

SOUTH AFRICA / JUDGMENT

Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH (2005/00230) [2020] ZACCP 2; 2021 BIP 1 (COP) (14 October 2020) [2020] ZACCP 2

COURT

Court of the Commissioner of Patents

BEFORE

AC Basson

CASE / FILE NUMBER

2005/00230

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IN THE COURT OF THE COMMISSIONER OF PATENTS

FOR THE REPUBLIC OF SOUTH AFRICA

Case No: Patent 2005/00230

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED

14/10/2020

In the matter between:

VILLA CROP PROTECTION (PTY) LTD

Applicant / Defendant

and

BAYER INTELLECTUAL PROPERTY GmbH

Respondent / Plaintiff

JUDGMENT:

INTERLOCUTORY APPLICATIONS

AC BASSON, J

[1] Bayer Intellectual Property GmbH (“Bayer”) is the plaintiff in the action and the registered proprietor of South African patent 2005/00230 (“the 2005 patent”) and, more in particular, of a chemical substance referred to in these proceedings as “spirotetramat”. This action concerns an alleged infringement of the aforesaid 2005 patent and was instituted on 12 March 2018 by Bayer against Villa Crop Protection (Pty) Ltd (“Villa Crop”) as the defendant. In its particulars of

claim, Bayer claims that the patent has at all material times been valid and in force. In the various interlocutory applications Villa Crop is the applicant and Bayer the respondent.

[2] Villa Crop has brought a counter-claim in the action for the revocation of the patent on the ground, amongst others, of the alleged lack of novelty and lack of inventiveness of the invention claimed in the aforesaid patent.

[3] Four interlocutory applications were served before the court. The first was an application by the defendant/ applicant (Villa Crop) for leave to amend. The plaintiff / respondent (Bayer) also filed an application to strike out whereafter Villa Crop filed an application setting aside the notices of application to strike out. I have already dealt with this application in a separate

judgment.

[4] In this judgment I will briefly deal with the remaining three interlocutory applications.

[5] The first application (“A”) is an interlocutory application to compel further particulars in terms of rule 21(2) of the Rules[1] (“the first application to compel further particulars”) and served on 19 March 2019. The first application for further particulars comprises 23 (with their respective subparagraphs) requests for further particulars.

[6] The second application (“B”) is an interlocutory application to compel in terms of rule 21 and 35(3) of the Rules (“the second application to compel further particulars”) dated 8 April 2019. The second application for further particulars comprises 102 (with their respective subparagraphs) requests for further particulars.

[7] The third application (“C”) is an interlocutory application in terms of rule 35(3) of the rules to compel further and better discovery of 25 documents. The notice in terms of rule 35(3) on which the application is based is dated for October 2018 and the application was served on 19 March 2019.

[8] In each of these application Bayer applied to have material in the affidavits of Villa Crop struck out. Villa Crop in turn applied to have Bayer’s application to strike out struck out. In each of these applications Villa Crop seeks the cost of the application whereas Bayer seeks the cost, including the costs of two counsel, on a punitive scale.

[9] These interlocutory applications all relate to the action for the infringement of a patent by Bayer (as the plaintiff) against Villa Crop (as the defendant).

General principles: Further particulars

[10] The principles are well-known and need only be referred to briefly. Bayer's main argument is that the information sought by Villa Crop is not strictly necessary in order for it to prepare for trial. The commentary in Erasmus Superior Court Practice[2] relating to rule 21(2) explains what must be considered by a court in deciding whether or not to compel a party to provide the required further particulars:

"Only such further particulars as are strictly necessary. It is to be noted that a party is only entitled to call for such further particulars as are 'strictly necessary' to enable him to prepare for trial. The purpose of permitting a party to call for further particulars for trial is (a) to prevent surprise; (b) that the parties should be told with greater precision what the other party is going to prove in order to enable his opponent to prepare his case to combat counter allegations; and (c) having regard to the foregoing nevertheless not to tie the other party down and limit his case unfairly at the trial. Even if the particulars requested may at times involve the disclosure of evidence, that fact does not disentitle the other party from obtaining the particulars if on the grounds of embarrassment or prejudice in the preparation of his case he would otherwise be entitled to know what case he has to meet. In general, however, the purpose of particulars for trial is not to elicit evidence or information which will emerge on cross-examination.

