth defendant (the Law Society) has been cited for any interest it may have in the matter but no relief is sought against it. The Law Society has not entered appearance to defend. At the hearing of the matter, Mr Gibbs, counsel for the plaintiff, conceded that the second defendant no longer exists and also that the fourth plaintiff should not have been cited at all. I will, accordingly, where I refer to the first and third defendants jointly, simply refer to them as 'the

defendants’.

[3] The plaintiff caused a summons to be issued against all four defendants on 9 November 2015 in which he claims the following relief:

‘1. The 1st Defendant and / or the 2nd Defendant and / or the 3rd Defendant within 30 days from the date of this order, render a full account to the Plaintiff, supported by:

1.1 all of the receipts issued for all amounts received by the 1st Defendant and / or the 2nd Defendant and / or the 3rd Defendant from or on behalf of the Plaintiff;

1.2 proper accounts for all of the fees charged to or raised against the Plaintiff with an indication of the tariff, date and time spend by the 1st Defendant;

1.3 copies of extracts from the Trust account of the 1st Defendant and / or the 2nd Defendant and / or the 3rd Defendant reflecting all of the amounts received by the 1st Defendant and / or the 2nd Defendant and / or the 3rd Defendant from or on behalf of the Plaintiff, as well as the Trust to Business transfers reflecting the fees and expenses debited against the amounts received from or on behalf of the Plaintiff.

2. The 1st Defendant shall debate the account with the Plaintiff within 60 days from the date of this order;

3. The 1st Defendant and / or the 2nd Defendant and / or the 3rd Defendant, jointly and severally, the one to pay the other to be absolved, shall pay to the Plaintiff:

3.1 whatever the amount appears to be due to the Plaintiff upon debate of the account;

3.2 in the alternative or in the event that the 1st Defendant does not comply with paragraphs 1 and 2 above, the amount of R 544 000.00 (five hundred and forty four thousand rand);

3.3 interest on the amount that appears to be due to the Plaintiff upon debate of the account, in the alternative on the amount of R 544 000.00 (five hundred and forty four thousand rand), at the mora rate from the date of demand to date of payment.

4. Costs of the action;

5. Further and / or alternative relief.’

[4] The plaintiff alleges that over the period 3 January 2010 until about 11 November 2012 the first defendant represented him in various legal matters.

[5] Plaintiff says he made payments in varying amounts to first defendant, ‘and / or the second defendant and / or the third defendant’ totalling R 544 000.00 over the period 6 April 2011 to 26 September 2012 in cash for which no receipts were issued by them. He also alleges that the defendants failed to account to him for funds received by them on his behalf. In the latter regard the following is stated in paragraphs 25 and 26 of the particulars of claim:

‘25.1 In terms of the Plaintiff’s mandate and the order of the 26th of November 2012 under case number 30287/2011, a copy of which is attached hereto as Annexure “X”, the 1st Defendant and / or the 2nd Defendant and / or the 3rd Defendant collected on behalf of the Plaintiff, as a proven Creditor in the liquidated estate of Broad Brush Investments 15 (Pty) Ltd, the contribution to costs in the amount of R 600 000.00.

25.2 On the 28th of November 2012 and on receipt of the contribution to costs, the amount of R300 000.00 was unilaterally deducted by the 1st Defendant and / or the 3rd Defendant without the mandate and / or consent of the Plaintiff, before the amount of R 136 398.56 was paid to the Plaintiff. No account for the deduction was rendered to the Plaintiff.’

[6] A short chronology of events is necessary:

6.1.1 Summons was issued on 9 November 2015.

6.1.2 The defendants served a Notice in terms of Rule 23 on 4 February 2016 stating that plaintiff’s particulars of claim was vague and embarrassing and lacks averments which are necessary to sustain a cause of action.

6.1.3 Almost nine months later, on 18 October 2016 the plaintiff launched an application in terms of Rule 27(3) (to amend) and Rule 25 (for condonation). (‘The October 2016 application.’)

