



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO:31338/2013

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

17 /05/23

.....

.....

Date

ML TWALA

In the matter between:

ORACLEMED HEALTH (PROPRIETARY) LIMITED

PLAINTIFF

And

**THE HOLLARD LIF ASSURANCE COMPANY
LIMITED
DEFENDANT**

FIRST

**HOLLARD INSURANCE COMPANY LIMITED
DEFENDAND****SECOND**

Neutral Citation: *ORACLEMED HEALTH (PROPRIETARY) LIMITED v THE HOLLARD LIFE ASSURANCE COMPANY LIMITED & ANOTHER* (Case No:31338/2013) [2023] ZAGPJHC 469 (17 May 2023)

JUDGMENT

Delivered: This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the order is deemed to be the 17th of May 2023.

Summary: *Application to compel further particulars–Constitutional right to a fair trial– Rule 21 of the Uniform Rules of Court–request for further particulars not untoward or an abuse of court process– plaintiff has established its case and is entitled to the relief as sought in the notice of motion– defendants jointly and severally liable for the costs of this application including the costs for the employment of two counsels.*

TWALA J

[1] Serving before this Court is an application to compel further particulars for the purposes of trial brought by the applicant, who is the plaintiff, against the respondents, who are defendants in the main action. The application is

opposed by the defendants. For the sake of convenience, I propose to refer to the parties as they are referred to in the main action.

[2] It is common cause that on the 26th of August 2013 the plaintiff issued summons against the defendants for payment of fees based on a contract for services rendered by the plaintiff to the defendants. On the 1st of April 2014, the plaintiff amended its particulars of claim to the summons. On the 30th of May 2014 the defendants filed their plea. On the 3rd of May 2021, the defendants filed an amendment to their plea and this amended plea galvanised the plaintiff into action and filed a request for further particulars for the purposes of trial. On the 4th of May 2022 the defendants filed their reply to the plaintiff's request for further particulars. Not entirely satisfied with the reply to its request for further particulars, the plaintiff sent numerous correspondence requesting the defendants to furnish further and better particulars since in their reply they either failed to answer certain questions at all and or furnished inadequate answers or particulars. On the 2nd of September 2022 the plaintiff launched this application to compel the defendants to furnish further particulars.

[3] It has long been established that pleadings should be phrased in such a way that it does not prejudice the other party to the extent that he or she is unable to properly prepare to meet the case of his or her opponent. Put in another way, the purpose of pleading is to enable the parties to come to trial reasonably prepared to meet the case of his or her opponent and not be taken by surprise. Moreover, it is every party's right to be given a fair trial as enshrined in the Bill of Rights in the Constitution of the Republic of South Africa.

- [4] In *Independent Newspapers (Pty) Ltd v Minister for Intelligence services and Another*; *In re: Billy Masetlha v President of the Republic of South Africa*; (Case No: CCT/38/07 [2008] ZACC 6 the Constitutional Court stated the following when it was dealing with the issue of discovery:

“Paragraph 25: Ordinarily courts would look favourably on a claim of a litigant to gain access to documents or other information reasonably required to assert or protect a threatened right or to advance a cause of action. This is so because court take seriously the valid interest of a litigant to be placed in a position to present its case fully during the course of litigation. Whilst weighing meticulously where the interests of justice lie, courts strive to afford a party a reasonable opportunity to achieve its purpose in advancing its case. After all, an adequate opportunity to prepare and present one’s case is a time-honoured part of a litigating party’s right to a fair trial”.

- [5] Before embarking on the discussion herein, it is apposite that the relevant provisions of Rule 21 of the Uniform Rules of Court be restated which provides as follows:

“Rule 21 Further Particulars

(1) Subject to the provisions of subrules (2) and (4) further particulars shall not be requested.

(2) After the close of pleadings any party may, not less than twenty days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him to prepare for trial. Such request shall be complied with within ten days after receipt thereof.

(3).....

(4) *If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet.*

(5) *The court shall at the conclusion of the trial mero motu consider whether the further particulars were strictly necessary and shall disallow all costs of and flowing from any unnecessary request or reply, or both, and may order either party to pay the costs thereby wasted, on an attorney and client basis or otherwise.*

[6] In *M Ramanna and Associates cc v The Ekurhuleni Development Company (Pty) Ltd*, case No: 25832/2013 (4 April 2014) ZAGPJHC this Court, although dealing with an exception to the particulars of claim stated the following:

“It is a basic principle that particulars of claim should be so phrased that a defendant may reasonably and fairly be required to plead thereto. This must be seen against the background of the abolition of the requests for further particulars of pleading and the further requirement that the object of pleadings is to enable each side to come to trial prepared to meet the case of the other and not be taken by surprise. Pleadings must therefore be lucid and logical and in an intelligible form; and the cause of action or defence must appear clearly from the factual allegations made.

The whole purpose of pleadings is to bring clearly to the notice of the Court and the parties to an action the issues upon which reliance is to be placed and this fundamental principle can only be achieved when each party states his case with precision”.

- [7] The thread that runs through the authorities quoted above is that pleadings must be phrased in such a manner and have such particularity that they enable the other side to know what the case of his or her opponent is. It does not mean that the pleading must give such particularity which tend to be evidence or prove the case of the pleader. The pleading should state every fact which it would be necessary for the pleader to prove in order to support his right to obtain judgment of the court.
- [8] I do not intend to restate all the further particulars as requested by the plaintiff in its application and the defendants’ insufficient or sufficient reply thereto, but will however, in general terms deal with those that seem to be relevant for this judgment. Furthermore, it is worth noting that paragraphs 4.1 and 7.1 of the plaintiff’s request for further particulars is now moot between the parties, since the defendants have in their reply sufficiently furnished the requested particulars.
- [9] Paragraphs 8.1 to 8.11 of the request for further particulars by the plaintiff deals with the authority of the person who signed the novation agreement on behalf of the plaintiff. According to the defendants, Mr. Van der Knaap, who signed the novation agreement on behalf of BVI did not have the necessary authority to do so. In my view it is not out of line for the plaintiff to request further particulars on the defendants’ plea where the defendants neither disputes the existence of the agreement nor that certain obligations were performed in terms thereof. If the defendants are challenging the authority of

Mr Van der Knaap, then the plaintiff is entitled to the particulars of who had authority to sign the other agreements between the parties if not Mr Van der Knaap. This will, in my view, enable the plaintiff to properly prepare to meet the case of the defendants at the trial.

[10] In paragraphs 20; 21 and 22 of the plaintiff's requests, it deals with the amended plea as it pleaded that the plaintiff did not perform in terms of its mandate and or as expected and provided for in the administration agreement when it sold and or issued insurance policies in favour of third parties. The reply to the plaintiff's requests is rather inadequate in that the defendants do not furnish the plaintiff with the details of the policies that were issued or sold by the plaintiff. The defendants merely alleges that the policies were not issued with their approval but fails to state which policies are those and what was expected of the plaintiff to do under those circumstances. It is not a sufficient reply to a request for further particulars to say that there are more than 3400 policies to go through and that it will take quite some time to identify those policies.

[11] If the plaintiff issued any policies not in terms of its mandate or in terms of the administration agreement between the parties, then it is upon the defendants to furnish the plaintiff with the full particulars of those policies that were issued in breach of the plaintiff's duty or mandate to the defendants. Furthermore, it is for the defendants to furnish the particulars as to how the plaintiff is in breach with the terms of the administration agreement and the duty it owes to the defendants. As things stand the plaintiff is unable to prepare for its trial because it is told that the information it requires is within its knowledge. That is not what rule 21 is intended to

achieve but that if the defendants do not know something, they must say so and not to throw it back at the plaintiff.

[12] The purpose of rule 21 is to enable a party to obtain such particulars of the other party's claim that it is not taken by surprise at the trial. It is my respectful view therefore that, if the plaintiff were to be supplied with the particulars of those policies now it would be able to go back on its records and prepare fairly and properly for the trial because then it would know what the case of the defendants is. It is my respectful view therefore that the plaintiff's request for further particulars for the purposes of preparation for trial is not untoward or an abuse of the court process, but it is necessary to enable the plaintiff to know exactly what the case of the defendants is in order to prepare accordingly. The unavoidable conclusion is therefore that the plaintiff has established its case and is entitled to the relief as sought in the notice of motion.

[13] In the premises I make the following order:

1. The first and second respondents shall file a further and proper reply to the following paragraphs of the plaintiff's request for further particulars within ten (10) days of service of this order:
 - 1.1 paragraphs 8.1 to 8.11
 - 1.2 paragraphs 20.1.1 to 20.1.5
 - 1.3 paragraphs 20.1.19 to 20.1.26
 - 1.4 paragraphs 21.1 to 21.12 and

- 1.5 paragraph 22.1
2. Should the defendants fail to comply with this order, the plaintiff may, on the same papers duly supplemented, set the matter down for the dismissal of the defendants' plea in the main action.
 3. The first and second defendants are, jointly and severally the one paying the other to be absorbed, liable for the costs of this application including the costs for the employment of two counsel.

TWALA M L

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing: 26th April 2023

Date of Judgment: 17th May 2023

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