In determining what particulars fall within the scope of the rule, one would look primarily at the pleadings. A party cannot, however, be required to give particulars in relation to a mere denial, i.e. where a party pleads a bare denial of allegations made by his opponent, such a party cannot be required to furnish particulars of any aspect placed in issue by such denial. In applying this principle, it must be borne in mind that a statement in a plea which is in form a denial may embody by necessary implication a positive averment of some fact; and in such a case it may be proper to require that particulars be furnished of the implied averment.

Since the pleadings alone do not necessarily contain sufficient information to determine whether or not a party may be taken by surprise and what the other party intends to prove, it is permissible to go beyond the pleadings and to look at matter forming part of the record, such as expert witnesses' summaries and even (in an appropriate case) evidence given at an earlier hearing which forms part of the record."

[11] Where a party has pleaded a bare denial of the allegations made by his opponent, the Court will usually not order such party to give particulars of any matters placed in issue by such a denial. The court in *Hardy v Hardy*[3] explains:

"The Court must arrive at its decision by the application of principles firmly established by a long line of authoritative decisions.

It is contended on behalf of the defendant, on the authority of *Annandale v Bates*, 1956

(3) SA 549 (W), that:

'The purpose of particulars at this stage' (i.e. after pleadings have been closed) 'is to enable a party properly to prepare for trial and to prevent him being taken by surprise by evidence of a nature he could not reasonably anticipate;'

and that, therefore, as the plaintiff's financial position is a material issue, if the particulars sought are not granted, he may be taken by surprise by evidence which may exist in regard to this issue. It was further contended, on behalf of the defendant, that on the authority of *Smith v Clark*, 1935 NPD 459, it is competent for the Court to order a party to give reasonable particulars if it is necessary to enable the latter to know the nature of the evidence he will have to lead at the trial. This is perhaps just another way of expressing the phrase 'to enable a party properly to prepare for trial' used by WILLIAMSON, J., in *Annandale's case*, *supra*.

From a perusal of the numerous authorities quoted from the Bar by both counsel for the plaintiff and counsel for the defendant, it appears that in each case where particulars were sought and granted, they were particulars of allegations made in the pleadings by the party from whom such particulars were sought. No case was quoted to me in which a party, who had pleaded a bare denial of the allegations made by his opponent, was ordered to give particulars of any matter placed in issue by such a denial. That this is so, is not surprising, as this would be tantamount to ordering a party to furnish particulars of allegations made by his opponent, and it cannot be the function of particulars to enable a party to prove allegations which he himself has made. If the word 'particulars' in the passages from *Annandale's case* and *Smith's case* quoted above are read in the sense of 'particulars of the allegations made in opponent's pleading', then these cases, so far from assisting Mr. Schwarz in his contentions, are in fact adverse to him, as in the present case the plaintiff has made no allegations in regard to her financial circumstances or present requirements, but has contented herself with a bare denial of the plaintiff's allegations in this regard.

To grant the particulars sought would be tantamount to providing the defendant with ammunition to further the case he has to

prove. That this is not the purpose of particulars was laid down in *Birrell v Fryer*, 1926 E.D.L. 284."

[12] In its particulars of claim Bayer claims that the patent has at all material times been valid and in force. The patent is therefore *prima facie* valid. In an action such as in the present case, it is thus for the defendant (*Villa Crop*) seeking to rely on an alleged invalidity of the patent, to make the necessary allegations in that regard. It follows therefore that it is for the defendant to provide evidence in support of the allegation of invalidity.

[13] In the present matter *Villa Crop* has brought a counter-claim for the revocation of the patent. In Bayer's plea to that counter-claim, certain bare denials to the essential allegations made by *Villa Crop* is made. Despite this, what remains in issue in the (main) action, is *Villa Crop's* allegation regarding the invalidity of the patent.

[14] I have already dealt with Villa Crop's application for leave to amend its plea by inserting a special plea in limine. At issue in that application briefly was the allegation that Bayer had made certain representations during proceedings in various countries in the European Union when it applied for a Supplementary

Protection Certificate ("SPC") with reference to the active substance spirotetramat in respect of which Bayer now seeks to impose a monopoly in the pending action. That application was dismissed.

