

SOUTH AFRICA / JUDGMENT

Pretorius v Leonard and Others (11279/2024) [2024] ZAWCHC 386 (25 November 2024)

[2024] ZAWCHC 386

COURT

Western Cape High Court, Cape Town

BEFORE

A Bhoopchand

CASE / FILE NUMBER

11279/2024

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NUMBER: 11279/2024

In the matter between

JOHN CORNELIUS PRETORIUS

PLAINTIFF

and

LORENZO LEONARD

FIRST DEFENDANT

LORENZO BUILDERS (PTY) LTD

SECOND DEFENDANT

SPL CONSTRUCTION (PTY) LTD

THIRD DEFENDANT

JUDGMENT

Date of hearing: 22 November 2024

Date of judgment: 25 November 2024

BHOOPCHAND AJ:

1. The Defendants raised an exception to the Plaintiff's

particulars. The plaintiff formulated two claims based on the breach of a building contract, the first for damages arising from repairing the defective work and the second from loss of rental income caused by the delay in obtaining occupation of the medium-sized home. The Defendant raised two exceptions. The First Defendant complained that the particulars disclosed no cause of action regarding the claim for loss of rental income. The Second and Third Defendants excepted to the particulars as they contained no specific allegation against them. The Defendants sought orders to dismiss the claims. They challenge the legal validity of the claims and not their formulation. The Defendant must, therefore, show that upon every interpretation, the pleading in question can reasonably bear, no cause of action is disclosed.

2. The Plaintiff's particulars cite the parties and deal with the jurisdiction of this court to hear the matter. The Plaintiff then alleges that the First Defendant concluded a partially written and partially verbal building agreement in his personal capacity and as the authorised representative of the Second and Third Defendants. The Plaintiff referred to the contract and the building plan that constituted the agreement. The contract attached to the particulars was entered into and concluded by the Plaintiff and the First Defendant. The particulars at all material instances refer to the Defendants collectively.

3. Plaintiff recited the contract's material terms, which included the undertaking that the residential dwelling shall be completed within four and a half months. He then alleged that the completion time was specified to enable him to lease the property. This was not in the written contract, except that the Plaintiff alleged the contract was partly verbal. The Plaintiff recorded the contract price and the consequences of a breach of the contract. The Plaintiff documented that the parties contemplated the Plaintiff suffering damages if there were structural defects to the dwelling as well as the loss of rental income if the dwelling was not completed timeously. The Plaintiff alleged that the Defendants' work was flawed and listed twenty-three defects. Plaintiff alleged that had the Defendants performed properly and professionally, Plaintiff would not have suffered the damages set out in its two claims.

4. The first claim was premised upon the costs of repairing the defects to the dwelling. The Plaintiff estimated the cost at R685 170. The second claim was based upon the Plaintiff's inability to lease the dwelling from 1 April 2024, when the Plaintiff expected to take occupation. The Plaintiff formulates this part of the claim as: "the reasonable damages the Plaintiff suffered is R1900 per day from 1 April 2024 to such date the residential dwelling is completed, and the Plaintiff is provided with occupation of the property".

5. The First Defendant excepted to claim for loss of rental income because it lacked specific averments, did not deal with causation and foreseeability, and had insufficient detail. The Second and Third Defendants excepted to the claim for its lack of specific allegations, for misjoinder, no factual or legal basis, and the absence of a cause of action.

