13/10/17

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE YES.

(2) OF INTEREST TO OTHER JUDGES: NO :

(3 ---/ R (ISE /

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SIGNATURE

Case Number: 10619/10

Date: 13/10/17

In the matter between:

ANDRe PRETORIUS	PLAINTIFF
and	
JOHANNES JACOBUS OELOFSE NO	1st DEFENDANT
COSTASFOUROUCLAS	2nd DEFENDANT
MUTUAL & FEDERAL INSURANCE CO LTD	3rd DEFENDANT
NHBRC	4TH DEFENDANT
NEDGROUP INSURANCE CO LIMITED	5TH DEFENDANT

Coram: HUGHES J

JUDGMENT

HUGHESJ

Introduction

[1] In this action the plaintiff's claim pertains to that of breach of contract in relation to a building contract and damages. The initial summons cited. Andre Pretorius, as plaintiff and 'J. Tavares and Sons and C Fouroulas' as the first defendant. After service of the summons two special pleas were filed on behalf of J Tavares and C Fouroulas.

[2] The first special plea pertained to the citation of the partnership, 'J. Tavares and Sons and C Fouroulas', and its existence at the time of issue and service of the summons and the second special plea to prescription of the plaintiffs claim. For purposes of these proceedings, the parties have agreed that I need not deal with the issue of the existence of the partnership and the merits, however, I am tasked to make a determination, in light of the evidence to be adduced on the issue of prescription.

[3] In the opening addresses the parties stated that the merits and quantum of the plaintiff's claim were not in dispute. Thus, once a determination was made on the question of prescription, whether positive or negative, this was the end of the case against the first and second defendants, in the amended citation.

[4] On 3 June 2003 the plaintiff entered into a written agreement with the seller, a certain Mr Ferreira, for the purchase of the immovable property, being a freehold stand in the township, Highveld Park, Witbank. The immovable property is described as Portion A of Erf […] in the township, Highveld Park, Witbank (the property).

[5] The written agreement above was subject to a suspensive condition that the plaintiff would enters into a building contract with Mr Jose da Silva Tavaris (the deceased), who died on 13 January 2009, and the second defendant, Mr C Fourouclas. The plaintiff alleges that when he entered into the building contract, the deceased and the second defendant traded as a partnership. 'J. Tavares and Sons and C Fouroulas'. In these proceedings the executor of the estate of the deceased is cited as the first defendant.

[6] In addition, to the written agreement and the building contract, a contractor's minimum building specification and waiver of lien document was also concluded on 28

July 2003. This was signed by the plaintiff, the partnership and the fifth defendant, Nedcor Bank Limited, being the bondholder over the property.

[7] In terms of the legislative prescripts of the Housing Consumers Protection Measures Act 95 of 1998 (the Act), the property was registered by the partnership with the fourth defendant, the National Home Builders Registration Council **(NHBRC).**

[8] The building on the plaintiff's property commenced in 2003 and was completed in 2004. The certificate of occupancy was issued by Emalahleni Municipality on 1 November 2004.

[9] Initially, the first defendant was cited as the partnership consisting of Mr Jose da Silva Tavaris (the deceased) and Mr C Fourouclas. According to the building contract the partnership was the entity that contracted with the plaintiff and the initial summons was served on the partners of the partnership at their individual residential address. It was established after the summons was served that the partnership had dissolved about November 2004. It was further established that one of the partners had died on 13 January 2009. In the circumstances, the executor of the deceased estate of Mr Tavaris was substituted as the first defendant and the surviving partner Mr C Fourouclas was cited as the second defendant. This came about after an unopposed joinder applicationwas granted.

Background

[10] Sometime in 2003, the plaintiff concluded an insurance contract with the third defendant, Mutual & Federal Insurance Company Ltd. In terms of the insurance contract the third defendant insured the plaintiff's property against damage, loss or destruction to the property inclusive of damage caused by virtue of soil conditions and subsidence.

[11] The official handover of the property to the plaintiff took place on 4 November 2004. The plaintiff states that in February 2005 he observed the initial hairline cracks to the property in the areas of the windowsills, the windows, the roof of the bottom story slab, and there were visible cracks along the boundary wall.