A: THE FIRST APPLICATION TO COMPEL FURTHER PARTICULARS

[15] This is an interlocutory application to compel Bayer to furnish further particulars in terms of rule 21(2) of the Rules. Despite the fact that Bayer's reply to the request of further particulars was delivered on 27 November 2018, more than three and a half months went by before Villa Crop took steps to compel the furnishing of the further particulars sought by it. Bayer claims that this was a delaying tactic on the part of Villa Crop which Villa Crop, in turn disputes.

[16] In this application Villa Crop claims that Bayer was obliged to set out clearly the case which Villa Crop has to answer. It is also stated that the reluctance on the part of Bayer to adhere to the request for further particulars is prejudicial towards Villa Crop in that it prejudices Villa Crop in the preparation of its defence in the main action.

[17] Bayer objects to the requested particulars principally on the basis that it relates to evidence and are not reasonably necessary to enable Villa Crop to prepare for trial.

[18] In her final address to the court,[4] counsel on behalf of Villa Crop indicated to the Court that Villa Crop only persist with the particularities sought in paragraphs 1; 2; 5; 16 and

23. Villa Crop therefore no longer persisted with the requests contained in the remaining 20 paragraphs. The remaining paragraphs (and the particulars sought therein) will therefore not be considered for purposes of this judgment.

[19] In this application for further particulars, the vast majority of further particulars sought pertains to the applications for SPC's in numerous foreign jurisdictions. As already pointed out, Villa Crop has during argument abandoned most of those paragraphs which deals with those applications. Where the remaining particulars sought relate to foreign jurisdictions, I have dismissed those requests for further particulars as they are, in my view, irrelevant to the question whether the South African patent is valid and therefore not strictly necessary for Villa Crop in order to prepare for trial.

- [20] In respect of further particulars emanating from the bare denials made by Bayer in its plea to the counterclaim, Villa Crop is not entitled to further particulars relating to such bare denials. To again quote from Hardy:[5] “That this is so, is not surprising as this would be tantamount to ordering a party to furnish particulars of allegations made by his opponent, and it cannot be the function of particulars to enable a party to provide allegations which he himself has made.”
- [21] Bayer is therefore not required to provide further particulars relating to the validity of the patent. As already stated: The patent is *prima facie* valid and will be regarded as such until such time Villa Crop succeeds in discharging the onus it bears of establishing (and for purposes of its counterclaim), the invalidity of the patent on one or more of the grounds relied on by Villa Crop. In Villa Crop’s replying affidavit, it is stated that the request for further particulars is directed towards the validity of the patent in suit and its anticipation by Patent EP 0 914 846: “This validity is placed directly in issue by statements made by Bayer in a number of countries in the European Community, where Bayer applied to extend patent protection granted to spirotetramat by European patent EP 0 915 846”. This is not the issue before the trial court. The issue at the action is the question whether the evidence establishes the invalidity of the patent. And as already pointed out, the patent is *prima facie* valid and it is for Villa Crop to prove its invalidity of the South African patent. The particulars sought relates to the case of Villa Crop and not to that of Bayer. It is Villa Crop’s allegations as to the invalidity of the patent that are in issue and Bayer is not required to provide further particulars relating to the validity of the patent. Where the allegations of invalidity are simply denied (as in this case) it is for the plaintiff in reconvention to establish its case. It is not for the patentee to explain why the patent is valid (as it is *prima facie* valid) nor does a simple denial of the allegations in the plea in the counter-application places on obligation on the patentee to allege or prove that the patent is valid nor why the patent is valid in the face of the counter-claim.
- [22] Taking in account the foregoing, the request for further particulars sought in paragraphs 1; 2; 5; 16 and 23 is dismissed on the basis that they are not strictly[6] necessary for Villa Crop to prepare for trial. A punitive costs order is also warranted particularly in light of the fact that a substantial number of paragraphs requiring further particulars have been abandoned during argument. The costs further to include the costs of two counsel.

Order in respect of the first application for further particulars

[23] In the event the following order is made:

Villa Crop Protection (Pty) Ltd’s application for further particulars dated 19 March 2019 is dismissed with cost on a punitive scale including the costs occasioned by the employment of two counsel.

