IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO: D13804/2023

In the matter between:

MOHAMMED ABDOOL SATAR ARBEE N.O.	**FIRST APPLICANT**
NAIEM ESSA N.O.	**SECOND APPLICANT**
MOHAMED ESSA N.O.	**THIRD APPLICANT**

and

BRYTE INSURANCE COMPANY LTD.	**RESPONDENT**

ORDER

Accordingly, I make the following order:

1. The application is dismissed.

2. The plaintiffs are liable for costs, including the costs for counsel, on scale C.

JUDGMENT

Kuzwayo AJ

Introduction

[1] This is an interlocutory application emanating from the action between the parties. The applicants, Mohammed Abdool Satar Satar Arbee N.O., Naiem Essa N.O. and Mohamed Essa N.O., who are the trustees of Aimessa Property Trust ("the Trust"), lodged a claim for compensation against the respondent, Bryte Insurance Company Ltd ("Bryte Insurance"), emanating from an insured event whereby the insured building was damaged due to fire. The trustees are the plaintiffs in the main action, and Bryte Insurance is the defendant. For the sake of convenience, I shall jointly refer to the applicants as "the plaintiffs" and the respondent as "the defendant".

[2] The plaintiffs lodged an application to compel Bryte Insurance, to furnish better and further particulars requested by the applicants for purposes of trial, as specified in paragraphs 2.1, 2.2, 2.3, 4.1 and 4.2 of their request. The application was opposed by Bryte Insurance based on the following grounds:

> (a) That the plaintiffs incorrectly invoked Uniform rule 30A to compel the delivery of further particulars. It is contended that this approach is procedurally flawed, as Uniform rule 21 contains a self-contained mechanism enabling a party to compel the furnishing of particulars strictly necessary to prepare for trial.
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> (b) That the issue of insurable interest is moot, in that Bryte Insurance has admitted that the trustees had an insurable interest in the subject property, which constitutes an essential element of an insurance contract. Consequently, the plaintiffs' request for further particulars concerning what Bryte Insurance meant by its admission that the trustees represented they had an insurable interest is said to be impermissible.'

(c) That Bryte Insurance has disclosed the full nature of its defence."

[3] The core.issues for determination are:

(a) Whether the applicants are entitled to bring an application to compel the furnishing of better and further particulars in terms of Uniform rule 30A, in light of the procedure set in terms of Uniform rule 21(4) to compel such further particulars; and

(b) Whether the plaintiffs are entitled to further particulars sought in terms of paragraphs 2.1, 2.2, 2.3, 4.1 and 4.2 of the particulars of claim.

Background

[4] The Trust is the registered owner of the immovable property described as the Remainder of Portion 44 (of 32) of Erf 5[...] Brickfield, Registration Division FT, Province of KwaZulu-Natal ("the property"), situated at 302 Felix Dlamini Road, Overport, Durban, which is a multi-storey commercial building ("the building"). On 1 April 2021, the Trust entered into a written insurance contract with Bryte Insurance, in terms of which Bryte Insurance agreed to indemnify the Trust for damage to the property, including its fixtures and fittings, resulting from specified perils, including fire. The building was insured for a sum of R14 575 000.

[5] On 10 May 2021, a fire ("the insured event") occurred at the building which resulted in the extensive damage. As a result, the building, its fixtures and fittings were effectively destroyed. Consequently, the building was condemned by Ethekwini Municipality ("the Municipality") as being structurally unsafe and unfit for use and human occupation.

[6] On 6 December 2023, the plaintiffs issued summons against Bryte Insurance, claiming an amount of R14 573 000, allegedly being the reasonable and necessary cost of restoring and/or reinstating the building to the state and condition in which it was prior to the insured event, together with the cost of replacement of the fixtures and fittings in the building. The defendant filed its plea on 20 March 2024.

