

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

- | | |
|-----|--|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: |

Date: **22nd July 2020** Signature: _____

A handwritten signature in black ink, appearing to be "M. M. M.", is written over the signature line.

CASE NO: 26968/2019

DATE: 22nd JULY 2021

In the matter between:

CRAGG, DEBBIE GRACE

Plaintiff

and

PATTERTON, ELEANOR KAREN

Defendant

Coram: Adams J

Heard: 20 July 2021 – The 'virtual hearing' of the application was conducted as a videoconference on the *Microsoft Teams* digital platform.

Delivered: 22 July 2021 – This judgment was handed down electronically by circulation to the parties' representatives by email, being uploaded to the *CaseLines* system of the GLD and by release to SAFLII. The date and time for hand-down is deemed to be 13:00 on 22 July 2020.

Summary: Practice and Procedure – application to compel better discover – rule 35(3) discussed – application to compel better discovery granted –

- (1) The plaintiff shall within ten days from the date of this order comply with the defendant's notice in terms of rule 35(3) dated the 27th of November 2020 by discovering and making available for inspection in accordance with rule 35(6) the documents referred to in paragraphs 1, 2 and 3 of the defendant's aforementioned rule 35(3) notice.
- (2) The plaintiff shall pay the defendant's costs of her application in terms of rule 35(7) to compel better discovery.

JUDGMENT

Adams J:

[1]. I shall refer to the parties as referred to in the main action.

[2]. Before me is an application by the defendant in terms of uniform rule of court 35(7) for an order compelling the plaintiff to comply with her (defendant's) rule 35(3) notice, in which the plaintiff was required to discover the following documentation: (1) Bank statements for the period 1 January 2016 until 1 November 2020; (2) Pension fund statements for the Gauteng Department of Education; and (3) A detailed list of all endowment policies, life policies and annuities reflecting the current values thereof.

[3]. On 1 December 2020, the defendant delivered her Rule 35(3) Notice, calling upon the plaintiff to disclose and make available for inspection further documents in her possession which documents the defendant believed to be relevant to matters in question in the action. On 26 March 2021, the plaintiff replied by serving her affidavit in terms of Rule 35(7), objecting to producing any and all of the documents listed and averring that these documents are not relevant to the issue between the parties, that being whether a universal partnership existed between them during the period when they lived together. The plaintiff conceded that these documents may be relevant to the distribution

of the assets of the parties in the event of it being found that a universal partnership indeed existed, but not before such a ruling is made by the court.

[4]. The plaintiff therefore refuses to make available to the defendant for inspection the documents listed in defendant's rule 35(3) notice, because, so the plaintiff alleges, the documents are not relevant to the main issue to be decided between the parties, although they may very well be relevant once the main issue has been decided.

[5]. Rule 35(3) provides as follows:

'(3) If any party believes that there are, in addition to documents or tape recordings disclosed as aforesaid, other documents (including copies thereof) or tape recordings which may be relevant to any matter in question in the possession of any party thereto, the former may give notice to the latter requiring him to make the same available for inspection in accordance with subrule (6), or to state under oath within ten days that such documents are not in his possession, in which event he shall state their whereabouts, if known to him.'

[6]. My reading of the plaintiff's reply to the defendant's rule 35(3) notice is that the plaintiff in essence objects to the production of the documents on the basis that they are irrelevant. However, on plaintiff's own version the documents are relevant to issues between the parties, albeit that those issues only arise between the parties once it has been established that a universal partnership did exist. That, in my view, is sufficient and more than adequate to bring these documents within the ambit of rule 35(3), as being documents relevant to any matter in question in this action. The point is that, even on plaintiff's version, the relevance of the documents is clear.

[7]. I am therefore of the view that the documents are relevant to the matters in the main action. Accordingly, the defendant's application to compel discovery and inspection of the documents listed in her rule 35(3) should succeed.

Costs

[8]. The general rule in matters of costs is that the successful party should be given her or his costs, and this rule should not be departed from except where

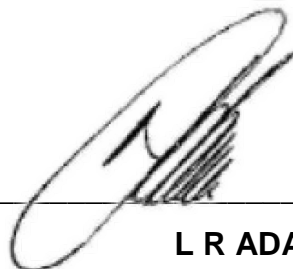
there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*¹.

[9]. In this matter, I can think of no reason why I should deviate from the general rule and I therefore intend ordering the plaintiff to pay the defendant's costs of this application.

Order

[10]. In the result, I make the following order:

- (1) The plaintiff shall within ten days from the date of this order comply with the defendant's notice in terms of rule 35(3) dated the 27th of November 2020 by discovering and making available for inspection in accordance with rule 35(6) the documents referred to in paragraphs 1, 2 and 3 of the defendant's aforementioned rule 35(3) notice.
- (2) The plaintiff shall pay the defendant's costs of her application in terms of rule 35(7) to compel better discovery.



L R ADAMS

Judge of the High Court

Gauteng Local Division, Johannesburg

¹ *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

HEARD ON:	20 th July 2021 – in a ‘virtual hearing’ during a videoconference on the <i>Microsoft Teams</i> digital platform
JUDGMENT DATE:	22 nd July 2021 – judgment handed down electronically
FOR THE PLAINTIFF / RESPONDENT:	Ms Magda Vermeulen
INSTRUCTED BY:	Magda Vermeulen Attorneys, Vereeniging
FOR THE DEFENDANT / APPLICANT:	Advocate W F Wannenburg
INSTRUCTED BY:	Esthé Muller Incorporated, Vereeniging