The application to strike out[7] in terms of rule 6(15) and the application to set aside the notices of application to strike out.

- [24] Bayer brought an application to strike out paragraphs 7 – 12 and 14 of the replying affidavit of Mr Llewellyn Roux du Toit (Villa Crop's attorney) on the basis that it constitutes hearsay and therefore inadmissible as evidence and/or is an expression of opinion that the deponent is not qualified to express and accordingly inadmissible; is vexatious; constitutes argument and therefore inadmissible and irrelevant and/or is irrelevant.
- [25] In light of my findings in respect of the application for further particulars and in light of my finding that the particulars requested pertaining to foreign jurisdictions are irrelevant, the application to strike out the paragraphs identified in this application is granted with costs including the costs consequent upon the employment of two counsel.
- [26] There is no merit in Villa Crop's application to set aside the notices of application to strike out and is therefore dismissed with costs including the costs consequent upon the employment of two counsel. I am not persuaded that any of the costs order in these two applications should be on a punitive scale.

Order in respect of the application to strike out and the application to set aside the notices of application to strike out.

[27] In the event the following order is made:

1. Bayer Intellectual Property GmbH's application to strike out paragraphs 7 – 12 and 14 of the replying affidavit of Mr Llewellyn Roux du Toit is granted with costs including the costs consequent upon the employment of two counsel.
2. Villa Crop Protection (Pty) Ltd's application to set aside the notices of application to strike out is dismissed with costs including the costs consequent upon the employment of two counsel.

B: THE SECOND APPLICATION TO COMPEL FURTHER PARTICULARS

- [28] The second application for further particulars in terms of rule 21(2) and for the production of documents in terms of rule 35(3) was served on 2 May 2019.
- [29] Similar to the first application for further particulars, counsel on behalf of Villa Crop indicated in her final address to Court that Villa Crop only persisted with the request for further particulars contained in the following paragraphs: paragraph 14, 26.4, 27, 75 until paragraph 84. The remaining paragraphs for further particulars have therefore been abandoned.
- [30] I do not intend dealing with each and every remaining paragraphs. Suffice to restate what I have already stated in respect of the first application for further particulars: The main action deals with the validity of South African patent. Villa Crop duly pleaded the grounds for invalidity. Simply put: It is for Villa Crop to prove the invalidity and not for Bayer to prove the validity of the patent. The patent remains *prima facie* valid until proven otherwise.[8]

- [31] In paragraph 14, the plaintiff is required to explain the relationship between various entities. This is not relevant nor necessary in order for Villa Crop to prepare for trial and the request is therefore dismissed.
- [32] The requests relating to detailed requests pertaining to the SPC proceedings in various European jurisdictions, are not necessary or relevant for purposes of deciding the validity of a South African patent. What transpired in foreign jurisdictions in respect of SPC applications, is not, in my view relevant to the question that is before the court in the main action namely the validity of the South African patent. For this reason, I have dismissed the requests for further particulars insofar as they relate to the SPC applications in the various European countries.
- [33] The request for further particulars should be considered in the context of the pleadings. Bayer's case in the action is that Villa Crop has infringed its patent. As already pointed out, Villa Crop has brought a counter-claim for the revocation of the patent. Bayer's plea to the counter-claim is one of bare denials of the essential allegations made by Villa Crop in the counter-claim. The requests for further particulars relate to Villa Crop's counter-claim for the revocation and not to Bayer's claim that the patent (which is prima facie valid) is being infringed upon by Villa Crop.
- [34] The particulars sought further relate to Villa Crop's claim that the patent is invalid on the ground of novelty in light of prior patents and in light of the SPC's that has been granted. There is no obligation on Bayer to furnish particulars of allegations made by its opponent (Villa Crop). That this is the aim of the request for further particulars, emanates from what is stated in Villa Crop's replying affidavit namely that: "The request for further particulars in issue was directed at an enquiry, in particular, towards the validity of the patent in suit and its anticipation by patent EP 0 914 846." The request for further particulars thus relates to the case advanced by Villa Crop and not Bayer. Moreover, the particulars sought in paragraphs 2; 5; 16 and 23 will, in all probability, form part of the main issues in dispute between the parties in the action.
- [35] In conclusion: The entire application is, in my view, ill-conceived not only because most of the particulars sought concerns the legal processes in European Countries relating to applications for SPC's[9] which is irrelevant to the question before the court in the action, but, more so, because the information sought is not strictly necessary to enable Villa Crop to prepare for trial.[10] A punitive costs order is also warranted particularly in light of the fact that a substantial number of paragraphs requiring further particulars have been abandoned during argument. The costs further to include the costs occasioned by the employment of two counsel.