[12] The plaintiff testified that he spoke to Mr C Fourouclas during February 2005 as regards the cracks and he was directed to contact Mr Leon Lloyd who was the appointed engineer, assigned by the partnership. On contacting Mr Lloyd telephonically in February 2005, the plaintiff after explaining the problem was advised to wait six to nine months, to observe the development of the cracks in order to establish if the cracks were merely settlement cracks or serious and a course of concern. The six to nine month period came to end in November 2005 and at this stage Mr Lloyd advised the plaintiff that the cracks were settlement cracks. He then instructed the plaintiff to call the builder to fill the cracks in order to ensure that some sort of control mechanism was in place to if the cracks had stabilised and settled. The plaintiff summoned the builder who filled the cracks in December 2005.

[131 After an entire year, that being January 2006 to December 2006, the filled up cracks began to open again even with the control mechanism in place. The plaintiff states that he realised in December 2006 that the cracks could not have been temporary settlements cracks that would subside, as advised by Mr Lloyd, because they had not stabilised by then. The plaintiff stated that *"towards the end of 2006 the plaintiff realised that the cracks may not be temporary settlement cracks and requested the aforesaid engineer (Mr Lloyd) to, again, investigate the cracks"*

[14] The plaintiff pleaded in his replication that as at February 2006, Mr Lloyd informed him that serious defects existed with the property and that remedial work was required. Amongst others, this remedial work would entail filling in the wider cracks in order to establish if the building had settled. This ultimately culminated in Mr Lloyd examining the building works and the foundations on 21 and 24 February 2007 and compiling a report which was submitted to the plaintiff in March 2007. In this report, Mr Lloyd concluded that the course of the cracks was *"subsidence"*. The plaintiff states that this is when he realised that there were serious defects to the property and to the best of his knowledge as regards the finding of subsidence he was covered by his insurance policy.

[15] According to the plaintiffs evidence he lodged a claim with his insurer on 28 September 2007 and this claim was rejected on 22 October 2007. The eventuality is

that the matter end at the doors on the ombudsman on 16 November 2007. The ombudsman confirmed receipt of plaintiff's claim and responded as set out below:

"... If there is a Clause in your Policy which obliges you to take legal action within a certain time, please draw this especially to my attention, and see to it that your Application reaches me before expiry of that period...Where, in terms of a Policy, any such time-barring period has already expired before the date when the complaint is *received, I have no formal mandated to deal with the complainant at all."*

[16] The ombudsman appointed experts on 7 April 2008 who concluded that the damages on the property of the plaintiff were not caused by subsidence, but rather *"by differential settlement due to inadequate filling and compaction."* On 1 June 2009, having the aforesaid conclusion on hand, the insurer of the plaintiff confirmed that its rejection stood.

[17] The plaintiff stated that it was on 1 June 2009, with the above information at hand, he realised for the first time that *"his claim lie* (was} *against the first and second respondents".* He proceeded to instruct an independent engineer, Mr Andre Fullard (Mr Fullard), who compiled an expert report dated 12 October 2009 which he relies upon for this action. This report was provided to him during November 2009 and he states that it was then, by way of Mr Fullard's report that established that the damage to his property was in fact caused by poor workmanship, inferior quality of design and structural work performed by the partnership.

[18] The plaintiff sent this report to the ombudsman who then closed their file during the course of January 2010. However, before doing so the plaintiff states that he was advised by the ombudsman, that in light of Mr Fullard's report, he should issue summons.

[19] I have set out above the circumstances surrounding the citation of the parties, joinder of the parties and amendment of the citation on the summons. Taking the foresaid into account the plaintiffs case is that the partnership had failed to comply with the minimum requirements provided by the Building Regulations promulgated under the Act, thus causing the defects and damages to his property. Specifically, the partnership failed to comply alternatively properly comply with its obligations in terms

of the agreements and the Building Regulations of the Act, pertaining to the erection of the house. In addition the partnership failed to appoint a structural engineer or geologist to perform a geo technical investigation prior to the construction of the house.

Prescription

[20] It is common cause, that the hand over and completion of the plaintiff's house was effected on 1 November 2004. In addition, the summons was served on the defendant's on 18 February 2010.

[21] The first defendant avers that the distress in the house, structural and design defects in the quality of the building, on the plaintiff's own version, would have become known to him in February 2005, alternatively, December 2005, alternatively, December 2006, alternatively, in the beginning of 2007 and at the least, alternatively, 22 October 2007. In the circumstances, the first defendant argues that the plaintiff's claim became due during the aforesaid periods. The first defendant contends that when the summons was served a period of three years had lapsed taking into account the periods *supra,* before prescription was interrupted by the service of the summons.