Pleadings

[7] For the sake of brevity, it is prudent to set out the paragraphs of the particulars of claim and the defendant's plea which are the cause of this application. In paragraphs 7.1 and 7.2 of particulars of claim, the plaintiffs pleaded that:

> "7.1 The trust is and was at all material times the registered owner of the immovable property bearing the cadastral description Remainder of Portion 44 (of 32) of Erf 5[...] Brickfield, Registration Division FT, Province of KwaZulu-Natal and physically situated at 302 Felix Dlamini Road (formerly Brickfield Road), Overport, Durban (referred to hereinafter as "the property");
>
> 7.2 The property was at all material times hereto improved by way of erection thereon of a multi-storey commercial building ("the building").

[8] In response to the above averments, Bryte Insurance pleaded as follows:

> "1. AD PARAGRAPHS 7, 7.1 AND 7.2
>
> 4.1 The defendant admits that the Trust represented to it that it was the owner of, alternatively has an insurable interest in, "the property" as defined by the plaintiff. Save as aforesaid, the defendant has no knowledge of the allegations contained in these paragraphs and they are accordingly denied."

[9] In paragraph 14 of the particulars of claim, the plaintiffs pleaded that: "The reasonable and necessary cost of restoring and / or reinstating the building to its state and condition prior to the insured event, together with the reasonable and necessary cost of replacement of the fixtures and fittings therein / thereon, exceeds the sum of R14 573 000,00."

[10] In response to the above averment, Bryte Insurance pleaded as follows:

> "9.1 The defendant denies the allegations contained in this paragraph.

9.2 The defendant pleads that:

9.2.1 All structural repairs to the property have been effected.

9.2.2 The cost of effecting the remaining repairs in order to return the property to its condition prior to the fire, amount to R3 493 747,37.

9.2.3 The defendant tendered payment to the plaintiffs of the amount of R3 493 747,37. The tender remains in effect."

[11] The plaintiffs took issue with the above pleas and, on 3 May 2024, sent a request for further particulars in terms of Uniform rule 21, for purposes of preparation for trial. The plaintiffs requested the following further particulars from Bryte Insurance:

"2. AD PARAGRAPH 4.1

2.1 Was the alleged representation referred to in this paragraph made orally or in writing?

2.2 If in writing, the Defendant is required to furnish a copy thereof;

2.3 If the representation is alleged to have been made orally, then:

2.3.1 Who on behalf of the Trust is alleged to have made the representation?

2.3.2 Where was the representation made (the Defendant is required to identify the location by reference to a physical address?

2.3.3 When (by reference to a date) was such alleged representation made?"

"4. AD PARAGRAPH 9

4.1 The defendant is required to furnish:

4.1.1 full detailed particulars of the nature and extent of the "*structural repairs*" that are alleged to have been effected to the property and the costs incurred by the defendant in that regard.

4.1.2 full and detailed particulars of the "*remaining repairs*" that are allegedly required to return the property to its condition prior to the fire.

4.1.3 a detailed computation and breakdown of the sum of R3 493 747,37, being the alleged cost of the remaining repairs in order to return the property to its condition prior to the fire.

4.2 In relation to the structural repairs that are alleged to have been effected, defendant is required to identify with sufficient particularity:

4.2.1 the building contractors who carried out such repairs.

4.2.2 the project manager, quantity surveyor and structural engineer/s, if any, that were engaged by the defendant for purposes of the project."

[12] On or about 24 May 2024, Bryte Insurance replied to the plaintiffs' request and provided the further particulars that were requested. It will not serve any purpose to elaborate on this reply as it was later withdrawn by Bryte Insurance for reasons that will appear below, save to state that the plaintiffs were not satisfied with the response and formed a view that such particulars were inadequate and not in compliance with the defendant's obligation in terms of Uniform rule 21 as it failed to furnish such further particulars as were necessary to enable them to prepare for trial.

[13] Resultantly, on 4 June 2024, the plaintiffs served Bryte Insurance with a new notice in terms of Uniform rule 30A requesting the defendant to provide further particulars (which had been requested in terms of Uniform rule 21) within ten days, failing which an application would be made in court for an order compelling compliance or alternatively striking out the defence of Bryte Insurance.