Order in respect of the second application for further particulars

- [36] In the event the following order is made:

Villa Crop Protection (Pty) Ltd's application for further particulars dated 8 April 2019 is dismissed with cost on a punitive scale including the costs occasioned by the employment of two counsel.

The application to strike out and the application to set aside the notices of application to strike out.

- [37] Bayer also brought an application to strike out paragraphs 10, 12 – 22 (and the footnotes therein) of the founding affidavit of Llewellyn Roux du Toit and the entire affidavit of Dr Gerhard Hendrik Verdoorn on the basis that it is hearsay and therefore inadmissible as evidence and is accordingly irrelevant, and/or an expression of opinion that the deponent is not qualified to express and accordingly inadmissible and/or vexatious and/or constitutes argument and therefore inadmissible and irrelevant.
- [38] I am in agreement that paragraphs 10, 12 – 22 of Du Toits affidavit falls to be struck in that they mainly relate to SPC applications made in foreign jurisdictions and accordingly irrelevant.
- [39] Bayer further seeks an order striking out various paragraphs from Du Toits replying affidavit on the basis that it is abusive and defamatory and accordingly scandalous; constitutes hearsay evidence and constitutes an expression of opinion that the deponent is not qualified to express. I am in agreement with the submission that the aforementioned paragraphs fall to be struck from the affidavit of Du Toit in as far as it relates to legal processes regarding SPC applications in foreign jurisdictions are struck as
- being irrelevant.
- [40] Verdoorn's affidavit falls to be struck on the basis that it is merely a copy of an affidavit deposed to in another application.
- [41] The striking application is granted with costs but not on a punitive scale as I am of the view that it is not warranted. The application to strike out the notices to strike out is dismissed but likewise not on a punitive scale. Both costs orders to include the costs occasioned by the employment of two counsel.
1. Bayer Intellectual Property GmbH's application to strike out is granted with costs such costs to include the costs occasioned by the employment of two counsel.
 2. Villa Crop Protection (Pty) Ltd's application to strike out the notices to strike out is dismissed with costs such costs to include the costs occasioned by the employment of two counsel.

C: THE APPLICATION TO COMPEL THE PRODUCTION OF DOCUMENTS FOR INSPECTION IN TERMS OF RULE 35(3) OF THE RULES

- [42] In this application, Villa Crop seeks the production of various documents in terms of its Rule 35(3) Notice. All in all, 25 documents are sought to be produced.

[43] In its affidavit in support of the application to compel discovery, Mr Llewellyn Du Toit (the attorney on behalf of Villa Crop) sets out why the documents sought are relevant and does so with reference to the fact that one of the grounds for invalidity relied upon by Villa Crop is the SPC's that were granted for the active ingredient, spirotetramat in various European Countries on

the basis of the earlier European patent EP0 915 846 which anticipates the patent in suit. It is submitted that the SPC's

are of central importance in the pending action, inter alia, on the basis that SPC protection can only be granted where the product in respect of which the extended protection I sought is protected by a basic patent in force.

[44] Bayer maintains in its answering affidavit that many of those documents have either already been disclosed (either to Villa Crop or to their attorneys) - even though it maintains that the disclosed documents are in any event irrelevant. Bayer, however, insists that the documents are irrelevant. Some of the documents were also made available to Villa Crop's attorneys under a confidentiality regime agreed to between the parties on 8 May 2008.

[45] The following documents listed as items 1,2, 4, 5, 6, 7.2; 7.3; 7.4; 7.6; 7.7; 7.8; 7.9; 7.10; 7.12, 9.1; 9.2; 9.3; 9.6; 9.7; 9.8; 9.9; 9.11, 10; 11 and 14 are now requested.