[22] The second defendant in addition to that stated above goes a step further and avers that the summons served on 18 February 2010 sought judgment against the partnership, whilst the amended summons served on 19 November 2010 now seeks judgment against the individual partners, being the first and second defendant's, duly now cited after the joinder granted on 2 November 2010. Thus, the second defendant contends that the interruption of prescription for the judgment currently sought against the first and second defendant took place on 19 November 2010 and not 18 February 2010 as submitted by the plaintiff.

[23] The second defendant, further submits that the service of the initial process of 18 February 2010, as it was not prosecuted to finality, cannot be relied upon by the plaintiff against the first and second defendant. The amended summons, so the argument of the second defendant goes, which came about by way of the joinder order, the second defendant's contends that this fortifies it view that the interruption, in terms of section 15(2) of the Prescription Act 68 of 1969 (the Prescription Act), could only have taken place by service on 19 November 201O.

[24] Section 15 (2) of the Prescription Act reads as follows:

"Unless the debtor acknowledges liability, the interruption of prescription in terms of subsection (1) shall lapse, and the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment or if he does so prosecute his claim but abandons the judgment or the judgment is set aside."

[25] It is trite that the burden of proof lies with the defendants to show when the plaintiff acquired knowledge of the existence of the debt. The stance that the plaintiff takes on the issue of prescription is that the special plea raised is bad in law. The plaintiff argues that the service on 18 February 2010 upon the members of the partnership which were cited in the initial summons was in terms of Rule 14 of the Uniform Rules of Court. This emanates from the plaintiffs submission that when the partnership was cited and service was effected on the partners, in terms of Rule 14 both members of the partnership were thus before court on the date of service of the summons. This is so the argument goes, as the debts, rights, interests and assets, in common law, are not those of the partnership itself, but rather that of the partners, and an individual partner could be sued for the debt. Reference was made to **Michalow N.O v Premier Milling Co Ltd 1960 (2) SA 59 (W) at 121** and the case of **XTRTC United Workers Front and Others v Premier Eastern Cape Province 2010 (2) SA 114 (ECO) at para [8]** were the said principle is pronounced

[26] Reference was also made to Rule 14 specifically subrules 7 and 8, which I have set out below for easy referance:

(7) If a partnership is sued and it appears that since the relevant date it has been dissolved, the proceedings shall nevertheless continue against the persons alleged by the plaintiff or stated by the partnership to be partners, as if sued individually.

(8) The preceding subrule shall apply *mutatis mutandis* where it appears that a firm has been discontinued." [My emphasis]

[27] In these circumstances, the plaintiff argues that the partners were individually sued when the first summons was served upon them on 18 February 2010, albeit in the name of the partnership. This is in line with provision made in Rule 14 (7) *supra.* The plaintiff avers that on 29 April 2010 he became aware that one of partners was deceased, by virtue of the special plea raised, by the executor of the deceased. This the argument goes does not detract from the fact that he had served the summons on

the individual partner, the deceased, on 19 February 2010 and the partners were properly before the court.

[28] The section relevant in this matter, as regards prescription, is that of section 12(3) of the Prescription Act which reads as follows:

"Section 12

(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that the creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care." [My emphasis]

[29] In considering the above section of the Prescription Act it stated in **Links v Development of Heath Northern Provinces 2016 (4) SA 414 (CC) at para [26]** :

"The provisions of section 12 seek to strike a fair balance between, on the one hand, the need for a cut- off point beyond which a person who has a claim to pursue against another may not do so after the lapse of a certain period of time if he or she has failed to act diligently and on the other the need to ensure fairness in those cases in which a rigid application of prescription legislation would result injustice. As already stated, in interpreting section 12(3) the injunction in section 39(2) of the Constitution must be borne in mind. In this matter the focus is on the right entrenched in section 34 of the Constitution."

[30] According to the plaintiff, there is an added rider to these proceedings being, that by virtue of section 13 (1)(h) and (i) of the Prescription Act, the period of prescription is delayed in the case of the death of the debtor. I prose to deal with this proposition at this stage and not in the discussion below. This proposition made by the plaintiff is ill conceived as in terms of the above section it is only delayed if an executor has not been appointed. This is not the case in this matter the executor was appointed prior to the issuing of summons.