[14] In response to the plaintiffs' rule 30A notice, Bryte Insurance withdrew its initial reply and submitted a new reply on 13 June 2024, which was within the specified time limit. In its new reply, Bryte Insurance addressed three paragraphs (paragraphs 2.1, 2.2 and 2.3) in respect of which the plaintiffs were seeking further particulars. It responded as follows:

> "AD PARAGRAPH 2.1
>
> The defendant had admitted that the trust made a representation to it. The allegation of the representation is an allegation made by the plaintiffs and as such is within the plaintiff's knowledge whether such representation was made orally and in writing. The answers to 2.2 and 2.3 are therefore within the Plaintiff's knowledge."

[15] Regarding paragraph 4 of the request for further particulars, Bryte Insurance stated as follows:

> "The plaintiff is required to prove that the property was damaged by fire and the extent of such damage in order to prove that it is entitled to cover under the policy. The defendant has in this regard admitted the fire and that some damage occurred but does not admit the extent of damage as alleged by the plaintiff. The defendant's reasons for this are a matter for evidence and are not necessary for the plaintiff to prepare for trial. That said, the defendant intends to appoint an expert and the issues raised in paragraphs 3 and 4 will be canvassed in the expert's report to be filed in due course in accordance with the rules of this honourable court. In so far as the plaintiffs are have requested information relating to the structural repairs effected by the defendant, this information is included in the defendant's discovery affidavit filed on 24 May 2024 and will also be dealt with in further detail in the defendant's expert's report to be filed in due course. The defendant's is not in a position to provide further particularity at this time."

[16] The plaintiffs again took issue with the above particulars and considered them as being "deficient and inadequate". On 1 July 2024, they served the defendant with

another notice in terms of Uniform rule 30A. On 8 July 2024, the defendant sent correspondence to the plaintiffs' attorneys in response to the said notice. Of significance are paragraphs 6 to 9 of the said correspondence, where the defendant stated:

> "6. We now turn to the aspect of the nature and extent of damage to the property. Our client has been open and honest to say that it will be obtaining the opinion of an expert so as to adequately describe, not only the fire damage to the property, but the pre-existing and/or non- fire related structural damage to the property. Your clients cannot abuse the court processes to obtain information that speaks to matters of evidence in order to satiate itself that it does or does not have a claim. This is particularly so given the at length correspondence that has been discovered regarding the damage and quantum, and as you say, the centredness of these issues to the case.
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> 7. Our client has, just like yours, the right to obtain and prepare for its case and in these circumstances, our client is seeking the views of an expert so as to properly make their case in light of the various technical reports and lab tests that were prepared in respect of this matter. Your client will not be prejudiced by having to wait for an expert opinion since the court process caters for such opinions and it is in the interest of fairness and justice to obtain same on behalf of our client.
>
> 8. Our client has also provided a breakdown of the costs that it intended to compensate your clients for (and has tendered) subsequent to the discussions around the nature and damage to the property. This breakdown stands and will also be considered by the expert."

[17] Subsequently, the plaintiffs lodged an application in terms of Uniform rule 30A, compelling the Bryte Insurance to provide better and further particulars. Bryte Insurance opposed the application and, in its opposition, raised a point in limine that it was impermissible for the application to be brought in terms of Uniform rule 30A, where Uniform rule 21(4) provides a mechanism for the enforcement of the particulars necessary for trial as contemplated by Uniform rule 21.

[18] For the plaintiffs, Mr *Stewart* submitted that the purpose of requesting further particulars is to prevent surprises at trial, ensuring that each party is sufficiently informed about the case the other party is going to present in order to enable his/her opponent to prepare his/her case. He contended that even if the particulars requested may involve disclosure of evidence, that does not disentitle the other party from obtaining such particulars as he/she is entitled to know what case he has to meet in court.

