

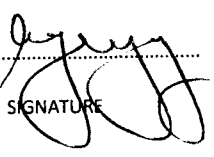


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

21/5/2015
CASE NO: 56329/2013

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

19/05/15 
DATE SIGNATURE

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED Applicant

And

TENELLE TRADING CC 1ST Respondent

AMANDA LYNELLE KRUGER 2ND Respondent

JUDGMENT

KGANYAGO, AJ

[1] The applicant seeks to amend its particulars of claim. The second respondent is objecting to the proposed amendment.

- [2] The second respondent objection is solely based on paragraph 7.2 of the proposed amendment.
- [3] The original paragraph 7.8 of the particulars of claim which the applicant's intends to amend reads as follows:
" Insofar as it may be found that any of the suspensive conditions in Annexure "A" have not been fulfilled the plaintiff pleads that the suspensive conditions have been included exclusively for the benefit of the plaintiff and insofar as it may be necessary the plaintiff have waived compliance with the suspensive conditions. "
- [4] The proposed amendmend to paragraph 7.8 read as follows:-
" 7.2. All suspensive conditions to which the agreement may have been subject were:-
7.2.1. timeously fulfilled; and/or
7.2.2. timeously waived on the basis that such condition were exclusively
for the benefit of the plaintiff."
- [5] The second respondent's objection is based on the contention that the proposed amendment renders the particulars of claim excipiable, or fails to remove an existing basis for exception from the pre-amendment particulars of claim. The second respondent further contends that the proposed amendment is vague and embarrassing.
- [6] It is trite that an amendment will not be allowed in circumstances which

cause the other party such prejudice which cannot be cured by a costs order or a postponement.

- [7] In **Affordable Medicines Trust v Minister of Health 2006 (3) 247(CC)** at paragraph 9 the court stated:

“ The principle governing the granting or refusal of an amendment have been set out in a number of cases. There is a useful collection of these cases and the governing principles in Commercial Union Assurance Co Ltd v Waymark No. The practical rule that emerges from these cases is that amendments will always be allowed unless the amendment is malafide (made in bad faith) or unless the amendment will cause an injustice to the other side which cannot be cured by an appropriate order for costs, or unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which it is sought to amend was filed. The principles apply equally to a notice of motion. The question in each case, therefore, is, what do the interest of justice demand.”

- [8] In my view paragraph 7.8 in the original particulars of claim was not clearly drafted as it seems to lack some particulars. The proposed amendment in my view seems to have simplified issues and gave more clarity. The second respondent was able to plead to paragraph 7.8 in the original particulars of claim in a detailed manner despite the deficiencies which were contained in it. I therefore don't see any reason why they will not be able to plead on the one that has been clarified and simplified.

- [9] Generally an amendment which would render the relevant pleading excipiable should not be granted. Whether the pleadings are excipiable, it is trite that the excipients have to show that the pleading is excipiable on every interpretation that can be reasonably be attached to it. See **First National Bank of Southern Africa v Perry No and Others 2001 (3) SA 960 SCA.**
- [10] Paragraph 7.2 which is intended to amend the original paragraph 7.8, cannot be read in isolation to determine whether the applicant's pleadings are excipiable or not. In paragraph 8 supra, I have already held that the proposed amendment seems to be giving more clarity than its predecessor.
- [11] Under the circumstances in my view the applicant's pleadings as they stand, will enable the second respondent to plead to the applicant's proposed amendment to the particulars of claim. I am therefore satisfied that the applicant's proposed amendment should be granted.
- [12] Rule 28(9) of the Uniform Rules provides that a party giving notice of amendment in terms of subrule (1) shall unless the court otherwise directs, be liable for the costs thereby occasioned to any other party. Generally if a party objects unreasonably to a proposed amendment, it may be ordered to pay the costs of the application.

[13] It is trite that awarding of costs is within the discretion of the court. The court must exercise its discretion judicially upon a consideration of the relevant facts of each case. The general rule is that costs follow the event.

[14] In applying my discretion, I could not find any ground to arrive at the conclusion that the second was unreasonable in objecting to the applicant's proposed amendment.

[15] In the result I make the following order:

15.1. The applicant is granted leave to amend its particulars of claim as set out in the applicant's notice in terms of rule 28 delivered on the 10th October 2014.

15.2. The applicant must effect the amendment by delivery of the amended pages within 10(ten) days from date of this order.

15.3. The applicant to pay the second respondent's costs occasioned by the amendment.


M F KGANYAGO
ACTING JUDGE OF THE GAUTENG DIVISION, PRETORIA

Heard on: 29th APRIL 2015

For the Applicant: Adv JE Ferreira

Instructed by: Vezi & De Beer Inc

For the Respondents: Adv S.G Gouws

Instructed by: Botha Massyn & Thobejane Associated Attorneys

Date of Judgment: