

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **00127/2021**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
_____	_____
DATE	SIGNATURE

In the matter between:

DOVETAIL PRPOERTIES (PTY) LIMITED

Applicant

and

SIBANYE STILLWATER LIMITED

Respondent

JUDGMENT

This judgment has been delivered by being uploaded to the CaseLines profile on and communicated to the parties by email.

Wepener, J

[1] This is a Commercial Court matter which is being conducted in term of the Commercial Court Practice Directive of this Division. In terms of Chapter 4

paragraph 22 “No request for further particulars may be sought in the Commercial Court.”

[2] Despite this provision, the applicant (defendant) has served and filed a request for particulars. Its heading indicates that the request is in terms of Rule 21 read together with Chapter 4 paragraph 18. In my view, the prohibition contained in the Commercial Court Practice Directives negate a request for further particulars in terms of Rule 21, which is ousted for the purposes of Commercial Court matters.

[3] The applicant further relies on the fact that Chapter 4 paragraph 18 provides that “matters heard in the Commercial Court will be dealt with in line with the broad principles of fairness, efficiency and cost-effectiveness.”

[4] This direction does not override the clear wording that “no request for further particulars may be sought . . .” (sic) served “in the Commercial Court. . . .”

[5] Unlike Chapter 5, in Rules 25 and 26, which also abolishes discovery but does open the door for some discovery, the rule against further particulars does not leave the door open. I do not need to consider whether exceptional circumstances would permit the request for further particulars as in this matter none such exceptional circumstances have been shown.

[6] Some exceptional ground or reason may have to be shown in order to go beyond the prohibition, if it is to be relaxed, but the applicant has not shown such exceptional circumstances. I note that the applicant has filed an extensive plea to issues raised in the particulars of claim and it had the opportunity to raise two exceptions on two different occasions.

[7] I am of the view that the result is that the extensive plea to the particulars of claim speaks against the need for further particulars.

[8] This matter was referred to the Commercial Court after pleadings had closed and the usual Commercial Court rules up to the close of pleadings did not apply, but, in my view, the witness statements which are to be exchanged and which ordinarily constitute the evidence in chief, will address any uncertainty which the applicant may have.

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

The request for further particulars is dismissed with costs which include the costs of two counsel where two counsel were employed.

Wepener J

Heard: 12 February 2024

Delivered: 12 February 2024

For the Applicant:

Adv N. Luthuli

Instructed by ENSAfrica

For the Respondent:

Adv P. Sais SC.

Instructed by Weavind & Weavind
Incorporated