

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED:
7/11/22	
DATE	SIGNATURE

CASE NO: 11799/2021

In the matter between:

GUARDRISK INSURANCE COMPANY LTD

Plaintiff

and

IFS RISK CONSULTANTS CC

First Defendant

MEL CARTLIDGE

Second Defendant

and

**INSURANCE UNDERWRITERS' MANAGERS
(PTY) LTD**

Third Party

JUDGMENT

D S FOURIE, J:

[1] This is an application directing the plaintiff to furnish further particulars to the defendants to prepare for trial. The application is opposed by the plaintiff.

[2] The request for further particulars dated 24 February 2021 consists of only four paragraphs. During argument counsel for the defendants indicated that paragraphs 1, 2, 3 and 4.4 are abandoned. The defendants now only persist with their request as set out in paragraphs 4 and 4.1 to 4.6, but excluding paragraph 4.4.

[3] The request for further particulars relates to the plaintiff's particulars of claim (second amendment). In this action the plaintiff, an insurance company, claims payment of damages from the defendants in the amount of R7,771,818.16. This amount represents certain payments made by the plaintiff to its insured, A&A Textiles (Pty) Ltd, under a contract of insurance.

[4] The second defendant was an employee of the first defendant, the insured's broker, and represented the insured in securing the contract of insurance from the plaintiff.

[5] The plaintiff claims that the second defendant failed to disclose certain previous insurance claims made by the insured, and that had it been aware of such claims it would not have issued an insurance policy to the insured. The defendants now apply for an order compelling the plaintiff to furnish certain further particulars regarding the plaintiff's claim against the defendants.

[6] For purposes of these proceedings the following paragraphs are a summary of the relevant allegations made in the particulars of claim:

- (a) on or about 7 June 2017 the second defendant represented to the Plaintiff's representatives that A&A Textiles (Pty) Ltd had no previous losses and/or claims (par 5 and 5.3);
- (b) the second defendant further failed to advise the plaintiff and/or the third party that A&A Textiles (Pty) Ltd had previous losses and/or claims (par 5B.1 and 5B1.3);
- (c) the first defendant owed a duty of care towards the plaintiff to provide accurate information to it (par 6);
- (d) the duty of care owing by the first defendant to the plaintiff *"arose in the following material circumstances"*:
 - (i) the second defendant had, at all material times, personal knowledge of the claims/loss history of A&A Textiles (Pty) Ltd (par 7 and 7.2);
 - (ii) the second defendant was obliged, in these circumstances, to make full and frank disclosure of all material facts relevant to the plaintiff's consideration of insuring A&A Textiles (Pty) Ltd, which included, *inter alia*, that A&A Textiles (Pty) Ltd had previous losses and/or claims (par 7.3 and 7.3.4);
- (e) the representations made by the second defendant were false in that A&A Textiles (Pty) Ltd had previous insurance losses and/or

claims within the personal knowledge of the second defendant
(par 13 and 13.1).

[7] The defendants' request for further particulars are the following:

"4. With reference to paragraph 13 of the particulars of claim, further particularity is required regarding the 'numerous previous insurance claims' alleged by the plaintiff. In particular:

4.1 precisely how many previous insurance claims does the plaintiff contend that the defendants failed to disclose on behalf of A&A Textiles;

4.2 when was each of these claims submitted;

4.3 to which insurer was each of these claims submitted;

4.4 ...

*4.5 what was the outcome in respect of each of these claims;
and*

4.6 when does the plaintiff contend that it first became aware of these claims?"

[8] In the founding affidavit the defendants' attorney maintains that the defendants' requests for further particulars *"are germane to the key issues in dispute and necessary for purposes of the defendants' trial preparation"*. It was also argued by counsel for the defendants that the further particulars requested are therefore *"strictly necessary to enable them to prepare for trial"*.

[9] Counsel for the plaintiff took a different approach. He argued that the particulars sought are not strictly necessary to prepare for trial and can at most *“be considered as particulars sought for the convenience of the defendants”*. He also pointed out that the defendants are not entitled to particulars in order for them *“to decide upon a version”*. More specifically, so it was contended, the defendants are not entitled to particulars to assist them to prove their case. Taking into account the plaintiff’s cause of action and the particulars that have been requested, I am of the view that there is no merit in any of these submissions.

[10] The relevant part of Rule 21(2) provides that after the close of pleadings any party may deliver a notice requesting *“only such further particulars as are strictly necessary to enable”* that party to prepare for trial.

[11] The purpose of permitting a party to call for further particulars for trial has been stated as follows in Thompson v Barclays Bank DCO 1965 (1) SA 365 (W) at 369C-E:

“(a) to prevent surprise; (b) that the party should be told with greater precision what the other party is going to prove in order to enable his opponent to prepare his case to combat counter-allegations ...; (c) having regard to the above nevertheless not to tie the other party down and limit his case unfairly at the trial.”

[12] It is also important to bear in mind that the particulars requested must relate to the pleaded issues and may, generally speaking, not raise further or new issues between the parties (De Polo v Dreyer 1991 (2) SA 164 (W) at 174IJ).

[13] When the pleadings in this matter are considered, more particularly the particulars of claim, it is clear that the allegations regarding previous insurance claims which the second defendant allegedly had failed to disclose, are not only part of the plaintiff's cause of action, but these allegations are also material to the plaintiff's case against the defendants. In short, these allegations go to the heart of the plaintiff's case against the defendants.

[14] That being the allegations pleaded against the defendants, the defendants are entitled to know what case they have to meet, even if the particulars requested may involve the disclosure of evidence to avoid prejudice in the preparation of their case (*Annandale v Bates* 1956 (3) SA 549 (W) at 551). Furthermore, having regard to the substance of these allegations, the defendants are entitled to be told with greater precision what the plaintiff is going to prove in order to enable them to prepare their case (*Thompson vs Barclays Bank DCO*, supra at 369).

[15] Taking into account the allegations made in the particulars of claim regarding previous insurance claims and that the representations made by the second defendant in this regard were false, I am satisfied that the particulars sought by the defendants not only relate directly to these allegations as part of the plaintiff's cause of action, but those particulars are also strictly necessary to enable the defendants to prepare for trial.


[16] That brings me to the final question of costs which had been reserved at a previous occasion. The issue is which of the parties should be held responsible for the wasted costs which had been reserved on 10 March 2022?

[17] According to the defendants' answering affidavit it appears that this matter was previously on the unopposed motion court roll for 10 March 2022. On 9 March 2022, a day before the hearing, the plaintiff filed its answering affidavit which necessitated the matter to be postponed *sine die*, with costs reserved. None of these allegations are in dispute as the plaintiff did not file an affidavit in answer thereto. As a matter of fact, it also appears from the filing notice that the plaintiff's answering affidavit was indeed filed on 9 March 2022.

[18] Taking into account these facts and circumstances, it seems to me that the late filing of the plaintiff's answering affidavit was the main reason why the application had to be postponed. I am therefore satisfied that the plaintiff should be held responsible for the wasted costs occasioned by that postponement.

ORDER: In the result I make the following order:

1. The plaintiff shall furnish a complete response to the defendants' request for further particulars dated 24 February 2021, but only with regard to paragraphs 4, 4.1, 4.2, 4.3, 4.5 and 4.6 thereof, within 10 days of service of this order on the plaintiff's attorney of record;
2. The plaintiff shall pay the costs of this application, including the wasted costs occasioned by the postponement on 10 March 2022 in the unopposed motion court.


 D S FOURIE
 JUDGE OF THE HIGH COURT
 PRETORIA

7/11/22