THE FIRST CLAIM

6. The First Defendant contended that the particulars failed to allege that the R1900 per day claimed as loss of rental was within the parties' contemplation at the time of contracting. The cornerstone of a valid claim for consequential damages is foreseeability. In *Dharumpal Transport (Pty) Ltd v Dharumpal*, 1956 (1) SA 700 (A), the Court emphasised the importance of foreseeability in claims for consequential damages.
7. The First Defendant alleged that the particulars did not provide a sufficient causal link between the alleged breach and the loss of rental. The Plaintiff did not specifically allege that the Defendants were informed that delays would result in a loss of R1900 per day. The Court in *Telematrix (Pty) Ltd v Advertising Standards Authority* SA 2006(1) SA 461 (SCA) cautioned against an overly technical approach to pleadings. Still, it emphasised the need for sufficient detail to establish a valid cause of action. The particulars fell short of this standard.
8. The First Defendant asserted that the particulars lacked the necessary detail to support a claim for consequential damages such as lost rental income. The claim does not specify how the daily rate was determined, nor does it provide any basis for asserting this rate was foreseeable by the Defendants at the time of contracting.
9. Plaintiff rebutted the allegation and cited the paragraphs of the particulars alleging that the parties contemplated that Defendant's failure to deliver the dwelling timeously would result in a loss of rental income. It was alleged that the Plaintiff could not lease the dwelling for profit at a market-related rental amount. Therefore, the reasonable foreseeability of the damages suffered by the Plaintiff and that it was within the contemplation of the parties was clearly pleaded.
10. Plaintiff refuted that it was required to plead that the parties agreed or were aware that the quantum of his damages would amount to R1900 per day. The plaintiff contended that damages are generally

assessed at the date of the breach and not when a contract is concluded. The plaintiff cited the case of *Mostert NO v Old Mutual Life Insurance Co (SA) Ltd* 2001 (4) SA 159 (SCA) at paragraph 78 in support of its contention. The plaintiff asserted that no rule in law requires parties to agree or foresee at the time a contract is concluded the exact extent of the damages a party may suffer if the other party breaches the contract. *North & Son (Pty) Ltd v Albertyn* 1962 (2) 212 (A), the case upon which the precedent for contractual claims is based in *Amler's Precedents of Pleadings*, concerned the loss of a farmer's summer crop as the mechanic repairing the tractor, failed to return it timeously. The extent of the damages could only be determined at a later stage and proved at the trial. When pleading, neither the trial Court nor the appeal Court held that the Plaintiff was required to allege that the precise extent or manner of calculation of the Plaintiff's damages was within the contemplation of the parties when they entered into their agreement. The exact quantification of a Plaintiff's

claim is a matter of evidence as it constitutes *facta probantia* rather than *facta probanda*.

11. Plaintiff argued that causation was alleged as he pleaded that he could not lease the dwelling because the Defendants failed to complete it on time. The plaintiff contended that the particulars contained the necessary allegations to sustain the first claim, and the exception was without merit.

THE SECOND CLAIM

12. The Second and Third Defendants contended that the particulars did not contain any specific allegations of fact or law against them and lacked averments that they were involved in the negotiation, execution, or performance of the building contract concluded between Plaintiff and First Defendant.
13. As Plaintiff did not allege that the Second and Third Defendants were parties to the contract, there was no legal basis for joining them in the action. First Defendant's alleged involvement with the Second and Third Defendants was insufficient to establish their liability for his contracts. They cited the case of *Callender-Easby v Grahamstown Municipality* 1981 (2) SA 810 (E) to emphasise the need for specific allegations to justify the inclusion of parties to litigation. The particulars failed to meet this standard.
14. The Second and Third Defendants assert that as the particulars did not attribute any conduct or omissions to them, it failed to establish any factual or legal grounds upon which they could be held liable.
15. The Second and Third Defendants contended that in the absence of any specific allegations or evidence of their involvement, the particulars did not disclose a cause of action against them. Hence, the Plaintiff did not establish any basis upon which the relief sought could be granted against them.
16. The Plaintiff contested the allegations of the Second and Third Defendants. Plaintiff alleged that the contract was partially written and partially verbal, and the Second and Third Defendants were represented by the First Defendant. Plaintiff contended that it was the legal basis for joining the Second and Third Respondents to the action. Plaintiff had pleaded the Second and Third Defendants breach and their liability in all material aspects of the particulars.
17. The Defendants contended that pleadings must be clear, specific, and legally sound to proceed to trial. Defendant's Counsel raised the analogy of the Court being like a skilled architect reviewing blueprints; it has the opportunity to identify and rectify fundamental flaws in the case structure before construction begins. The case illustrates the critical importance of proper pleading. The deficiency in the particulars strikes at the heart of the claims' viability. The Defendants cited the case of *Trustees for the time being of the Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others (Legal Resources Centre as Amicus Curiae)* [2013] 1 AllSA 648 (SCA) to emphasise that the law demands not only that a Plaintiff should have a cause of action but that he should make it appear clearly in his pleadings. By upholding the exceptions raised, the Court can reinforce