[46] It is, however, in light of what is now contained in Villa Crop's replying affidavit, no longer necessary to decide whether Bayer should be compelled to disclose any of these documents. In its replying affidavit, Villa Crop only focusses on three document (out of the 25 documents listed in the application in terms of rule 35) stating that, in light of the fact that Bayer had disclosed (albeit only at the stage at which it filed its answering affidavit) item 1 and 4 free from the confidentiality arrangement and item 5 in an unredacted form although still subject to the confidentiality arrangement, Bayer had therefore complied with the rule 35(3) request. As a result, Villa Crop now only seeks costs of the application.

[47] It appears therefore that, despite the fact that Villa Crop initially insisted upon disclosure of 25 documents, Villa Crop no longer takes issue with any of the other remaining documents. Villa Crop also does not deal with any of Bayer's assertions regarding the relevancy of the documents sought to be produced in this application.

[48] In my view, Villa Crop is not entitled to the costs of this application particularly in light of the fact that item 1 has already been provided free from any confidentiality restrictions in April 2018 and was in fact provided for a second time in the answering affidavit. The document in item 4 in an unredacted form has already been made available on 17 September 2018 subject to the confidentiality agreement between the parties. In response to the rule 35(3) notice, the document in item 5 had been made available on 9 April 2019 in an unredacted format but subject to the confidentiality arrangement. Most importantly, Villa Crop, in its replying affidavit, now seems to have abandoned its insistence on disclosure of the remaining 22 documents with no response to the relevance argument raised by Bayer in

its answering affidavit. The application was therefore, in my view, not substantially successful.

- [49] The application is therefore dismissed and Villa Crop is ordered to pay the costs such costs to include the costs consequent upon the employment of two counsel. I am of the view that a punitive costs order is warranted in the circumstances.

Order in respect of the third application to compel production of documents for inspection

- [50] In the event the following order is made:

Villa Crop Protection (Pty) Ltd's application to compel discovery dated 14 March 2019 is dismissed with cost on a punitive scale including the costs occasioned by the employment of two counsel.

The application to strike out and the application to set aside the notices of application to strike out.

- [51] Bayer also brought an application to strike out paragraphs 10, 12 – 22 (and the footnotes therein) of the founding affidavit of Llewellyn Roux du Toit and the entire affidavit of Dr Gerhard Hendrik Verdoorn on the basis that it is hearsay and therefore inadmissible as evidence and is accordingly irrelevant, and/or an expression of opinion that the deponent is not qualified to express and accordingly inadmissible and/or vexatious and/or constitutes argument and therefore inadmissible and irrelevant.
- [52] I am in agreement that paragraphs 10, 12 – 22 of Du Toit's affidavit falls to be struck in that they mainly relate to SPC applications made in foreign jurisdictions and accordingly irrelevant.
- [53] Bayer further seeks an order striking out various paragraphs from Du Toit's replying affidavit on the basis that it is abusive and defamatory and accordingly scandalous; constitutes hearsay evidence and constitutes an expression of opinion that the deponent is not qualified to express. I am in agreement with the submission that the aforementioned paragraphs fall to be struck from the affidavit of Du Toit in as far as it relates to legal processes regarding SPC applications in foreign jurisdictions are struck as being irrelevant.
- [54] Verdoorn's affidavit falls to be struck on the basis that it is merely a copy of an affidavit deposited to in another application.
- [55] The striking application is granted with costs but not on a punitive scale I am of the view that it is not warranted. The application to strike out the notices to strike out is dismissed but likewise not on a punitive scale. Both costs orders to include the costs consequent upon the employment of two counsel.
- [56] In the event the following order is made

1. Bayer Intellectual Property GmbH's application to strike out is granted with costs such costs to include the costs occasioned by the employment of two counsel.
2. Villa Crop Protection (Pty) Ltd.'s application to strike out the notices to strike out is dismissed with costs such costs to include the costs occasioned by the employment of two counsel.

JUDGE OF THE HIGH COURT

For the applicant / defendant

RM Robinson SC

Instructed by:

DM Kisch Inc t/a Kisch IP

For the respondent / plaintiff

L BOWMAN SC

BRAHM DU PLESSIS SC

VON SEIDELS ATTORNEYS

c/o Smith & Van Wyk Attorneys

- [1] The request for further particulars is dated 19 November 2018.
- [2] Erasmus at OS, 2017, D1-253.
- [3] 1961 (1) SA 643 (W) at 646D – F.
- [4] When the matter was argued, Villa Crop, although many of the requests for further particulars were already abandoned at that

stage, still insisted on the particulars listed in numerous other paragraphs. However, in her final address, counsel on behalf of Villa Crop only relied on the particulars sought in paragraphs 1; 2; 5 and 16. I have therefore limited the judgment to these paragraphs.