[19] He contended further that, after having requested further particulars and received an unsatisfactory reply from Bryte Insurance, the plaintiffs decided to issue the notice in terms of Uniform rule 30A as a "courtesy" to afford the defendant an opportunity to provide further and better particulars instead going straight to court. 'He explained that this approach was taken in line with the general requirement of the now- repealed Uniform Rule 30(5), which required a party seeking relief to first allow the defaulting party 10 days to comply or remedy the defect, with the warning that failure to comply would result in an application to compel compliance. Mr Stewart submitted that this procedural requirement remains unchanged under the current Uniform rule 30A and maintained that the plaintiffs are entitled to the particulars they requested, as they are essential for the plaintiffs' preparation for trial.'

[20] In his argument, Mr Stewart raised his dissatisfaction about the plea of Bryte Insurance whereby it admitted that the Trust had represented to Bryte Insurance that it was the owner of, or alternatively had an insurable interest in, "the property" as defined by the plaintiffs, but then denied the further allegations contained in paragraphs 7, 7.1, and 7.2. According to Mr *Stewart*, by using the words "the Trust represented", the defendant is effectively disputing the plaintiff's ownership of the property.

[21] Mr *Choate*, for Bryte Insurance, submitted that it was impermissible for the plaintiffs to utilise Uniform rule 30A in bringing the application compel further particulars. He argued that Uniform rule 21 has its own mechanism to resort to in order to compel the other party to provide better and further particulars, as provided

for by Uniform rule 21(4) and the application ought to have been brought in terms of this rule, and not Uniform rule 30A. Therefore, the plaintiffs adopted an incorrect rule in their application by utilising Uniform rule 30A to compel particulars.

[22] Mr *Choate* further submitted that the plaintiffs are not entitled to further particulars based on the following three reasons:

(a) That Bryte Insurance has admitted that the building sustained damages. The plaintiffs are, therefore, not entitled to demand particularity as to what the nature of the damages is.

(b) The plaintiffs have the onus and the evidentiary burden to prove the nature and extent of the damages they allegedly suffered.

(c) The nature and extent of the damages are matters for evidence and the plaintiffs cannot impermissibly constrain the case of Bryte Insurance at the pleading stage to avoid their apparent evidentiary burden.

[23] Mr *Choate* contended that, on the strength of the plea, the plaintiffs have sufficient information to prepare for trial. He argued that Bryte Insurance has made various admissions in its plea which includes its liability for the claim and only denied the nature and extent of damage to the structural repairs. Such admissions will enable the plaintiffs to prepare for trial. Additionally, he submitted that the detailed breakdown of the tendered amount of R3 493 747.37, as requested by the plaintiffs in paragraph 4.1.3 of their request for further particulars, was provided to the plaintiffs in terms of a letter dated 22 November 2023 that was attached to the reply from Bryte Insurance.

[24] He further submitted that the application was premature because Bryte Insurance had advised the plaintiffs of its intention to call an expert to deal with the fire damage to the property, and the pre-existing or non-fire related structural damage to the property. As the expert report was still pending, it was anticipated that it would provide the necessary details to address some particulars that were required

by the plaintiffs. He argued that the plaintiffs would not be prejudiced by waiting for the expert report.

Legal Principles

[25] Uniform rule 21(2) provides as follows:

> "After the close of pleadings any party may, not less than 20 days before trial, deliver a notice requesting only such further particulars as are strictly necessary to enable him or her to prepare for trial. Such request shall be complied with within 10 days after receipt thereof."

[26] Uniform rule 21(4) provides that:

> "If the party requested to furnish any particulars as aforesaid fails to deliver them timeously or sufficiently, the party requesting the same may apply to court for an order for their delivery or for the dismissal of the action or the striking out of the defence, whereupon the court may make such order as to it seems meet."

