



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

Case No: 49156/2021

In the matter between:

COMPENSATION SOLUTIONS (PTY) LTD

Plaintiff/Excipient

and

THE COMPENSATION COMMISSION

1ST DEFENDANT/RESPONDENT

**DIRECTOR-GENERAL OF THE
DEPARTMENT OF THE NATIONAL
GOVERNMENT OF THE REPUBLIC
OF SOUTH AFRICA**

2ND DEFENDANT/ RESPONDENT

**THE MINISTER OF THE DEPARTMENT
OF EMPLOYMENT AND LABOUR OF
THE NATIONAL GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA**

3RD DEFENDANT/RESPONDENT

DELETE WHICHEVER IS NOT
APPLICABLE

(1) REPORTABLE:

JUDGMENT

HF JACOBS, AJ:

[1] The plaintiff objects to the contents of two special pleas of prescription of the defendant on the basis that the two special pleas lack averments which are necessary to sustain the defence of extinctive prescription. I approach the exception mindful of the law as stated in *Trope*¹, *Southernpoort Developments*², *Ditz*³ and *Thompson*⁴. But before I deal with the merits of the exceptions, I need to deal with the procedural challenge raised by the defendants in the exception proceedings.

[2] Summons was served on the defendants on 30 September 2021 and the defendants filed their plea on 14 February 2022 whereupon the plaintiff applied for summary judgment on 7 March 2022 and filed a supplementary affidavit in the summary judgment proceedings on 4 April 2022 whereupon the defendant delivered an answering affidavit in the summary judgment proceedings on 6 April 2022. The summary judgment application was heard on 15 August 2022. Judgment in the summary judgment proceedings was handed down on 18 July 2023 dismissing summary judgment and granted the defendants leave to defend the action as follows:

“b) The defendant is granted leave to defend in respect of case numbers 56219/2021 and 49156/2021 only insofar as a plea of prescription is to be raised;

¹ *Trope and Others v South African Reserve Bank* 1993 (3) SA 264 (A) at 273A

² *Southernpoort Developments (Pty) Ltd v Transnet Ltd* 2003 (5) SA 665 (W)

³ *Living Hands (Pty) Ltd v Ditz* 2013 (2) SA 368 (GSJ)

⁴ *Barclays National Bank Ltd v Thompson* 1989 (1) SA 547 (A)

c) *The defendant is to file notice of intention to amend its plea in respect of the case numbers mentioned in paragraph (b) within 10 days of this order failing which the Plaintiff may approach this Court on papers duly supplemented for orders for summary judgment.*”

[3] On 24 July 2023, on the fourth court day following judgment in the summary judgment proceedings, the plaintiff delivered its notice of exception against the two special pleas. Later the defendant delivered a notice in terms of rule 30 alleging that the exception proceedings were irregular, but no action was taken in that regard and counsel for the defendant submitted that the notice in terms of rule 30 “has fallen away”. The defendants submit that the exception was noted out of time and can, therefore, not be entertained at all.

[4] The summary judgment proceedings were launched by the plaintiff on the 15th court day after the defendants delivered their plea (between 14 February 2022 and 7 March 2022). In terms of rule 25 the plaintiff had 15 days after the service upon it of the defendant’s plea to deliver a replication to the plea, or any further pleading.

[5] The defendant’s objection to the procedural soundness of the plaintiffs’ exceptions is that, on the date the notice of exception was delivered, the plaintiff was outside “the period allowed for filing any subsequent pleading” provided for by rule 23(1). I do not agree. The principle set out by Levinsohn J in *Khayzif Amusement Machines*⁵, albeit a judgment

⁵ *Khayzif Amusement Machines CC v Southern Life Association Ltd* 1998 (2) SA 958 (D&CLD) at 962G-963F

under the previous summary judgment dispensation, applies in my view to the summary judgment procedure introduced with effect 1 July 2019. The principle that the process of exchange of pleadings commence afresh after summary judgment proceedings have come to an end is a practical and procedurally fair process and it would be in the interests of justice to apply that well established rule of practice in the present matter. A defendant (or a plaintiff) may apply at the hearing of the summary judgment application for relief in terms of rule 32(8) should it be necessary to put a litigant on terms with regard to delivery of further pleadings. In my view the objection to the exception proceedings cannot be upheld. I now turn to the two exceptions.