6.1.4 The application was opposed by the defendants who filed an answering affidavit on 15 November 2016.

6.1.5 The plaintiff did not file a replying affidavit.

6.2.1 Some nineteen months later, on 7 June 2018, (whilst the October 2016 application was still pending), plaintiff filed a second notice of intention to amend and thereafter, on 6 August 2018, instituted a second application to amend his particulars of claim (‘the August 2018 application’).

6.2.2 The defendants opposed this application and filed their answering affidavit on 4 September 2018.

6.2.3 Whilst both the first and second applications were still pending, the plaintiff served a third notice to amend his particulars of claim on 13 September 2018.

6.2.4 The plaintiff thereafter withdrew only his second application on 16 November 2018.

6.3 As a result the defendants instituted an application in terms of Rule 30 on 14 December 2018 supported by a founding affidavit alleging that an irregular step had been taken by the plaintiff.

6.4.1 Thereafter, the parties agreed that the plaintiff will withdraw his first two pending applications and the defendants

will file an objection to the plaintiff’s third notice of intention to amend his particulars of claim which is the subject of the current application.

6.4.2 The plaintiff launched the current application on 14 March 2019 after having received the notice of objection from the defendants. The application was not accompanied by a supporting affidavit.[1]

6.4.3 On 25 March 2019 the defendants, through their attorneys, addressed an email to the plaintiff's attorneys

querying whether the plaintiff will file a supporting affidavit as he did in his previous two applications.

6.4.4 The plaintiff's attorneys responded that plaintiff's counsel advised him that it was not necessary to file an affidavit in support of the application.

6.4.5 The defendants then filed an opposing affidavit even though no supporting affidavit was filed by the plaintiff. The defendants say they found it incumbent to do so because of the events that unfolded over the previous four years..

[7] As I said, in this the third application the plaintiff seeks to replace the particulars of claim in its entirety and now seeks the following relief:

'1. That second defendants render an account or accounts as provided for in Rule 68.7 to plaintiff within 30 days from date of any order made herein for all work done from 3 January 2010 to date of termination of second defendant's mandate in respect of all matters wherein plaintiff instructed second defendant to act on his behalf or on behalf of any other entity;

2. Debate of said account;

3. Payment to plaintiff of whatever amount appears to be due to plaintiff upon debate of said account;

4. Interest on the aforesaid amount a tempore morae;

5. Costs on attorney and client scale; and

6. Further and/or alternative relief.'

[8] I do not deem it necessary to traverse the contents of the first and second applications to amend in any detail save where necessary.

Objections to the intended amendments

[9] There appear to be eight grounds of objection to the intended amendment:

9.1 That plaintiff is attempting to gain an unfair advantage over the defendants by time and again and after having received the defendants' answering affidavits to the previous applications for leave to amend, merely to file a new notice of intention to amend after having seen what the objections and defences are which will be pleaded if and when defendants have to plead.[2]

9.2 That the amendment, if allowed, will have the effect of introducing a new cause of action or changing the character of the plaintiff's claims.[3]

9.3 Plaintiff is attempting to overcome the problem of prescription and the other objections which were raised against his initial particulars of claim by attempting to introduce new facts and a new cause of action.[4]

9.4 The amendment will have the effect of changing the character of the action.[5]

9.5 The aim of the intended amendment is to resuscitate prescribed claims, alternatively resuscitate an action which was abandoned by the plaintiff.[6]

9.6 The intended amendment would render the particulars of claim excipiable.[7]

9.7 The plaintiff is litigating recklessly and vexatiously.[8]

9.8 The intended amendment is mala fide and will cause the defendants such prejudice as cannot be cured by an order for costs.

The

legal framework

[10] The legal principles relating to applications for amendment may be summarised as follows:

10.1 A court hearing an application for an amendment has a discretion whether or not to grant such amendment, a discretion which must be exercised judicially[9].

10.2 The primary object of allowing an amendment is 'to obtain a proper ventilation of the dispute between the parties, to determine the real issues between them, so that justice may be done'.

