



**IN THE HIGH COURT OF SOUTH AFRICA**  
**(NORTH GAUTENG HIGH COURT, PRETORIA)**

Case number: 77015/2011

Date: 14 November 2013

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
14/11/2013 DATE	<i>Pretorius</i> SIGNATURE

In the matter between:

**FIRSTRAND BANK LIMITED T/A NISSAN FINANCE**

Applicant

and

**EG SCOTT**

Respondent

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**JUDGMENT**

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PRETORIUS J.

[1] This is an application in terms of Rule 28(4) of the Uniform Rules of Court to amend the Applicant's particulars of claim.

[2] Summons in this matter was issued during July 2010 and served on the defendant (respondent in present application) on 22 December 2010.

[3] Plaintiff's Notice of Intention to Amend is dated 18 July 2013. The respondent objects to the present application to amend, although the respondent has yet to plead in the action.

[4] Due to the prior objections by the respondent to amend, the applicant has decided to replace the entire particulars of claim and has informed the respondent of such in the Notice of Intention to Amend of 18 July 2013.

[5] The respondent objects that:

*"The plaintiff fails to comply with Rule 28 and to set out exactly what is sought to be amended in any detail whatsoever."*

This court cannot find that this objection can be sustained due to the fact that the respondent has not yet pleaded in the action and it is not necessary to give any more detail than the detail the applicant has already provided.

[6] The second ground of objection:

*"Plaintiff merely replaces its existing particulars of claim in toto leaving the unfortunate defendant to pick his way through the*

*proposed globular amendment to try and discern precisely what it is in the particulars of claim as a whole that is being amended.”*

[7] During argument respondent’s counsel admitted that it would not be necessary to compare the previous particulars of claim with the present particulars of claim, as the respondent has not pleaded. If the cause of action is still the same, then the respondent will be able to plead on the present particulars of claim. The respondent could not prove any prejudice should the amendment be granted. It is common cause that the cause of action is still the same as was set out in the original particulars of claim.

[8] In **Blaauwberg Meat Wholesalers CC v Anglo Dutch Meats Exports Ltd [2004]1 AllSA 120 (SCA)** at 133 h-l Heher JA held:

*“Amendments are regulated by a wide and generous discretion which leans towards the proper ventilation of disputes and are granted according to a body of rules developed in that context.”*

[9] If this principle is applied as set out in the **Blaauwberg matter (supra)** the court can only deny such an application if the court can find prejudice or injustice which cannot be cured by an order for costs. I cannot find that the respondent has proved any prejudice or injustice that will ensue, should the order be granted.

[10] The third objection that:

*"The defendant is prejudiced by replacement of the particulars of claim as a whole in this fashion."*

[11] There is no indication by the respondent in any manner as to the prejudice or injustice it will suffer should the application be granted.


[12] In **Moolman v Moolnam 1927 CPD 27** it was stated at:

*"The practical rule adopted seems to be that amendments will always be allowed unless the amendment is mala fide or unless such amendment would cause an injustice to the other side which cannot be compensated by costs, or in other words unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which is sought to amend was filed."*

[13] I cannot find that the respondent has shown in any of the three objections that it will suffer prejudice or injustice should the court grant the amendment. In this application it is even more so where the whole of the particulars of claim is replaced and the respondent has not pleaded as yet. Counsel for the respondent, conceded, correctly in my view, that where the respondent had not pleaded there will not be prejudice in these circumstances.

[14] Therefore I make the following order:

1. Leave is granted to the plaintiff to amend its particulars of claim in accordance with the plaintiff's notice of intention to amend, dated the 18<sup>th</sup> of July 2013, delivered to the defendant's attorney on the 26<sup>th</sup> of July 2013;
2. Each party to pay its' own costs.



Judge C Pretorius

Case number	: 77015/2011
Heard on	: 11 November 2013
For the Applicant	: Adv Du Plessis
Instructed by	: Hack Stupel & Ross
For the Respondent	: Adv J Schoeman
Instructed by	: GP Venter
Date of Judgment	: 14 November 2013