[27] *In Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH*,[1] the court referred to the case of Hardy v Hardy and stated as follows:

> *"The court in Hardy v Hardy explains:*
> *'The Court must arrive at its decision by the application of principles firmly established by a long line of authoritative decisions.*
> *It is contended on behalf of the defendant, on the authority of Annandale v Bates, 1956 (3) SA 549 (W), that:*
> *'The purpose of particulars at this stage' (i.e. after pleadings have been closed) 'is to enable a party properly to prepare for trial and to prevent him being taken by surprise by evidence of a nature he could not reasonably anticipate;'"*

[1] *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH* [2020] ZACCP 2; 2021 SIP 1 (COP) para 11.

[28] The court proceeded and stated as follows:

> *"This is perhaps just another way of expressing the phrase 'to enable a party properly to prepare for trial' used by WILLIAMSON, J., in Annandale's case, supra.*
> *From a perusal of the numerous authorities quoted from the Bar by both counsel for the plaintiff and counsel for the defendant, it appears that in each case where particulars were sought and granted, they were particulars of allegations made in the pleadings by the party from whom such particulars were sought .....*
> *To grant the particulars sought would be tantamount to providing the defendant with ammunition to further the case he has to prove. That this is not the purpose of particulars was laid down in Birrell v Fryer, 1926 E.D.L. 284."*[2]

Analysis

Point in limine

[29] The defendant raised a point in *limine* based on the fact that Uniform rule 21 deals specifically with further particulars and the plaintiff ought to have utilized Uniform rule 21(4) to compel better and further particulars.

[32] It may be true that the plaintiffs served the defendant with notices in terms of Uniform rule 30A as a "courtesy". However, it is not clear why the plaintiffs had opted to utilise a "courtesy" of issuing two formal notices in terms of Uniform rule 30A in compelling the defendant to provide further and better particulars when Uniform rule 21(4) specifically provides a remedy for failure to comply with Uniform rule 21(2), where a party can file an application in court without having to first issue a notice in terms of Uniform rule 30A.[3] As correctly pointed out by Mr *Choate*, in exercising its "courtesy", the plaintiffs would have penned a simple letter or email to Bryte

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[2] Ibid.

[3] *Absa Bank Ltd v The Farm Klippan 490 CC* 2000(2) SA 211 (W) at 215.

Insurance, instead of resorting a formal route of issuing notices in terms of Uniform rule 30A.

[33] While the plaintiffs aver that the notices in terms of Uniform rule 30A were merely "courtesy" reminders, it is puzzling that upon failure to secure the expected response from Bryte Insurance, the plaintiffs disregarded the provisions of Uniform rules 21(2) and 21(4), to compel the defendant to provide such. Mr *Stewart's* contention that what was provided by the repealed Uniform rule 30(5) has not changed under the new Uniform rule 30A is correct. However, that does not divest the provisions of Uniform rule 21(4). When considering the submissions made by Mr *Stewart*, his submissions seem to be that Uniform rules 30A and 21(4) work interchangeably to compel the other party to provide further particulars. I disagree with him in this regard. It has not been specified anywhere in the rules and legal commentary that parties have an option of utilising either two rules to compel provision of further particulars. I therefore uphold the special plea.

[34] For the sake of completeness, I proceed to consider whether the plaintiffs are entitled to the particulars they are seeking, which is the other bridge that the plaintiffs must cross. At this juncture, I turn to deal with the specific paragraphs in respect of which the plaintiffs are seeking further and better particulars.

Paragraphs 2.1, 2.2 and 2.3 of the request

[35] The application for further particulars should be considered in the context of pleadings. Regarding paragraphs 2.1, 2.2 and 2.3, the plaintiffs wanted to know about the representation that Bryte Insurance contended that it was made to it that the Trust was the owner of the building (the insured property); whether such representation was made orally or in writing; if in writing, Bryte Insurance was required to furnish a copy thereof and if oral, to provide the names of the representatives that represented each party as well as the date and place where such representation was made.