10.3 In deciding whether or not to allow an amendment, a court should consider the issue of prejudice. Prejudice which cannot be cured by an order for costs should be refused.[10] The onus is on the party seeking the amendment to establish that the other party will not be prejudiced by it.

10.4 Watermeyer J held in *Moolman v Estate Moolman* 1927 CPD:

'[T]he practical rule adopted seems 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.'

10.5 The court in *Trans-Drakensberg Bank*[11] held the following:

‘Having already made his case in his pleading, if he wishes to change or add to this, he must explain the reason and show prima facie that he has something deserving of consideration, a triable issue; he cannot be allowed to harass his opponent by an amendment which has no foundation. He cannot place on record an issue for which he has no supporting evidence, where evidence is required, or, save perhaps in exceptional circumstances, introduce an amendment which would make the pleading excipiable....’

10.6 Where the real issue in a case is imperfectly or ambiguously expressed in the pleadings an amendment designed to place on record the true issue will be allowed.[12]

10.7 An amendment which introduces a new cause of action will only be allowed if no prejudice is occasioned thereby.[13]

10.8 It is important to distinguish between an amendment introducing a new cause of action (i.e. right of action)[14] and one which merely introduces fresh and alternative facts supporting the original right of action as set out in the cause of action.

10.9 An amendment which introduces a new claim will not be allowed if it would resuscitate a prescribed claim.[15]

10.10 An amendment seeking to introduce a claim which is prescribed will not be allowed.[16]

10.11 Where there are differences between the facta probanda in the original claim and those in the amended claim, but the causes of action are not so separate and distinct that it can be said that the plaintiff is seeking to enforce a substantially different cause of action, the amendment will be allowed.[17]

10.12 However, even if it is shown that the plaintiff’s claim has prescribed, an amendment will be granted if it appears to the court that it is only possible and not definite that prescription is the full answer to the plaintiff’s case.[18]

Discussion

Is the plaintiff attempting to gain an unfair advantage and is he litigating recklessly and vexatiously?

[13] I am of the view that the attempts to amend after the defendants excepted to the particulars of claim were as a result of the objections raised by the defendants. The mere fact of lodging further applications to amend cannot of themselves constitute grounds for refusing an amendment nor can it be said that plaintiff is thereby seeking to gain an unfair advantage or that he is litigating recklessly and vexatiously. In this regard it is to be noted that defendants initially excepted to plaintiff’s particulars of claim. As a result, plaintiff filed an application to amend. The defendants objected to it which led to the plaintiff filing a second application which was also objected to by the defendants. The plaintiff then filed a third (the current) application.

Will the amendment, if allowed, result in a new cause of action or change the character of the action?

[14] In the original particulars of claim:

14.1 The plaintiff mentions the various matters the defendants handled on his behalf. He also states that he paid R 544 000.00 over a period of time and for which, he says, no receipts were issued to him. This is for the period 6 April 2011 to 26 September 2012.

14.2 Plaintiff also alleges that the third defendant retained an amount of R 300 000.00 from the R600 000.00 it received from the liquidated company Broadbrush Investments (Pty) Ltd and for which it did not account to him.

14.3 Accordingly he wants a full and proper account from the defendants. He claims that he is entitled to a refund of the R 544 000.00 if the defendants fail to properly account to him within 60 days of the court granting an order for debatement of the account and paying him whatever amount that may be due to him.

[15] In the intended amendment of the particulars of claim the plaintiff states:

15.1 That an oral agreement which was later educed to writing was entered into between him and the first defendant (who represented the third defendant) in terms of which the third defendant accepted instructions from him in various matters over the period 3 January 2010 to 18 October 2012.

15.2 These matters are the same ones which are set out in the original particulars of claim

15.3 In the original particulars of claim no mention is made of any interim accounts having been rendered to the plaintiff in any of the matters. However, in the intended amendment the plaintiff states that interim accounts or 'memorandum of fees' were rendered in ten of the sixteen matters and has attached copies to the intended amended particulars of claim.

