

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

Case No: 16/2920

Not reportable

Not of interest to other judges

Revised.

28/6/2017

In the matter between:

**T, C**

Plaintiff

and

**T, A**

Excipient/Defendant

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**JUDGMENT**

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**MURPHY J**

1. The parties in this matter were divorced by an order of the South Gauteng High Court on 6 February 2013. The order incorporated a deed of settlement recording the agreement between the parties regarding their proprietary rights and other related matters relevant to the divorce action.

2. Clauses 7.2 - 7.4 of the deed of settlement dealt with the parties' rights and

interests in relation to certain financial investments. The clauses read:

"7.2 The parties agree that they are the joint owners of the following policies and/or investments.

7.2.1. Investec Linked Life Annuity with Policy Number: 328520/219622/ILLAV ;

7.2.2. Fairbairn Capital with Policy Number: 14475284;

7.2.3. Fairbairn Capital with Policy Number: 15890006;

7.2.4. Fairbairn Capital with Policy Number: 15909635;

7.2.5. Old Mutual Endowment with Policy Number: 2541480 ; and

7.2.6. Liberty Life Retirement Annuity with Policy Number: 57053369300;

7.3 The parties agree further that the institutions issuing or holding such policies and/or investments will make the necessary endorsements or amendments to their records (as the case may be) to give effect to such joint ownership as at the date of divorce in terms of the provisions of this agreement and at the values of each policy and/or investment as at that date. The parties shall moreover be entitled (as of the date of the endorsement in terms hereof) to appoint such beneficiaries in relation to their respective shares of each policy and/or investment as they may wish to do;

7.4 In relation to the Liberty Life Cover Policy with number 55140567800 , the parties agree to surrender the policy as soon as reasonably possible following the date of divorce in terms of this settlement agreement and to divide the proceeds of such surrendered value equally;"

3. On 16 January 2016, the plaintiff issued summons against the defendant in which she averred that the various policies have matured or alternatively have been paid out with the consequence that she is entitled to receive 50% of the value of the policies. As at June 2015 50% of the value of the policies amounted to R1 893 888,99 and accordingly the plaintiff claimed that amount together with *mora* interest.

4. The defendant excepted to paragraph 7 of the particulars of claim on the grounds that they are vague and embarrassing. Paragraph 7 of the particulars of claim read:

"The Policies have matured alternatively have been paid out and in the premises Plaintiff is entitled to receive 50% of the value of the Policies referred to in clause 7.2 of the Deed. The Defendant refuses to make payment thereof."

5. The defendant complains that the plaintiff has failed to distinguish which of the policies are pension interests and which are pension benefits. He maintains that if the plaintiff is relying on the policies being pension interests then the value of the pension interests shall be calculated as stipulated in section 1 of the Divorce Act 70 of 1979 as at the date of the divorce. If on the other hand the plaintiff is relying on the policies being pension benefits, then she needed to allege when the benefits accrued. The failure to so disclose, the defendant contended, in that he is unable to determine the basis of the plaintiff's claim in relation to each policy.

6. The plaintiff correctly argues that the exception is without merit. Clause 7 of the agreement makes no reference to a pension interest. With the exception of the retirement annuity referred to in clause 7.2.6, the agreement does not identify the investments and policies as pension interests. Clause 7.2 declares that the parties are joint owners of the "policies" and "investments". The court granting the divorce order did not make any order in terms of section 7(8) of the Divorce Act 70 of 1979 in terms of which it ordered that any part of a pension interest (essentially, in terms of section 1 of the Divorce Act, being the accumulated resignation benefit of a member of a fund as at the date of divorce) should be assigned to the plaintiff. Section 7(8) of the Divorce Act is designed to value the pension interest of a spouse as being his/her contribution up to the date of divorce and to apportion that value at that date for the benefit of the other spouse when it is paid out. Nor was any order made in relation to payment of a share of

any pension interest in terms of section 370(4) of the Pension Funds Act 24 of 1956.

7. The plaintiff's claim is different to a spouse's claim arising under section 7(8) of the Divorce Act. The agreement records that she is "the joint owner" of the investments and that the agreed fact of joint ownership will be recorded in the records of the financial institutions. It does not expressly seek an apportionment of any pension interest or make any provision for when any payment will be due. Paragraph 7 of the particulars of claim makes it plain that the plaintiff alleges that the agreement properly interpreted entitles her to 50% of the value of the investments when they matured and were paid out. In so far as any of the policies were pension investments, the pension interests have matured and been paid out and thus constitute benefits. The plaintiff's claim is evidently for 50% of the benefits of any insurance policy or retirement annuity after they were paid out. Her claim is against the defendant, not any pension fund or insurer and arises from her alleged interpretation of Clause 7 of the agreement. The fact that there may be possible defences arising under the legislation does not render her particulars of claim vague or embarrassing.

8. The defendant raises a second exception to paragraph 8 of the particulars of claim. In that paragraph the plaintiff claims 50% of the value of each policy at June 2015, amounting in total to R1 893 888,99, being the total amount of her claim. This too, the defendant contends, is vague and embarrassing because it provides no basis "upon which the plaintiff alleges that she is entitled to an amount as calculated at June 2015".

9. The second exception too is without foundation. The exception goes to the evidence of how the amounts are calculated. It is trite that in an exception the court must presume the facts alleged to be true. The date merely relates to demand, *mora* and *mora* interest. The method of calculation on the date of maturity, if such is found to be the due date of payment, is a matter for evidence.

10. In the premise, the exception is dismissed with costs.

**JR MURPHY**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION**

Date of hearing:	24 May 2017
Counsel for the Applicant:	Adv N Lombard
Instructed by:	RC Potgieter Inc.
Counsel for the Exipient/Defendant:	Adv PG Lauw
Instructed by:	Corien Potgieter Inc
Date of Judgment:	28 June 2017