[36] It is common cause that, in its plea, Bryte Insurance admitted that the Trust had represented that it was the owner of the property or had an insurable interest in

the property. That is also confirmed in the plea that was made by Bryte Insurance in paragraph 5.2 of the plea, where it pleaded as follows:

> "5.2 Without derogating the aforesaid, the defendant pleads that:
>
> 5.2.1 On or about 1 April 2021 an insurance agreement was concluded between Aimessa Property Trust (the trust) and the defendant.
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> 5.2.2 The insurance was reduced to writing as contained in the survey form, policy schedule and policy wording attached hereto marked "PL1", "PL2", and "PL3", respectively.
>
> 5.2.3 The material terms of the agreement were the following:
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> 5.2.3.1 The property would be covered for damage to the whole or part of the described property in the schedule, owned by the Trust or for which the Trust is responsible, including alterations by the Trust as tenants to the building and structure, caused by fire and other perils as indicated, subject to, *inter alia*, the terms, conditions, and warranties of the policy;"

[37] From the above, and having admitted the insured event and its liability to compensate the plaintiffs, it is apparent that Bryte Insurance does not dispute ownership of the Trust. There is no reason that it would have admitted the insured event and went as far as pleading that it had effected structural repairs and tendering the sum of R3 493 747.37 for the remaining repairs.

[38] Therefore, the plaintiffs' request for Bryte Insurance to provide particulars of whether the agreement was in writing and who had represented each party, has no merit and cannot be categorised as being strictly necessary for the plaintiffs to prepare for trial. As a result, I do not agree with Mr *Stewart* that by using the word "represented", the defendant is disputing ownership of the property.

Paragraphs 4.1 and 4.2 of the request

[39] In paragraph 17 of the plea, Bryte Insurance pleaded that:

> "All structural repairs to the property have been effected; and
> The defendant tendered payment to the plaintiffs of the amount of R3 493 747.37 on 22 November 2023. The tender remains in effect."

[40] In paragraphs 4.1 and 4.2 of the request, the plaintiffs requested particulars of the nature and extent of the "structural repairs" that are alleged to have been effected to the property and the costs incurred by the defendant in that regard, as well as the name of the contractor and the remaining repairs that were alleged to be remaining.

[41] The point regarding the nature and extent of the structural repairs was addressed in the defendant's reply to the request for particulars as quoted in paragraph 15 above and in the correspondence that was sent by Bryte Insurance to the plaintiffs, as reflected in paragraph 16 above. Such structural repairs were also confirmed on the Certificate of Completion of the structural repairs, fire protection, fire installation system or energy usage in terms of s 14(2A) of the National Building Regulations and Building Standards Act 103 of 1977that was filed with Ethekwini Municipality in August 2003. The said certificate was certified and signed by the Project Engineer who certified that structural repairs due to fire damage and the reinstating of roof to the equivalent position it was prior to the fire had been completed. Such certificate was issued on 3 August 2023 and was attached to the defendant's response to further particulars and forms part of the bundle before court.

[42] No submissions were by the plaintiffs disputing the validity of the Certificate of Completion, and neither did they allege that such certificate was never placed before them at any stage before the hearing. In the circumstances, I am not convinced that the plaintiffs do not know the nature and details of the structural repairs that were allegedly effected on the building by Bryte Insurance. Therefore, the plaintiffs cannot require Bryte Insurance to provide them with particulars of structural repairs that were undertaken on the building and name of the contractor that effected the repairs. That information should be within their knowledge as they have always had full access to the building.

[43] Furthermore, the particulars regarding the cost of the repairs that were effected, has no merit at this stage. If Bryte Insurance indeed repaired the building and restored it to its pre-event state as it alleges, the amount that was spent by Bryte Insurance in effecting such repairs bears no relevance.