15.4 As for the R 300 000.00 retained by the second defendant out of the R 600 000.00 received by it the plaintiff states in the intended amendment that he received a letter dated 28 November 2012 stating how the funds were applied by it.

15.5 He says further in the intended amendment that as a result of the retention of the R 300 000.00 by the second

defendant, he terminated second defendant's mandate with 'immediate effect.' The date of termination is not stated. He then states he seeks rendering and debatement of the accounts.

15.6 The relief sought in the intended amendment is that second defendant render 'an account or accounts' for all work done from 3 January 2010 to date of termination of second defendant's mandate; debatement of the account; payment to plaintiff of whatever amount appears to be due to the plaintiff; interest and costs on the attorney and client scale.

[16] It is evident that in the draft particulars of claim annexed to the notice of intention to amend it is alleged that on 11 September 2012 the first defendant reduced the oral agreement or mandate to writing. The remainder of the content in general remains the same. The prayers in the proposed amended particulars of claim are also generally the same as in the existing particulars of claim. In both the plaintiff claims the rendering and debatement of an account and payment of whatever may be due to plaintiff, with interest and costs.

[17] In *Sentrachem Ltd v Prinsloo* the Appellate Division laid down the test as follows:[19]

‘Die eintlike toets is om te bepaal of die eiser nog steeds dieselfde, of wesentlik dieselfde skuld probeer afdwing. Die skuld of vorderingsreg moet minstens uit die oorspronklike dagvaarding kenbaar wees, sodat ‘n daaropvolgende wysiging eintlik sou neerkom op die opklaring van ‘n gebrekkige of onvolkome pleitstuk waarin die vorderingsreg, waarop daar deurgaans gesteun is, uiteengesit word...’

[18] In both the original and in the intended amendment the plaintiff bases his claim for an accounting on section 76 of the Attorneys Act 53 of 1979 and Rule 68 of the Rules framed thereunder. The Rule imposes a duty on an attorney to account to his or her client within a reasonable time of the performance or early termination of any mandate.

[19] It is also trite that courts in general allow an amendment of a prayer where the main issue between the parties remains the same.[20]

[20] In my view, plaintiff is not attempting to introduce any new fact which will have the effect of introducing a new cause of action. Such facts as are alleged in the intended amended particulars of claim may assist in determining the real issue between the parties.

[21] I also do not see any prejudice to the defendants more so as they have not pleaded as yet.

Is plaintiff attempting to overcome a problem of prescription with the intended amendment?

[22] I have already stated that the intended new particulars are hardly completely different from the original. So it cannot be said that the plaintiff is attempting to overcome prescription with the intended amendment. If plaintiff’s claim has prescribed, the defendants can plead that and it can be adjudicated by the trial court.

[23] In the original particulars of claim the plaintiff states at paragraph 25 (supra) that on 28 November 2012 and on receipt of a contribution to costs in the matter of Broadbrush Investments (Pty) Ltd, the third defendant unilaterally deducted

R 300,000.00 from the R 600,000.00 received without the mandate or consent of the plaintiff and without rendering an account.

[24] The defendants say in effect that they had no duty to account to the plaintiff but rather to the liquidators of Broadbrush. However, in the letter or account dated 28 November 2012 addressed to the plaintiff by the third defendant it is stated that the R 300,000.00 is for:

‘2. Ons balans rekeninge vir verskeie dienste aan u gelewer in bogemelde aangeleentheid[21] en ander tot op hede: R 300,000.00.’

This, then, is an issue for determination by the trial court.

[25] The plaintiff says the unilateral deduction of the R 300,000.00 by third defendant led to the termination of its mandate. Neither the existing particulars of claim nor the intended particulars of claim contain any specific date on which plaintiff terminated defendants’ mandate. However, from both particulars of claim it would appear that this was some time after the retention of the amount of

R 300,000.00. Plaintiff alleges that the duty to account only arose within a reasonable time after the termination of the mandate. Hence, so argues plaintiff, prescription would only begin to run from this date. Since summons was issued prior to 28 November 2015 (i.e. 9 November 2015 and served on 12 November 2015) the claim would not have prescribed.

