

THE HIGH COURT OF SWAZILAND

R.M.J. STATIONERY (PTY) LTD

Applicant

And

MATER DOLOROSA HIGH SCHOOL

Respondent

Civil Case No. 2265/2004

Coram: S.B. MAPHALALA-J

For the Applicant: MISS ZWANE

For the Respondent: MR. M. MABILA

JUDGEMENT
(9th February 2006)

[1] For present purposes the Defendant excepts to Plaintiffs claim on the ground that it does not disclose a cause of action as:

- i) In its Particulars of Claim, in particular paragraph 4 and 5 thereof, the Plaintiff alleges that the oral agreement was entered into on the 1st December 2003, and in terms of thereof delivery of the goods was to be made not later than the 31st January 2004, and in actual fact was indeed made on or before the said date.
- ii) In its (Plaintiff) reply to a request for further particulars, the Plaintiff has annexed documents indicating that the alleged delivery was effected after the 31st January 2004.
- iii) In the circumstances, no cause of action is disclosed when the Particulars of Claim are read together with the reply to the request for further particulars.

[2] It is contended in support of the exception by the Defendant that in terms of Rule 18 (4) of the Rules of Court, every pleading must contain a clear and concise statement of the material facts upon which the pleader relies for this claim. According to *Herbstein and Van Winsen*,

The Civil Practice of the Supreme Court of South Africa, 4th Edition at page 398 the Plaintiff must set out what the cause of action is and on what it is based. Further particulars furnished by Plaintiff must not vary materially from the claim as set out in the summons or as particularized. If, despite the furnishing of particulars there is an embarrassment, an exception should be taken. The particulars furnished by a party in relation to a pleading form part of the pleadings, and if an exception is taken thereafter, it is to the pleading as amplified by the particulars.

[3] The Plaintiff on the other hand contends that the exception is defective in form, in that it does not contain a prayer for relief. In this regard the court was referred to what is stated by the authors *Herbstein et al (supra)* at page 488 that "**whenever an exception is taken to any pleading the grounds upon which the exception is founded must be clearly and concisely stated and should conclude with a prayer for the relief sought**". See also *Pietermaritzburg City Council vs Local Road Transportation Board Pietermaritzburg 1960 (1) S.A. 256*, *Kistensamy vs Bramdaw and others 1962 (3) S.A. 797 (D)* and *Vernon and others NNO vs Bradley and others NNO 1965 (1) S.A. 422 (N)*.

[4] Plaintiff further contends that the particulars of the exception went beyond the allegations in the Particulars of Claim read with the further particulars furnished, in that it could not be said that the Plaintiff alleged that delivery was effected after the 31st January 2004.

[5] It appears to me that the Plaintiffs contention is the correct one in the circumstances of the case. It cannot be said on the papers before me that Plaintiff alleged that delivery was effected after 31st January 2004. It is my view that the exception is a complete nullity in that a cause of action has been disclosed. It is also worthy of note that the Defendant in its affidavit resisting summary judgment at paragraph 4 admitted the dates upon which delivery was effected. Furthermore, the exception is defective in form, in that it does not contain a prayer for relief, (see *Herbstein et al, supra*).

[6] In the result, for the afore-going reasons the Defendant's exception has no basis and is therefore dismissed with costs.

S.B. MAPHALALA

JUDGE