

SOUTH AFRICA / JUDGMENT

Reiter Foods and Services CC v Cattle Baron Steak Franchising Pty Ltd (10281/08) [2010] ZAWCHC 642 (18 February 2010) [2010] ZAWCHC 642

COURT

Western Cape High Court, Cape Town

BEFORE

S J Koen

CASE / FILE NUMBER

10281/08

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IN THE HIGH COURT OF
SOUTH AFRICA
(WESTERN CAPE HIGH
COURT, CAPE TOWN)
Case No.: 10281/08

In the matter between:

REITER
FOODS AND SERVICES CC
.....Plaintiff
and
CATTLE
BARON STEAK FRANCHISING (PTY) LTD
.....Defendant

JUDGMENT

DELIVERED THIS 18th DAY OF FEBRUARY 2010

KOEN AJ.

- [1] This matter concerns an exception to the plaintiff's particulars of claim on the ground that it is vague and embarrassing. For the sake of convenience I shall refer to the excipient as the defendant, and to the respondent as the plaintiff.
- [2] The particulars of claim allege that the plaintiff and the defendant are parties to a written agreement. In terms of the agreement the plaintiff was granted the right to carry on a restaurant business at Cape Town by the defendant. As provided for in the agreement the

plaintiff leased certain business premises and incurred costs in setting up its business, but it transpired that the premises could not be used as a restaurant, and the agreement was therefore cancelled by the plaintiff. In consequence, the plaintiff now claims damages from the defendant in the sum of R 2 429 043,09. Broadly speaking, these are the wasted costs of setting up the restaurant business. It also claims an amount of R 8 332 682,50 in respect of an alleged loss of profits which would have accrued to it had the agreement run its course.

- [3] The exception is directed at the first part of the plaintiffs claim which I have described as being the claim for the wasted costs of setting up the restaurant business. It is contended on behalf of the defendant that the damages allegedly suffered by the plaintiff in setting up the restaurant business have not been set out in the manner prescribed by Rule 18 (10), thereby rendering the claim excipiable on the ground that it is vague and embarrassing.
- [4] The relevant part of Rule 18 (10) provides that: "A Plaintiff suing for damages shall set them out in such a manner as will enable the defendant reasonably to assess the quantum thereof...".
- [5] The quantum of the claim for the wasted setting up costs is described in the particulars of claim as being the sum of three components. These are: firstly, an amount of R 85 000 paid being a "start up fee" paid by the plaintiff to the defendant; secondly, an amount of R 2 110 270.59 being in respect of the cost of "setting up and installing [the] restaurant" and "training staff" itemised in a spreadsheet headed "set up cost" annexed to the particulars of claim; and thirdly, an amount of R 38 925,00 in respect of "rental obligations" paid by the plaintiff in respect of the restaurant premises. The first and third components of the claim speak for themselves and are not assailed. The exception is aimed at the spreadsheet itemising the breakdown of the claim for R 2 110 270,59.
- [6] The thrust of the attack on the spreadsheet is that it lists simply costs which were incurred, without taking into account the fact that it is evident from the nature of certain items listed in the spreadsheet that some of the costs were incurred in purchasing items which had a value, and which belonged to the plaintiff.
- [7] The way the claim was formulated, it was argued, permitted the plaintiff to keep the items so purchased, and to recover the costs it incurred in purchasing them. Because a double recovery of damages is legally impermissible it was argued that the defendant could not discern from the pleading what the damages claimed by the plaintiff were - those items in respect of which a double recovery would operate were listed together with those items in respect of which a double recovery would not operate - and it could therefore not assess the quantum of the damages claimed.
- [8] In my judgment there is justification in this line of argument. The spreadsheet reflects, for example, costs incurred by the plaintiff in purchasing items which, on the face of it, are owned by it: crockery; a stock of liquor; chairs; cutlery; a music system; and a plasma television set are among these. All that is reflected is the cost of acquiring these items, with

no indication being furnished in the spreadsheet of the value of these items. The spreadsheet also lists costs incurred by the plaintiff in the obtaining of services, or in acquiring items which prima facie have no residual value: fees payable to the Municipality; wages to staff; and advertising material fall into this category. Moreover, almost half of the claim is relates to what is described as "ACM Shopfitters" without any particulars being furnished as to what this is for.

- [9] Whether or not a claim is vague and embarrassing on account of non-compliance with Rule 18(10) entails a factual enquiry

involving a determination of the question whether the pleading contains sufficient detail to enable the defendant who is called upon to meet a damages claim "reasonably to assess the quantum thereof (my emphasis). "/Assess" according to the Concise Oxford English Dictionary, 11th Edition, means "evaluate or estimate the nature, value or quality of. The Rule requires more than simply the communication by the plaintiff to the defendant of what is being claimed. The defendant must not only know how much is being claimed, but it must be able to make an informed evaluation or estimation of the amount claimed.

- [10] In my view the particulars of claim in this matter do not measure up to the standard required. The spreadsheet detailing the breakdown of the claim is an amalgamation of various categories of damage allegedly suffered by the plaintiff. On the face of it the amount claimed in respect of many of the items listed is not the amount of the damage which can lawfully be claimed. No allowance is made in the pleading for those items which obviously belong to the plaintiff, and which have a value which the law requires must be deducted from the claim. In the result the defendant cannot make an evaluation of the amount of the claim, and the object of the Rule is defeated.

- [11] It is well established in our law that for an exception on the grounds of vague and embarrassing to be upheld the Court must be satisfied not only that the pleading is vague, but that the vagueness causes prejudice. (See: *Trope v South African Reserve Bank and Another* 1992

- (3) SA 208 (TPD) at 211B). In this case it was contended on behalf of the defendant that its inability to evaluate the quantum of the damages claim inhibits its preparation for trial and precludes it from making an informed tender. I agree and conclude that the requirement of prejudice has been established.

- [12] In my view therefore the exception must succeed. Counsel for the defendant submitted that if this were the result then the proper order would include a provision affording the plaintiff an opportunity to amend its particulars of claim. There is no reason why costs should not follow the result.

- [13] Accordingly I make the following order:

- a. The exception is upheld with costs:

- b. The plaintiff is granted leave to amend its particulars of claim within 20 days.

S J KOEN AJ

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Prepared on 11 October 2026 · Esheria