



**IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)  
CASE NO. 29336/13**

In the matter between:

17/10/2013

**SOUTH AFRICAN POLICING Union**

*Plaintiff/Respondent*  
**APPLICANT**

and

*Bargaining*  
**PUBLIC SERVICE CO-ORDINATING B COUNCIL**

*Defendant/Excipient*  
**RESPONDENT**

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**JUDGMENT**

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**HASSIM A AJ**

1. This is an application in terms of rule 23(1) of the Uniform Rules of the High Court. The respondent (the plaintiff in the main matter) issued a summons against Public Service Co-ordinating Bargaining Council (the excipient in this matter, referred to herein as "the Bargaining Council") on the basis of an agency shop agreement concluded between representative trade unions and the state as employer. It is common cause between the parties that the agency shop agreement is a collective agreement as defined in section 1 of the Labour Relations Act, 1995.

2. In terms of this collective agreement: a) the state is obliged to deduct and an agency fee from the salaries of all employees and to pay such fees to the Bargaining Council, and b) the Bargaining Council, through its Secretary, must divide the amount received between the respective trade unions in proportion to the members of each trade union who are members in good standing.
3. The agreement was concluded on 10 February 2005. On 1 April 2005, the Bargaining Council took a resolution confirming the agency shop agreement and that the Bargaining Council will 'monitor the implementation of this agreement'. The Bargaining Council filed an exception on the basis that the particulars of claim does not disclose a cause of action because the plaintiff did not aver that the Bargaining Council is a party to the agreement and therefore the Bargaining Council is not under a duty to give effect to the agreement.
4. The relevant averment in the particulars of claim is contained in paragraph 6 of the particulars of claim and is formulated as follows:

"6.1 The parties to the agreement, (Resolution 1 of 2005), are the parties constituting the defendant and accordingly the defendant is obliged, as a matter of law, to give effect to the terms of Resolution 1 of 2005.

6.2 Resolution 1 of 2005 is at all material times hereto a resolution of the defendant and accordingly the defendant is, as a matter of law, inter alia, bound to give effect to its own resolutions by virtue of the operation of Section 28 of the Labour Relations Act read with paragraphs 3(c), (d), (e), (f) and 4 (b) of its constitution read with clause 17 (9) of its constitution.

Alternatively:

The provisions of Resolution 1 of 2005, as set out in paragraph 5 impose an obligation on the defendant to deposit the agency fees into the bank

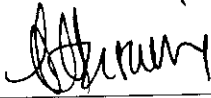
account of the plaintiff which obligation, the defendant, at all material times hereto has accepted and undertook to perform.”

5. The particulars of claim then goes on to state the amount of the debt owing based on the annual audited statements of the defendant.
6. An excipient has a duty to persuade the court that upon every interpretation of the pleading in question no cause of action is disclosed: *Sanan v Eskom Holdings Ltd* 2010 (6) SA 638 (GSJ) at 645D.
7. To disclose a cause of action the pleading must allege every material fact that it would be necessary for the plaintiff to prove. If evidence can be led to disclose a cause of action alleged in a pleading, that pleading is not excipiable: *Erasmus*, Superior Court Practice, B1-157. Whether or not the plaintiff can prove all the allegations is not for me to decide.
8. The excipient sought to persuade the court that unless the Bargaining Council was a party to the agreement no duty in terms of the agreement accrued to it and therefore no cause of action arises. However, this issue is open to interpretation. Of particular importance is that the Constitution of the Bargaining Council may provide evidence of the nature and extent of its duty when concluding collective agreements in terms of section 28(1) (a) of the Act and when enforcing those agreements in terms of section 28(1)(b) of the Act. The Constitution of the Bargaining Council was not attached to the particulars of claim. Neither did the excipient make it available to the court, except to quote certain paragraphs in counsel's written submissions. It is therefore not before the court. In any event the excipient is bound by the four corners of the pleading.
9. The allegation that the Bargaining Council bears a duty to act in terms of the agreement because the agreement was concluded by its constituent members, read with its constitution is made in the particulars of claim. It is for the plaintiff to prove the allegation at trial. The defendant may raise the same argument as it has in these proceedings at trial.

10. I therefore make the following order:

10.1. The defendant's exception is dismissed.

10.2. The defendant is to pay the costs of this exception.



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JUDGE HASSIM A AJ