[44] The plaintiffs also requested the breakdown of how the tendered sum of R3 493 747.33 was attained by the defendant. As pointed out Mr *Choate*, such particulars are contained in the document that was annexed to Bryte Insurance's reply to the request for further particulars dated 22 November 2023. The calculations that are contained in the said documents provide detail of each item to the full amount tendered. Clearly such information is also within the plaintiffs' knowledge. During argument plaintiffs did not deny knowledge of the said document. Even if the plaintiffs did not receive the document on 22 November 2023, it was provided to them in reply to their request for particulars dated 24 May 2024. That was before this application was filed. Hence, the plaintiffs' request for the breakdown is tantamount to abuse of the court process.

[45] It is also crucial to note that Bryte Insurance had advised the plaintiffs that in order for it to prepare for its case, it was seeking the views of an expert so as to properly make their case in light of the various technical reports and laboratory tests that were prepared in respect of this matter. It advised the plaintiffs that they would not be prejudiced by having to wait for the expert opinion. Seemingly, this was unduly disregarded by the plaintiffs.

[46] I considered the cases I was referred to by both counsel. However, none of them dealt with the facts similar to those of the present case. In this case Bryte Insurance admitted the occurrence of the insured event (which is the fire in this case) and also admitted that the fire had caused damage to the property. The averment made by Bryte Insurance that it had effected repairs to the property and its tendering of the sum of R3 493 747.33 for the remaining damages, is a clear admission of liability to compensate the plaintiff. The dispute only revolves around extent of damage that befell to the property.

[47] In *Visser N.O. and Others v Van Niekerk and Others*,[4] the following was said:

> "...It should not be allowed to become a so-called fishing expedition whereby a party attempts to obtain all that he can from his opponent prior trial and so force his opponent to play all his or her cards beforehand. Trials are adversarial by nature and no party is entitled to every piece of evidentiary information which his opponent intends to utilise at trial."

[48] Where there has been non-compliance with a rule of court, in the first instance, it is necessary to look to the specific rule itself to see if it contains a remedy."[5]

[49] In deciding whether to compel a party to provide the required further particulars, the court must consider only such further particulars as are strictly necessary to prepare for trial.[6] A party is only entitled to call for such further particulars as are "strictly necessary" to enable him to prepare for trial.[7] The admissions plus the information provided by the defendant in its reply to the plaintiffs' request effectively highlights that the plaintiff have got necessary information to prepare themselves for trial. Over and above that, there are various other available pre-trial procedures such as providing the list of admissions requested during the pre-trial meeting or requesting additional discovery. The defendant still has a duty to file a notice in terms of Uniform rule 36(9) regarding the expert it intends calling. The plaintiffs' counsel shied away from dealing with this issue in his argument and acknowledge that there are other and/or more appropriate pre-trial procedures still available to the plaintiffs.

[50] In the circumstances, this court is not convinced that the particulars that are requested by the plaintiffs are strictly necessary for the plaintiffs to prepare for trial. In my view, the plaintiffs request for further and better particulars is ill-conceived. The defendant had provided sufficient particulars for the plaintiffs to prepare for trial. Even awaiting the expert report would not have answered any question raised by the

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[4] *Visser N.O and Others v Van Niekerk and Others* [2021] ZAFSHC 187 para 23.
[5] *N.Z.M v Road Accident Fund* [2024] ZAGPPHC 444 para 21.
[6] DE van Loggerenberg & E Bertelsmann *Erasmus: Superior Court Practice* 2023.
[7] *Villa Crop Protection (Pty) Ltd* above fn 1.

plaintiffs in paragraphs 4.1 and 4.2 of the requests. To request such conspicuous particulars is just an abuse of the court process. I, therefore, conclude that the plaintiffs have failed to make out their case and are not entitled to the relief sought in the notice of motion.

Order

[51] In the circumstances, I make the following order:

1. The application is dismissed.

2. The plaintiffs are liable for costs on scale C, including the costs for counsel.

KUZWAYO AJ

APPEARANCES

For the applicant. : Adv. M E Stewart
Instructed by : Norton Rose Fulbright South Africa Inc.

For the Respondent : Adv. L Choate
Instructed by : Legator McKenna Incorporated

Date of hearing : 11 March 2025
Date of Judgment : 16 April 2025