

SOUTH AFRICA / JUDGMENT

Telesure Group Services v Eastern Cape Development Corporation (1088/2015) [2015] ZAECHGHC 142 (24 November 2015) [2015] ZAECHGHC 142

COURT

Eastern Cape High Court, Grahamstown

BEFORE

N G Beshe

CASE / FILE NUMBER

1088/2015

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IN THE HIGH

COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, GRAHAMSTOWN)

CASE NO.: 1088/2015

In

the matter between:

TELESURE
GROUP SERVICES
Plaintiff
And
EASTERN
CAPE DEVELOPMENT
CORPORATION
Defendant

JUDGMENT

BESHE, J:

- [1] The plaintiff, an insurance policy administrator and claims processing company is suing the defendant for damages on the basis of delict allegedly committed by it.
- [2] Plaintiff's cause of action is formulated on the following basis:

Plaintiff bore the risk of loss in respect of motor vehicles which were being repaired by Herbs Panelbeaters and Spray Painters CC on the premises that are owned by the defendant. Which premises Herbs Panelbeaters was renting from the defendant.

[3] As a result of a fire that broke out at the said premises on the 5 July 2012, a number of the motor vehicles that were there for repairs were either destroyed or damaged.

[4] Plaintiff alleges that the damage caused to the said motor vehicles was as a direct result of the fire not having been expediently

brought under control due to fire extinguishing equipment on the premises being inadequate, inadequately maintained and serviced. That the defendant as the owner of the premises, had a duty in terms of the National Building Regulations to maintain the equipment for detecting, fighting, controlling and distinguishing fire on the premises. By failing to do so, defendant was negligent and such negligence gave rise to the loss suffered by the plaintiff.

[5] Defendant has raised a legal objection to plaintiff's pleadings / particulars of claim. The complaint being that: Plaintiff's particulars of claim do not allege:

a duty of care towards the plaintiff;

its entitlement to rely on defendant's non-compliance with the National Building Regulations and bureau of standards code of practices as evidence of defendant's liability to it;

fault (negligence) on the part of the defendant vis-a-vis the plaintiff.

Defendant complains that plaintiff has sought to rely on the principle of strict liability emanating solely from defendant's ownership of the property to found its delictual claim. That the common law does not provide for such broad liability.

[6] The exception is taken on the basis that plaintiff's pleadings do not disclose a cause of action.

[7] Plaintiff seeks to hold defendant for the damages it suffered as a result of the fire that broke out at premises owned by the defendant on the basis of an omission. Namely that defendant failed to ensure that adequate fire extinguishing equipment was available at the said building.

[8] Defendant will only be liable for damages caused as aforementioned if it was under a legal duty to act in the circumstances.

[9] Plaintiff's claim against the defendant is founded upon the latter being the owner of the building in question.

[10] It was submitted on behalf of the defendant that in order for plaintiff to succeed, it has to prove that the defendant owed it a duty to care not to negligently cause it to suffer damages.

- [11] Mr Scott for the plaintiff on the other hand argued that the plaintiff has defined defendant's legal duty towards it in its particulars of claim.
- [12] For an action to lie at the suit of anyone affected by an omission by another, such other must have been under some duty to perform the act he is alleged to have omitted.[1]
- [13] In *Sea Harvest Corporation v Duncan Dock Cold Storage* 2000 (1) SA 827 SCA at 837 J – 837 A Scott JA acknowledged that liability for omissions has been a source of judicial uncertainty since Roman times. He went on to state that “if there is fault, whether in the form of dolus or culpa, the question that has to be answered is whether in all the circumstances the omission can be said to have been wrongful or, as
- it is sometimes stated, whether there existed a legal duty to act”. See also *Olitzke Property Holdings v State Tender Board and Another* 2001 (3) SA 1247 SCA at paragraph 12.
- [14] In order to succeed, an excipient has a duty to persuade the court that upon every interpretation of the pleading in question, no cause of action is disclosed.[2]
- [15] One has to be mindful that if evidence can be led which can disclose a cause of action as alleged in a pleading, that particular pleading is not excipiable. A pleading is only excipiable on the basis of no possible evidence led on the pleadings being capable of disclosing a cause of action.[3]
- [16] It was correctly pointed out on behalf of the plaintiff that plaintiff would be required to prove that the defendant would have foreseen the reasonable possibility that its failure to provide adequate fire fighting equipment on the leased premises would cause loss to a third party in the event that such third party had any property on the leased property. And that defendant failed to comply with National Building Regulations.
- [17] I am therefore not persuaded that upon every interpretation of plaintiff's particulars of claim it can be said that the
- particulars of claim do not disclose a cause of action.
- [18] Accordingly the exception is dismissed with costs.

N G BESHE

JUDGE OF THE HIGH COURT

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Date Delivered : 24 November 2015

[1] Beck's Theory and Principles of Pleading in Civil Actions 6th Edition H Daniels p. 196

[2] Erasmus Superior Courts Practice Farlam et al – B1-151-2 Service 45 2014

[3] See Erasmus supra B1-157

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