



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No: 295/2021

In the matter between:

MAZIYA GENERAL SERVICES CC

Plaintiff

And

THE MINISTER OF PUBLIC WORKS N.O.

First Defendant

**TSHIYA INFRASTRUCTURE DEVELOPMENT
(PTY) LIMITED**

Second Defendant

JUDGMENT

BESHE J:

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[1] Plaintiff is suing the first defendant for what is colloquially referred to as money owing in respect of damages it allegedly suffered. No relief is sought against the second defendant.

[2] First defendant raised an exception complaining that plaintiff's particulars of claim (as amended) are vague and embarrassing, alternatively that they fail to disclose a cause of action.

[3] The claim stems from a contract that was concluded between plaintiff and second defendant constituting a joint venture on the one hand, and the first defendant. Apparent from the amended particulars of claim is that:

Plaintiff and second defendant concluded a joint venture agreement. The purpose of which was to perform services in respect of a contract to repair, renovate and construct newly built accommodation at the Queenstown Police Station. This was of course subject to the contract being awarded by first defendant.

[4] The relationship between the plaintiff and second defendant was to endure until the services in respect of the contract were completed, or until the contract was otherwise terminated. The agreement between the plaintiff and second defendant did not give rise to a separate legal entity.¹ The ratio of the distribution of the revenue from the project was to 60% for the plaintiff and 40% for the second defendant.

[5] However, a few months into the contract, it was cancelled by the first defendant. Plaintiff considered first defendant's actions in this regard as a repudiation of the contract between it and the plaintiff and second defendant. Plaintiff elected to accept first defendant's repudiation of the contract and is now claiming damages as a result of the said repudiation.

[6] First defendant's gripe is that plaintiff failed to plead any premise in fact or law upon which it could unilaterally, legitimately dispute the notice of cancellation by first defendant that was issued to a contracting party being a joint venture comprising of plaintiff and second defendant. And go on to accept the repudiation of the contract, as well as the cancellation of the contract. And accordingly that the amended particulars of claim fail to disclose a cause of action. That this also renders the amended particulars of claim contradictory, vague and embarrassing. Further as a result, the first defendant is prejudiced in having to plead to these amended particulars of claim. First defendant seeks an order that plaintiff's particulars of claim be struck out.

¹ So pleads the plaintiff at page 6 of exception index.

[7] The stance adopted by the plaintiff is that the exception has no merit and falls to be dismissed. This essentially on the basis, as I understand plaintiff's argument, that any one of co-creditors may demand receive payment of the whole debt or for its pro-rata share. Further that a joint venture, even if entered into for the purpose of a single transaction or project, it may amount to a partnership. And if found to be such a partnership, the liability or entitlement of the "partners" would be joint and severable. And that therefore the plaintiff has a right in law to advance a claim for its joint share.

[8] Rules relating to pleadings are contained in *Rule 18 of the Uniform Rules* of this court. *Rule 18 (4)* provides that every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading as to case may be, with sufficient particularity to enable the opposite party to reply thereto. *Rule 18 (7)* provides that it shall not be necessary in any pleading to state the circumstances from which an alleged implied term can be inferred.

[9] Plaintiff is claiming 60% of the damages as would appear from paragraph 15A 2 of first defendant's particulars of claim. As indicated the particulars of claim at paragraph 6.5 state the ratio of distribution of revenue as being 60% for plaintiff and 40% for second defendant.

[10] Is first defendant's reference to this term of their joint venture agreement of the 60% split of revenue meant to suggest that it can be inferred from such term that their claim albeit being a joint venture being, joint creditors, it is severable as in the case a partnership. Should the plaintiff have pleaded the implied term in order to disclose a cause of action and *locus standi in judicio* to claim damages as sought by it, in other words, what right it has to assert the claim for damages. Even before the institution of the claim for damages, its right to independently / unilaterally accept the repudiation of the contract, that is the election to do so independent of the joint venture.

[11] *Mr Brown* for the plaintiff argued that the plaintiff and the second defendant contracted under the joint venture as separate juristic persons / entities. That is accepted by the first defendant. However, first defendant points out that plaintiff and second defendant were one contracting party (the joint venture) for purposes of the contract.² *Mr Brown* argued that where a debt is owed to a number of creditors jointly and severally (or in solidum) it is regarded as a single obligation owed to a multiplicity of obliges. That any of the creditors may demand and receive payment of the whole debt or for its pro-rata share. Reliance in this regard is placed on **Christies** publication on the **Law of Contracts** and the authorities quoted therein in regard to co-creditors.³ The author suggest that there is a presumption that co-creditors are jointly rather than jointly and severally entitled. The author goes on to suggest that the essence of joint, as opposed to joint and several, is that each co-creditor is entitled to his proportionate share, no more no less. It may well be so, but in my view the plaintiff needs to plead the basis upon which it is a joint creditor with second defendant as opposed to the joint venture being the creditor. The basis upon which it can unilaterally act on behalf of the joint venture and bind same. Namely by *inter alia* disputing the notice of cancellation from first defendant and accepting first defendant's repudiation and consequently pursue a damages claim in this regard.

[12] In my view, by failing to plead the basis upon which the plaintiff can enforce rights stemming from a contract entered into between it and the second defendant on the one hand being a joint venture, and the first defendant on the other, renders plaintiff's particulars of claim vague and embarrassing. They are therefore exceptible.

[13] In the result, the following order will issue:

1. Plaintiff's particulars of claim are struck out.

² Page 114 of the indexed papers paragraph 11.

³ See *Christies the Law of Contracts SA 6th Edition* page 266-7.

2. Plaintiff it so advised, is granted leave to file amended particulars of claim within ten (10) days of the date of this order.

3. Plaintiff is to pay the costs of the exception.

**N G BESHE
JUDGE OF THE HIGH COURT**

APPEARANCES

For the Plaintiff : Adv: G Brown
Instructed by : WHEELDON RUSHMERE & COLE INC.
119 High Street
GRAHAMSTOWN
Ref: M van der Veen/Michelle/S23694
Tel.: 046 – 622 7005

For the 1st Defendant : Adv: J J Nepgen
Instructed by : STATE ATTORNEYS
WHITESIDES ATTORNEYS
53 African Street
GRAHAMSTOWN
Ref: Mr. Barrow/C12739
Tel.: 046 – 622 7117

Date Heard : 24 February 2022
Date Reserved : 24 February 2022
Date Delivered : 23 June 2022

Judgment handed down electronically by circulation to the parties' legal representatives via email and release to SAFLII.

The date and time of handing down of the judgment is deemed to be 14h00 on the 23 June 2022.