[26] An amendment will be disallowed where it is beyond dispute that the claim has prescribed. [22]Amendment proceedings are not designed to determine factual issues such as whether the claim has prescribed.[23] Here it cannot be said with certainty that the claim has indeed prescribed. It is an issue to be determined by the trial court.

[27] The defendants also submit that the plaintiff had abandoned his claim only to attempt to revive it again. It is so that there have been lengthy delays between the various amendment applications but I cannot, without more, conclude that it amounted to an abandonment of the claim. In any event, as plaintiff’s counsel submits, correctly in my view, an abandonment of an action would amount to a waiver, which is a question of fact. The onus rests on the party wishing to rely on it and it has to be alleged and proved.[24] Defendants may, if they so wish, include such a defence in the plea.

Is the intended amendment, if allowed, excipiable?

[28] The defendants state that the intended amendment will be excipiable if allowed but do not state in what respects it will be so. Plaintiff concedes that an amendment which would render the pleading excipiable would not be allowed. However, submitted plaintiff’s counsel, the application and the grounds of objection, if they are susceptible to an exception, should be dealt with as if it is an exception. Defendants can then argue why they allege that the intended particulars of claim would be excipiable during the hearing of the matter and the court can then apply the same tests it would have if an exception was argued before it.

[29] In the defendants’ heads of argument Mr Van Rensburg SC submits that in para 25.2 of the notice of intention to amend dated 13 September 2018, the plaintiff is attempting to create the impression that the R 300,000.00 retained by defendants was collected on his behalf, without specifically pleading it and therefore it is excipiable. I have already dealt with the issue of who was to be accounted to, i.e. the plaintiff or the liquidators on the basis that it is to be determined by the trial court. The same can be said regarding defendants’ contention

that para 11 of the same notice of intention to amend, if allowed, would be excipiable. In any event, the issue of excipiability was not argued at the hearing.

Several other objections to the intended amendment

- [30] Mr Van Rensburg submitted that plaintiff was no longer seeking any relief against the first defendant in the intended amendment in that plaintiff only refers to the third defendant. Hence, first defendant should no longer be cited. However, this loses sight of the fact that the first defendant practices as an attorney through the third defendant which is an incorporated entity in terms of the Companies Act, which in the case of attorneys provides (as per the Attorneys Act – and now the Legal Practice Act 28 of 2014) for personal liability of an attorney where he practices through a juristic personality.
- [31] It was also submitted that plaintiff should withdraw the claim against the second defendant and tender costs. The second defendant does not exist. While it would be preferable to withdraw the claim against it, it would make no practical difference and there would be no point in ordering costs in its favour.
- [32] It was further submitted that plaintiff should also withdraw the citation of the fourth respondent. Mr Gibbs already conceded at the commencement of the hearing that it should not have been cited. Again, whilst it would be preferable, it is noted that no relief is sought against it and it has not entered appearance. In any event, it has been succeeded by the Legal Practice Council.
- [33] The defendants submit that plaintiff cannot, after having paid R 544,000.00 now seek to have a rendering of accounts. They rely on *Praxley Corporate Solutions (Pty) Ltd v Werksmans Incorporated* (A5074/15) [2017] ZAGPJHC 21 (28 February 2017) in this regard. However, that case can be distinguished on the facts. There the appellant paid invoices which were rendered by the respondent (a firm of attorneys) over a period of a year. Only thereafter did it insist that those invoices be submitted to the Taxing Master for taxation before it would pay an admitted disbursement by respondent for counsel's fees. The full court held that the client's debt to the attorney was discharged by voluntary payment (barring an obligation to pay counsel's fees). The parties owed no further obligations inter se. The client accordingly had no right to insist on taxation once the debt to the attorney was discharged voluntarily and without reservation. In this matter before me the applicant made ad hoc payments over a period of time whilst no final invoices had been rendered.