the importance of clear, precise, and legally sound pleadings in the interests of justice and for guidance to future litigants to ensure that well-constructed claims proceed to trial.

18. In its written argument, the Defendants abandoned their prayer for the claims to be dismissed. They contended that the exceptions should be upheld and the Plaintiff should be granted leave to amend the

particulars within thirty days, failing which the claim would lapse. The Plaintiff sought to place evidence on affidavit where he would reveal correspondence addressed to the Defendants to withdraw the exceptions failing which he would seek punitive costs against them. The Court declined the invitation to prolong what is, in essence, an ill-founded exception.

EVALUATION

19. when adjudicating an exception based on the particulars disclosing no cause of action, a Court will accept the allegations pleaded by the Plaintiff as true to assess whether they disclose a cause of action. An excipient who alleges that the particulars disclose no cause of action must establish that upon any construction of the particulars, no cause of action is disclosed. An excipient must make out a compelling case before the exception can succeed. The unreported case of *Merb (Pty) Ltd v Matthews* 2020/15069 provides a useful summary of some of the general principles applicable to exceptions. The Plaintiff argued that from even a cursory reading of the particulars, the Defendants' exceptions are ill-founded and should be dismissed with costs.
20. The Defendants sought to dispose of the Plaintiff's entire case by seeking their dismissal. The Defendants failed to appreciate that if they were successful, the Plaintiff's summons would remain intact (*Group Five Building Ltd v Government of the Republic of South Africa (Minister of Public Works and Land Affairs)* 1993(2) SA 593 (A) at 603 C-D). The proper prayer would be to uphold the exception and for the unsuccessful party to apply for leave to amend its pleading. Defendants seemed to realise this in their heads of argument but reverted once again in oral argument to seeking the dismissal of Plaintiff's second claim.
21. The Plaintiff's particulars are inelegantly drafted and fail in many respects to present a clear and distinct recital of the allegations necessary to support the two claims. Examples include the

failure to establish the link between the Second and Third Defendants and the First Defendants in their citations. The headings are misleading. The "Background" deals with the essential allegations relating to the contract. The "Performance"

deals with the factors causing the breach of the contract. The second claim leaves the R1900 per day floating without reflecting the total claim under this head of damages, even if it is an estimate. However, none of these omissions detract from the test on exceptions raised for a failure to disclose a cause of action. Not only are the Plaintiff's claims evident on a cursory reading of the particulars, but the latter contains all the material allegations necessary to sustain both claims. This is evident from the survey of the particulars and aspects of the Plaintiff's

argument reproduced in this judgment.

22. The exceptions raised by the Defendants have no merit and stand to be dismissed. An exception is not directed at producing and pleading to the perfect particulars but determining whether the imperfect one supports a cause of action and permits the opponent to know the case it must meet. Nor are the Defendants' exceptions based on particulars that are vague and embarrassing or a failure to comply with Rule 18(10) of the Uniform Rules of Court. In the premises, the order that follows is appropriate.

ORDER

1. The Defendants' exceptions to Plaintiff's claims are dismissed with costs.

Ajay Bhoopchand

Acting Judge of the High Court

Western Cape Division

Cape Town

Judgment

was handed down and delivered to the parties by e-mail on 25 November 2024

Plaintiff's Counsel: D R de Wet

Instructed by Barnard Inc, Pretoria

Defendants Counsel: P Tredoux

Instructed by Kruger & Blignaut, Bredasdorp

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