

LOM Business Solutions t/a LK Transcribers

IN THE SOUTH GAUTENG HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: 587/2007

DATE: 2009-08-31

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In the matter between

CITY OF JOHANNESBURG

Plaintiff

and

MARGARET JENNIFER PENGELLY

Defendant

J U D G M E N T

20WILLIS J:

This is an application for an amendment. This matter has had a troubled history. On the 18 November 2008 my brother Blieden, J upheld the defendant's exception and directed that the plaintiff's particulars of claim

be set aside as vague and embarrassing and gave the plaintiff 15 days within which to amend its particulars of claim. That did not occur. There then was an application, it would seem, for a dismissal of the action. The matter came before Geldenhuys, J who ordered the respondent, being the City of Johannesburg, to pay the costs of the dismissal application on an opposed scale.

The matter came before a Marais, J on the 11 August 2009 and was postponed *sine die* with costs reserved. The notice of intention to amend seeks to amend certain specific paragraphs in the original 10 particulars of claim. The counsel for the defendant has taken the point that it would seem from Blieden, J's order that wholly amended particulars of claim should be filed.

There seems merit in the point. Nevertheless, there are more substantive objections, which have been taken by counsel for the defendant. The plaintiff purports to rely on certain statutes, which have come into operation namely the Local Government: Municipal Property Rates Act No. 6 of 2004 as well as the Local Government Municipal Systems Act No. 32 of 2000.

On the other hand, the claims stretch for the period from 20 June 1997 up to and including December 2006. There is no breakdown as to when the specific amounts accrued although it must in fairness be noted that the plaintiff has, in the notice of intention to amend, given more particularity as to the breakdown in terms of refuse removal, sewage, rates assessments, sundries and VAT. Nevertheless, in my opinion, the objection is well founded. *Prima facie* at least some of these amounts

may well have prescribed if they are being claimed from 1997. There should be a breakdown in order that the defendant can address this. Counsel for the plaintiff said that there are certain statutory prohibitions on prescription. That may well be, but then in my respectful opinion the plaintiff must set out why the claims or the portions of the claims that are more than three years old have not prescribed and as set out the sections in the relevant statute upon, which it relies.

In other words it does seem to me that the defendant has objected on a reasonable basis that the amended particulars of claim remain in still 10 far too vague and embarrassing a form for the defendant to be able to plead properly thereto.

I can see no reason why the reserved costs of the postponement on the 11 August should not be part of the costs of today. The reason for this is that that matter came before court on 11 August 2009 relating to this very application. It also seems to me that, having validly objected to the amendment, or the notice of intention to amend, the defendant is entitled to the costs that relates thereto. Accordingly the following order is made:

1. The plaintiff's notice of intention to amend is set aside (in any other
20 words, the plaintiff may not file amended particulars in the form set out in that notice of intention to amend);
2. The plaintiff is to pay the costs of this particular application, which costs are to include the costs reserved on 11 August 2009.
3. The plaintiff is nevertheless given a further 10 days in which to file amended particulars of claim.