Costs

- [34] Both parties sought punitive costs orders against each other. The normal rule in an application for amendment is that the party seeking the amendment should bear the costs. Here the applicant has succeeded after the hearing of an opposed application. However, As was stated in *Grindrod*: [25]

‘As regards costs, the normal rule is that an applicant for an indulgence, such as the plaintiff in the present application is, should pay all costs as can reasonably be said to be wasted because of the application for amendment. There is authority that such costs should include the costs of such opposition as is in the circumstances reasonable, and not vexatious or frivolous. *Myers v Abrahamson* 1951 (3) SA 438 (C) at 455; *Meintjies NO v Administrasieraad van Sentraal-Transvaal* 1980 (1) SA 253 (T) at 294 in fine – 295F; *Genn NO v Rudich Holdings (Pty) Ltd* 1983 (2) SA 69 (W) at 72.

The justification for this kind of order is that the respondents ought not to be put in a position where they oppose the granting of an indulgence at their peril, in the sense that, if the amendment is granted, they cannot their costs of opposition, or may even have to pay such costs as are occasioned by their opposition, despite the fact that such apposition was reasonable in the circumstances.’

[35] It seems to me that the defendants’ opposition to the present application was neither frivolous nor vexatious and was reasonable in the circumstances. However, I do not think a punitive costs order is justified.

[36] I make the following order:

1. The applicant is granted leave to replace his particulars of claim in its entirety as set out in the Notice of Intention to Amend dated 13 September 2018.
2. The applicant is directed to pay the costs of this application, which costs include the first and third respondents’ (defendants’) costs of opposition including the costs of senior counsel.

JUDGE OF THE HIGH COURT

Appearances:

For applicant:

Adv W Gibbs

Instructed by

For respondents:

Adv S.J.J Van Rensburg SC

[1] Being an interlocutory application it is not mandatory to file an affidavit.

[2] Notice of objection at para 12.

[3] Notice of objection at para 13.

[4] Notice of objection at para 14.

[5] Notice of objection at para 15.

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- [6] Notice of objection at para 16.
- [7] Notice of objection at para 17.
- [8] Notice of objection at para 19.
- [9] YB v SB 2016 (1) SA 47 (WCC) at 50H-J
- [10] Trans-Drakensberg Bank Ltd v Combined Engineering (Pty) Ltd 1967 (3) SA 632 (D) at 638H-639C.
- [11] Ibid at 641A-B
- [12] Trans-African Ins. Co. Ltd v Maluleke 1956 (2) SA 273 (A) at 279C.
- [13] MacDonald, Forman & Co. v Van Aswegen 1963 (2) SA 150 (C) at 153 (D).
- [14] In Sentrachem Ltd v Prinsloo 1997 (2) SA 1 (A) at 150 B-E it was pointed out that it is preferable in the context of prescription to speak of a ‘right of action’ instead of a ‘cause of action.’
- [15] Ibid Trans-African Ins. Co. Ltd v Maluleka supra at 279B.
- [16] Associated Paint & Chemical Industries (Pty) Ltd t/a Albestra Paint and Lacquers v Smit 2000 (2) SA 789 (SCA) at 796B-I.
- [17] Wavecrest Sea Enterprises (Pty) Ltd v Elliot 1995 (4) SA 596 (SE) at 602D-E.
- [18] Cordier v Cordier 1984 (4) SA 524 (C) at 535I.
- [19] Supra, at 15H-16C.
- [20] Tomassini v Dos Remendos 1961 (1) SA 226 (W).
- [21] ‘Insake: Broadbrush Investments 15 (Edms.) Bpk vs Kaninvest 3146 BK en andere.’
- [22] Manwood Underwriters (Pty) Ltd and Others v Old Mutual Life Assurance Company (South Africa) (Pty) Ltd [2013] All SA 701 (WCC) at [27], Fisher v Natal Compunders (Pty) Ltd 2016 (5) SA 477 (SCA).
- [23] Vide Cordier v Cordier (supra).
- [24] Hepner v Roodepoort – MaraisburgTown Council 1962 (4) SA 772 (A).
- [25] Grindrod (Pty) Ltd v Delport and Others 1997 (1) SA 342 (W) at p 347.

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