



**HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

28/08/17

Case number: **43858/2016**

Not reportable

Not of interest to other Judges

In the matter between:

ANGLO AMERICAN INYOSI COAL (PTY) LTD

Excipient

and

MINE GUNTING CC

Respondent

In re:

MINE GUNTING CC

Plaintiff

and

ANGLO AMERICAN INYOSI COAL

Defendant

JUDGMENT

MAKGOKA, J

[1] This is an unopposed exception. The excipient is the defendant in the main action and the respondent is the plaintiff in the main action. For the sake of convenience the parties are referred to as in the main action. The plaintiff has not filed any heads of argument. The defendant delivered its heads of argument on 21 February 2017. On 8 March 2017 the defendant wrote to the respondent noting its failure to timeously deliver its heads of argument. It provided the plaintiff an indulgence of six days to do so. Despite this, the plaintiff failed to deliver its heads of argument. When the matter was mentioned on 21 August 2017, there was no appearance on behalf of the plaintiff. Mr *Seape* appeared for the defendant and moved the exception.

[2] The facts giving rise to the exception are simple. The plaintiff issued a combined summons in this court for payment of R13 685 957.99 pursuant to a written contract concluded between the parties on 28 August 2012. The contract, which is attached to the particulars of claim, is alleged in paragraph 3 of the particulars of claim, and it is stated that 'the contents thereof [be] incorporated herein as if repeated.' In paragraph 4 the plaintiff 'highlights inter alia' the commencement date (1 August 2012) and the completion date (31 July 2016). In paragraph it is alleged that on 1 December 2014 the defendant unlawfully repudiated the contract with an attempt to cancel the agreement prior to the termination date, which repudiation the plaintiff elected to accept. A copy of the purported notice of cancellation is attached to the particulars of claim. The plaintiff further alleges that as a result of the repudiation of the contract by the defendant, it suffered damages in the amount of R13 685 957.99.

[3] On 14 November 2016 the defendant delivered a notice in terms of rule 23(1) of the Uniform Rules of Court giving notice of its intention to except to

the plaintiff's particulars of claim on nine grounds on the basis that the particulars of claim are vague and embarrassing. The plaintiff was given 15 days to remove the causes of complaint, failing which the defendant would except to the particulars of claim. There was no response to that notice, and on 9 December 2016 the defendant delivered its exception detailing nine grounds of complaint to the particulars of claim.

[4] In this application, Mr *Seape*, counsel for the defendant, relied on only the first to eighth grounds, and not the ninth. I assume it has been abandoned. The defendant's complaints can be placed in three broad categories. The first ground is a stand-alone one. It is this. Whereas the plaintiff pleads that it accepted the defendant's purported repudiation of the contract, it fails to plead any facts which would establish when and how the purported repudiation was exercised, nor when it communicated its election to the defendant.

[5] The complaint in both the second and third grounds is that there is no legal basis for the claim for damages to which the two exceptions relate. In second ground it is complained that whereas the plaintiff claims damages allegedly suffered, it claims, in the same breath, loss of profits without laying a basis to claim both. The complaint in the third ground is that the plaintiff claims value added tax (VAT) on the damages without alleging that the listed items which it contends are damages in fact constitute taxable supplies and on which the plaintiff is obliged to levy VAT.

[6] The fourth to eighth grounds relate to plaintiff's claims for what are essentially special damages. The thrust of the defendant's complaints is that these damages do not flow naturally and generally from the breach of contract in question, and that the plaintiff had failed to plead the special circumstances attendant upon the conclusion of the contract which demonstrate that the parties

actually or presumptively contemplated that such damages would probably result from the breach in question. Further, the defendant contends, first, that there are insufficient allegations to substantiate the plaintiff's entitlement to recover such damages. Second, the defendant contends that the items to which these damages are, how these damages were calculated or quantified or why the plaintiff is entitled to claim these losses as damages from the defendant. Furthermore, in respect of each of the claims, it is contended that there are insufficient allegations to sustain the plaintiff's claim for damages, and that the plaintiff has failed to plead any facts as to how these costs are calculated or relate to the alleged repudiation of the contract by the defendant.

[7] Below is a summary of the claims complained of. In respect of the fourth ground, damages are claimed in the form of 'retrenchment cost to company' to the value of R1 508 136.66, and in respect of the fifth ground, the claim relates to the repair costs and interest to the purchase costs claimed in the form of 'amortization of equipment' Further, that the plaintiff has failed to plead with sufficient particularity the interest and the amortization cost reflected in the 'total' column of annexure 'C'. The sixth ground relates to the plaintiff's claims for 'loss of company profits'. The seventh ground is in respect of the plaintiff's claim for office related costs. The eighth ground concerns costs relating to 'KBC – Mine changing requirements to negotiated specifications'.

[8] I agree in broad terms with the thrust of the defendant's complaints, which straddle 'lack of cause of action' and 'vague and embarrassing' grounds of exception. There is just too little in the plaintiff's particulars of claim for the defendant to properly meet the case alleged against it. It is not for the defendant to trawl through the somewhat unintelligible annexures to the particulars of claim to make out exactly what the case against is. The general principles in this regard are too trite to be repeated here. I accordingly conclude that not only

would the defendant be embarrassed in pleading to the plaintiff's particulars of claim, but in addition it would be prejudiced in doing so. As alluded to above, to some extent the particulars of claim do not contain sufficient particulars to sustain a cause of action for a given claim. Therefore, the grounds of exceptions - all of them - were, in my view, well-taken. The plaintiff has elected not to oppose the application. The exception should be upheld with costs.

[9] In the result the following order is made:

1. The defendant's first to eighth grounds of exception as fully contained in its notice of exception dated 9 December 2016, are upheld;
2. The plaintiff is given leave to seek the amendment of its particulars of claim within 10 (ten) days of the service of this order by the defendant's attorneys on the plaintiff's attorneys;
3. The plaintiff is ordered to pay the costs of the exception.



TM Makgoka
Judge of the High Court

Date heard: 21 August 2017

Judgment delivered: 28 August 2017

APPEARANCES:

For the Excipient (Defendant)	M Seape
	Instructed by:
	Baker & McKenzie, Sandton, Johannesburg
	Adams & Adams, Pretoria

For the Respondent (Plaintiff)	No appearance
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