[31] The plaintiff's argument is that he only knew the facts upon which the debt arose *"when he was convincingly advised by Mr Fullard, that the contractor/builder failed to employ the necessary professional people",* that the cracks were caused due to poor workmanship on the part of the contractor/builder, this was the advice extracted from the report received from Mr Fullard during November 2009.

Discussion

[32] The special plea of prescription must be viewed against the backdrop set out above and as such I will not repeat the facts. It has been held that the onus of proving prescription lies with that party who asserts it. See **Makate v Vodacom Ltd 2016 (4) SA 121 (CC) at 149 para [185].**

[33] There is no question that a debt in terms of section 10 of the Prescription Act exist in these circumstances. The plaintiff alleges that in terms of the building contract he concluded and the norms and standard set by the NHBRC he is entitled to seek recourse for the damages caused to his property from the first and second defendants. The existence of a debt is not in dispute, however, the issue is that this debt cannot be satisfied as it has already prescribed in terms of section 12 (3) of the Prescription Act.

[34] In light of the fact that the interpretation of section 12(3) will have an effect on the ability of the plaintiff to exercise his Constitutional right to claim from the first and second defendant, I am mindful of the warning sounded by the Constitutional court that in the determination of the meaning of a statute regard ought to be had to section 39 (2) of the Constitution which reads as follows:

"When interpreting any legislation, and when developing the common law or customary law. every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."

[35] The plaintiff argued that in its initial summons the partnership was cited as a defendant and this summons was served on the partners of the partnership on 18 February 2010. He further argues that when advised by the current first defendant, the executor, of the death of one of the partners and that the partnership had dissolved, he proceeded to join the executor and the second defendant individually. The defendants argue that this joinder and the new citation on the summons amounts to a new process which was only served on 19 November 2010. The plaintiff contends that the summons with the new defendant's cited stands as though served on 18 February 2010 because even though the partnership had been cited the partners of that partnership were before court since the date of service of the summons.

[36] I agree with the plaintiff's argument. Firstly, the partnership is not a legal entity separate from its individual partners. Thus, if one sues the partnership, to me it stands

to reason that, one sues the individual partners as they are not separate or distinct from the partnership. See **Michalow NO v Premier Milling Co Ltd 1960 (2) SA 59 (W) at 61D-F** where Marias J said:

"At Common Law a partnership is not a legal entity having an existence apart from the individuals constituting it. It cannot have assets and liabilities. Its "debts" are legally the debts of the partners, and, as far as third parties are concerned, the ·assets" of the partnership are indistinguishable from the assets of the partners. Partnership is no more than a complicated contractual arrangement between individuals as to the joint employment of their resources; the "partnership debt" are in law debts *in solidum* of all the partners. In the absence of special rules of procedure, a creditor "of the partnership" would be entitled to sue any individual partner for payment of the whole debt and failing satisfaction sue the other partners one by one."

[37] In light of the aforesaid, it is my view, that the amended citation on the summons does not constitute a new process but in fact remains the initial process served on 18 February 2010. The partners though not initially cited were part of the proceeding from the outset as they are not separate from the partnership and the service of the summons on each individual member on 18 February 2010 was valid in law. It follows, that in terms of section 15 (2) of the Prescription Act the interruption of prescription took place on 18 February 2010.

[38] It is comforting that the parties are *addedem* that the claim of the plaintiff for purpose of sections 10(1), 11(d) and 12(3) constitute a debt in terms of the Prescription Act and I need not deal with that issue. Though this is in line with the interpretation of a debt by the Constitutional court in **Makate** *supra.* The Constitutional court however did altered the law dealing with prescription which was adopted by the Supreme Court of Appeal (SCA) in **Desai NO *v* Desai and Others 1996 (1) SA 141 (A) at 1461** and other case, which adopted a wider meaning to the word debt. As the term debt was not defined by the Prescription Act, the SCA interpreted it to be a claim for payment or a claim for the delivery of something and its wide and general meaning included an obligation to do something or refrain from doing something. In **Makate** the Constitutional court adopted the initial interpretation of a debt taken in **Electricity Supply Commission v Stewart and Lloyds of SA (Pty) Ltd 1981 (3) SA 340 (A) (Escom) at 344E-G** which is a more narrow interpretation. The relevant passage from **Escom** is set out below:

"...It is common cause in this court that debt is -"that which is owed or due; anything (as money, goods or services) which one person is under obligation to pay or render to another: See *Shorter Oxford English Dictionary;* and see also Leviton and Son v De Klerk's Trustee 1914 CPD 685 at 691 *in fin.* "Whatever id due- *debitum* - from any obligation.• •

[39] In this case it is obvious that the obligation owed to the plaintiff by the first and second defendant was in the form of services as is contemplated in **Escom** and **Makate.**

[40] Turning now to the enquiry in terms of section 12(3), the purpose is to establish when the plaintiff attained the knowledge of the identity of his debtor and the facts from which his debt arose. Initially, guidance to this effect was set out in **Truter and Another v Deysel 2006 (4) SA 168 (SCA) at para (16]:**

"For the purpose of the Act, the term "debt due" means a debt, including a delictual debt, which is owing and payable. A debt is due in this sense when the creditor acquires a complete cause of action for the recovery of the debt, that is, when the entire set of facts which the creditor must prove in order to succeed with his or her claim against the debtor is in place or, in other words, when everything has happened which would entitle the creditor to institute action and to pursue his or her claim.·

It was further stated in **Truter at page 175 at [20]** that·...an expert opinion that a conclusion of negligence can be drawn from a particular set of facts is not itself a fact, but rather evidence... the presence or absence of negligence is not a fact; it's a conclusion of law drawn by the court in all the circumstances of the specific case. Section 12(3) of the Act requires knowledge only of the material facts from which the debt arises for the prescriptive period to begin running- it does not require knowledge of the relevant legal conclusion (ie that the known facts constitute negligence) or of the existence of an expert opinion which supports such conclusions."

[41] The construction adopted in **Truter** was acceptable prior to the recent pronouncement by Zondo J in **Links v MEC for Health, Northern Cape 2016 (4) SA 414 (CC) at 423 para (26)** where he states that in interpreting section 12(3) the injunction in s39 (2) of the Constitution must be borne in mind... focus is on the right entrenched in s34 of the Constitution."

At **428 para [42]** Zondo J further states:

"...To require knowledge of causative negligence for the test in s12 (3) to be satisfied would set the bar too high. However, in cases of this type, involving professional negligence, the party relying on prescription must at least show that the plaintiff was in possession of sufficient facts to cause them on reasonable grounds to think that the that the injuries were due to the fault of medical staff. Until there are reasonable grounds for suspecting fault so as to cause the plaintiff to seek further advice, the claimant cannot be said to have knowledge of the facts from which the debt arises."

[42] I do not intend to repeat the facts of this case neither do I intend to repeat the evidence unless necessary. The case argued on behalf of the plaintiff, is that Mr Lloyd, the engineer employed by the first and second defendant, had examined the cracks and the foundations of the property. He eventually compiled a report advising the plaintiff that the cause of the defect to his property was due to subsidence. As such, the plaintiff was covered in his insurance policy for subsidence and he promptly proceeded with a claim against his insurer. When his claim was rejected and he was advised by the ombudsman that the problem was not subsidence that is when he proceeded to instruct his own engineer, Mr Fullard. The latter complied a report which set out that the fault was with the first and second defendant having not delivered the services that was expected of them in the building of his home on the property.

[43] As stated above it must be borne in mind that the first and second defendants having raised prescription are duty bound to discharge the onus and prove that the claim of the plaintiff has prescribed. Further to the aforesaid, they have to prove the date on which the plaintiff actually attained either actual or constructive knowledge of the debt. See **Macleod v Kweyiya 2013 (6) SA 1 at 6 para [1O]**

[44] The case made out by the first and second defendants is that of constructive knowledge of the debt and as such they ought to show that by exercise of reasonable care the plaintiff could have reasonably acquired the identity of the debtor and facts upon which the debt arose.

[45] The case of the first defendant is that the plaintiff knew or ought to have known during 2005, 2006 and by the latest December 2006 that the cracks were not normal cracks. Thus, by December 2006 the plaintiff would have had the knowledge of all the minimum facts required to formulate a case against the builder, as he was the responsible person. The first defendant submits that it has by virtue of the evidence proven that prescription of the plaintiffs claim ought to commence from December 2006. This would be prior to the plaintiff having obtain a report from Mr Lloyd in March 2007 and before he received Mr Fullard's report in November 2009.