- [5] See Hardy v Hardy supra at 646E-F.
- [6] Rule 21(2) provides as follows: “After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him to prepare for trial. Such request shall be complied with within ten days after receipt thereof.”
- [7] What constitutes “relevant” was explained by the Court in Rail Commuters' Action Group and others V Transnet Ltd and others 2006
- (6) SA 68 (C) as follows: “It is also to be noted that a decision whether or not to strike out is discretionary in nature: see Stephens v De Wet 1920 AD 279 at 282. 'Irrelevant', for the purposes of the Rule, means irrelevant to an issue or issues in the action: see Stephens v De

Wet (supra) and Meintjes v Wallachs Ltd 1913 TPD 278 at 285. In the former of the two last-mentioned decisions Innes CJ said at 282: '(T)he correct test to apply is whether the matter objected to is relevant to an issue in the action. And no particular section can be irrelevant within the meaning of the Rule if it is relevant to the issue raised by the plea of which it forms a part. That plea may eventually be held to be bad, but, until it is excepted to and set aside, it embodies an issue by reference to which the relevancy of the matter which it contains must be judged.' The Court will not concern itself with the validity or otherwise of the claim, or whether it raises a cause of action: That may be a matter for exception. All that concerns the Court is whether or not the passage or passages sought to be struck out is or are relevant in order to raise an issue on the pleadings: see Erasmus Superior Court Practice at B1-161. In *Golding v Torch Printing and Publishing Co (Pty) Ltd and Others* 1948

- (3) SA 1067 (C) Ogilvie-Thompson AJ, as he then was, said at 1090: 'A decisive test is whether evidence could at the trial be led on the allegations now challenged in the plea. If evidence on certain

facts

would be admissible at the trial, those facts cannot be regarded as irrelevant when pleaded."

- [7] What constitutes "relevant" was explained by the Court in *Rail Commuters' Action Group and others V Transnet Ltd and others* 2006

- (6) SA 68 (C) as follows: "It is also to be noted that a decision whether or not to strike out is discretionary in nature: see *Stephens v De Wet* 1920 AD 279 at 282.

'Irrelevant', for the purposes of the Rule, means irrelevant to an issue or issues in the action: see *Stephens v De Wet* (supra) and *Meintjes v Wallachs Ltd* 1913 TPD 278 at 285. In the former of the two last-mentioned decisions Innes CJ said at 282:

'(T)he correct test to apply is whether the matter objected to is relevant to an issue in the action. And no particular section can be irrelevant within the meaning of the Rule if it is relevant to the issue raised by the plea of which it forms a part. That plea may eventually be held to be bad, but, until it is excepted to and set aside, it embodies an issue by reference to which the relevancy of the matter which it contains must be judged.'

The Court will not concern itself with the validity or otherwise of the claim, or whether it raises a cause of action: That may be a matter for exception. All that concerns the Court is whether or not the passage or passages sought to be struck out is or are relevant in order to raise an issue on the pleadings: see Erasmus Superior Court Practice at B1-161. In *Golding v Torch Printing and Publishing Co (Pty) Ltd and Others* 1948

- (3) SA 1067 (C) Ogilvie-Thompson AJ, as he then was, said at 1090:

'A decisive test is whether evidence could at the trial be led on the allegations now challenged in the plea. If evidence on certain

facts

would be admissible at the trial, those facts cannot be regarded as irrelevant when pleaded.”

- [8] Bayer Pharma AG and another v Teva Pharmaceuticals (Pty) Ltd and another 2017 BIP 33 (CP) at para 25.
- [9] Although Villa Crop no longer persisted with the majority of these requests for further particulars.
- [10] Rule 21(2) provides as follows: “After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him to prepare for trial. Such request shall be complied with within ten days after receipt thereof.”
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Prepared on 11 October 2026 · Esheria