[6] Past litigation between the parties appear from a number of judgments of our courts.⁶ The plaintiff's particulars of claim states its case as follows: The plaintiff conducts the business of a factoring house. It takes cession of monies due in terms of invoices of service providers of medical services to persons who have claims and for which the defendants admitted liability under the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 (COIDA). In a judgment mentioned the Supreme Court of Appeal and courts in this division have rejected the defence of prescription premised on section 43 and 44 of COIDA on more than one occasion. The defendants, again, in this matter pleaded the same defence of prescription. In my view there is no need to set out in any further detail why the defence based on prescription in terms of sections 43 and 44 of the COIDA is bad in

⁶ See Compensation Commissioner and Others v Compensations Solutions (Pty) Ltd 2022 JDR 3587 (SCA); Compensation Solutions (Pty) Ltd v Compensation Commissioner and Others (unreported judgment of 19 June 2023) Gauteng High Court case number 59305/2021; Compensation Solutions (Pty) Ltd v Compensation Commissioner and Others (unreported judgment of 3 August 2023) case number 52139/2021

law and the special plea based thereon must be struck out. The legislative scheme imposed by COIDA discerns claims of injured persons that fall under sections 43 and 44 of that act from claims of service providers who render a service to and on behalf of the state. Claims of service providers to the state who render the service do not prescribe under those two sections of COIDA. In my view the first special plea is baseless and must be struck out. The defendants will not be afforded an opportunity to deliver an amended special plea in that respect.

[7] The second special plea reads as follows:

**“PRESCRIPTION IN TERMS OF SECTION 11 OF PRESCRIPTION ACT
68 OF 1969**

5. *The Plaintiff's claim is based on medical services rendered to employees injured in the Course of duty, wherein the causes of action dates are set out in the Plaintiff's annexure “CS1”, being the date when the medical claims fell due.*
6. *The Plaintiff's summons was served on the Defendants on the 30th of September 2021, which date is more than three years after which some of the claims are set out in annexure CS1 arose.*
7. *The Defendants avers that all the claims are set out in annexure “PS2” attached herein have prescribed.*
8. ***IN THE PREMISE***, *the Plaintiff's claim as set out in annexure “PS2” have all prescribed in terms of section 11 of the Prescription Act of 68 of 1969.*
9. ***THE DEFENDANTS PRAY THAT*** *the Plaintiff's claim be dismissed with costs.”*

[8] The proper way to raise prescription in action proceedings is by way of a plea or special plea that would allow a plaintiff to raise factual averments in answer to the special plea in replication.⁷ The party who raises prescription must allege and prove the date of the inception of the period of prescription. Prescription begins to run as soon as a debt is due.⁸ In paragraph 5 of the defendants' second special plea it is alleged that the plaintiff's claims based on medical service rendered to employees injured in the course of duty "*wherein the causes of action dates are set out in the Plaintiff's annexure "CS1", being the date when the medical claims fell due.*" The defendants second special plea does not contain a firm allegation of the date on which the defendants allege the plaintiff's claims fell due. That is not what is alleged by the plaintiff in the particulars of claim in respect CS1 thereto. Annexure CS1 is a 76 page spreadsheet. In paragraphs 6, 7, 8 and 9 of the particulars of claim the plaintiff alleges the context of CS1 "*A schedule, prepared in a format as prescribed by the First Defendant, containing all the detail required by the First Defendant to identify each invoice and affect payment, is attached as **ANNEXURE "CS 1."***" The two columns on the far right of the first page of the spreadsheet (1 of 76) also numbered as 002-17 on the CaseLines platform, contain numbers (many of them) under two rubrics to wit: "*Days from Acceptance to Submission*" and "*>61 days*". It seems to be the defendant's case that the entire claim of the plaintiff has prescribed, in other words, that the debt became due and payable not less than three years (1095 days) before service of the summons

⁷ See *Murray & Roberts Construction (Cape) (Pty) Ltd v Upington Municipality* 1984 (1) SA 571 (A)

⁸ See *Gericke v Sack* 1978 (1) SA 821 (A) at 828B

(which occurred on 30 September 2021). Annexure CS1 does not, on any interpretation thereof, record the date on which it can be determined when prescription of the claims therein listed began to run, in other words, exactly when the defendants say the debt (or parts thereof) fell due. The defendants second special plea, therefore, lacks a firm allegation of the date of inception and the date of completion of the period of prescription as stated in *Gericke v Sacks*⁹. The allegation in paragraph 5 of the special plea does not state when it is alleged that the plaintiffs' claims fell due.

Under the circumstances I make the following order:

1. The exceptions are upheld with costs.
2. Paragraphs 1 to 9 of the Defendant's plea dated 14 February 2022 are struck out.
3. The defendants are afforded 20 days from date of this judgment to file an amended plea or special plea in respect of the defence raised in paragraphs 5 to 9 of its plea dated 14 February 2022, if so advised.

H F JACOBS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail. The date and time for hand-down is deemed to be 14h00 on the 6th February 2024.

⁹ (supra) at 827H-828C

APPERANCES

Counsel for plaintiff/excipient: Adv E J J Nel

Attorneys for plaintiff/excipient: Quiry Spruyt Attorneys

Counsel for defendants/respondents: Adv M Makhubela
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