[46] The second defendant's case is that as at November 2005 the plaintiff ought to have known from the enlargement of the hairline cracks and the formation of new

cracks that the settlement of the house had not stabilised. In December 2006 according to the plaintiff, he then realised that the cracks were not temporary caused by settlement, but were instead caused by subsidence. Likewise the second defendant states that at this stage the plaintiff would have knowledge of the minimum facts necessary to formulate his claim against the builder and thus, prescription would have commenced to run in December 2006. Even though the debt could not be quantified this did not prohibit prescription from commencing as the claim prescribes and not the cause of action, so argues the second defendant.

[47] The second defendant submits that the minimum facts as at December 2006, that the plaintiff had, was that he had contracted with the partnership for the construction of his home in a turnkey project. The defects appeared on the house and the boundary wall and as such they were in breach of contract with the plaintiff. Due to the aforesaid remedial steps are required. Thus, the claim of the plaintiff would have prescribed on 31 December 2009 or 1 January 2010 if it commenced in December 2006.

[48] The plaintiff on the other hand, at all material times, up until he attained a rejection from the ombudsman was of the view that he had a claim against his insurer. When this fell through he then instructed his own expert Mr Fullard who compiled a report which he received on 12 October 2009. This is when he became aware of the facts from which the debt arose and the identity of the debtor. He stated that these were lacking in the report which he had received from Mr Lloyd.

[49] I am mindful of the fact that this case places reliance on expert testimony and evidence, as such I heed the warning sounded by Zondo J in **Links** *supra* when dealing with cases of professional negligence at **para (42]** quoted above. On an analysis of the evidence before me the plaintiff's conduct in obtaining constructive knowledge of the identity of the debtor and the facts upon which the debt arose has been ascertained by the exercise of reasonable care by the plaintiff. Examining his conduct, in my view, he acted as any reasonable person would in the circumstances. He followed every avenue without "jumping the gun" so to speak. On noticing the cracks he alerts the building contractor, thereafter: he heeds the advice given by the building contractor; he further heeds the advice of the engineer employed by the building contractor, Mr Lloyd, as regards the six to nine month wait; when the cracks

continue to widen he gets the engineer to come out and conduct an examination; a report is compiled and he heeds the advice contained therein; to this end he lodges a claim with his insurer as he believes he is covered for subsidence, on the strength of Mr Lloyd's advice; his claim is rejected he is still under the belief that he is covered by his insurer so he approaches the ombudsman which claim is now time barred and not dealt with by the ombudsman; on the advice of the ombudsman he seeks a second opinion from an independent engineer and this is when the "penny drops" so to speak. This is the only time that the material facts of his claim emerged and the identity of the debtor is revealed with material certainty.

[50] In my opinion the plaintiff acted and followed-up on the situation he was confronted with, with the diligence of a reasonable person in the circumstances.

[51] An amendment is sought by the plaintiff of the particulars of claim which was not opposed by the defendants. The amendment is sought as the discovered documents, evidence adduced and expert reports are in contrast with the para 7.3 of the particulars of claim. The application is not opposed and no prejudice is suffered by the defendants if the amendment is granted. It is trite that an amendment sought can be granted at any stage up until judgment is delivered. See **Casper v Andre Kemp Boerdery CC 2012 (3) SA 20 (WCC) at 34C-G.**

[52] The amendment as set out in the plaintiffs Rule 28 (10) notice dated 10 March 2017 served on the defendants on 13 March 2017 is duly granted.

Order

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

1 The amendment to the particulars of claim sought by the plaintiff is duly granted and the plaintiff is ordered to pay the wasted costs;

2 The special plea of prescription raised by the first and second defendant is dismissed with costs;

3 The claim against the NHBRC is postponed *sine die* with costs reserved.

W. Hughes

Judge of the High Court Gauteng, Pretoria

Dates heard: 27 February 2017; 1 March 2017; 6 March 2017

Date delivered: 13 October 2017

Appearance for the Plaintiff: Adv. G H Meyer

Appearance for the first defendant: Adv. B D Stevens

Appearance for the second defendant: Adv. G F Heyns

Appearance for the fourth defendant: Adv. R A Fodew