

“ANNEXURE 11”

Practice Direction 61

IN THE HIGH COURT OF NAMIBIA

Case Title: <i>Sharon St. Clair-Bolam N.O v First National Bank Ltd</i>	Case No.: HC-MD-CIV-ACT-OTH-2019/01957
	Division of Court: High Court (Main Division)
Heard/tried before: Honourable Mr Justice B Usiku J	Date of hearing: 20 February 2020
	Delivered on: 20 February 2020
Neutral citation: <i>St. Clair-Bolam N.O v First National Bank Ltd</i> (HC-MD-CIV-ACT-OTH-2019/01957) [2020] NAHCMD 58 (20 February 2020)	
The Order: Having heard Mr Vaatz on behalf of the Plaintiff and Ms Angula , on behalf of the Defendant and having read documents filed of record: IT IS ORDERED THAT: 1. The plaintiff's exception to the defendant's plea is dismissed. 2. The plaintiff is ordered to pay the defendant's costs occasioned by opposition to the exception. 3. The matter is postponed to 01 April 2020 at 15:15 for status hearing. 4. The parties are directed to file a joint status report on or before 26 March 2020.	
Reasons: Practice Direction 61(9)	

Introduction

[1] This is an exception taken by the plaintiff against the defendant's plea on the basis that the plea lacks averments which are necessary to sustain a defence.

[2] The defendant opposes the exception and contends that its plea discloses a defence.

[3] In the main matter, the plaintiff is an executrix in the estate of the late Dieter Manig. The defendant is a commercial banking institution. There is a credit amount in the banking account of the late Dieter Manig held at the defendant-bank. The plaintiff has demanded payment of the aforesaid credit amount. The defendant has declined making the requested payment, insisting on prior delivery of some documents before pay-out.

The legal principles

[4] The legal principles regarding exceptions were succinctly spelt out in *Van Straten and Another v Namibia Financial Institutions Supervisory Authority and Another 2016 NR 747 SC*, and I do not need to repeat them here.

[5] I shall consider the exception raised in this matter, having regard to the overriding objective of the Rules of Court, namely to facilitate the resolution of the real issues in dispute justly and speedily, efficiently and cost effectively as far as practicable, by ensuring that cases are dealt with expeditiously and fairly. I shall also have regard to what has been stated in *Alphedie Investments (Pty) Ltd v Greentops (Pty) Ltd 1975(1) SA 161 at 161H-162A*, namely:

'The court is inclined to look benevolently at the pleadings....so that substantial justice need not yield to technicalities.'

Plaintiff's exception

[6] In her exception, the plaintiff contends that the defendant admits the amount owed to the plaintiff, yet defendant does not tender payment of amount owed. In addition, the plaintiff refers to the defendant's plea, where the defendant states that it requires certain original documents to be delivered to the defendant. The plaintiff contends that the defendant does not state precisely what original documents it requires to be delivered to its offices.

[7] Furthermore, the plaintiff contends that a debtor who admits owing a certain amount cannot come up with demands for delivery of documents of whatever nature. The claim about delivery of documents, the plaintiff argues, is not a defence in not paying the amount owed. The plaintiff further argues that the demand for delivery of documents is without substance and not required by any law or regulation.

[8] The plaintiff, therefore, submits that the defendant's plea does not have any averments which make up a defence and should be dismissed with costs.

[9] In response, the defendant argues that according to banking practices and obligations, the defendant is obliged to maintain and verify information, in terms of section 21 of the Financial Intelligence Act (No13 of 2012) ("FIA"). According to the defendant, non-compliance with the provisions of FIA may lead to criminal penalties being imposed against the defendant. The defendant submits that it is willing to effect payment in respect of the amounts in question to the plaintiff, subject to the plaintiff delivering the required documents.

Analysis

[10] The issue for determination in this matter is whether the defendant's plea discloses no defence on every interpretation.

[11] Paragraphs 3.1, 3.2 and 3.3 of the defendant's appear to me to contain material facts to disclose a defence. It is apparent from the plea that the defendant has a credit amount due to the plaintiff in her capacity as executrix. The defendant requires delivery of certain documents from the plaintiff before it pays out such amount to the plaintiff. And the

defendant refuses to pay out the amount in absence of the delivery of the required documents. The basis for requiring such documents is alleged to be section 21 of the FIA.

[12] I am of the opinion that the allegation made in paragraph 3.3 to the effect that the defendant is obliged under the provisions of section 21 of FIA not to make payment to the plaintiff, until the plaintiff delivers certain documents to the defendant, discloses a valid defence. For the foregoing reasons, I am not persuaded that the plea lacks necessary averments to disclose a defence. The plaintiff's exception therefore stands to be dismissed with costs.

[13] In the result, I make the following order:

1. The plaintiff's exception to the defendant's plea is dismissed.
2. The plaintiff is ordered to pay the defendant's costs occasioned by opposition to the exception.
3. The matter is postponed to 01 April 2020 at 15:15 for status hearing.
4. The parties are directed to file a joint status report on or before 26 March 2020.

Judge's signature	Note to the parties:
	Not applicable
Counsel:	
Plaintiff	Defendant
Mr A Vaatz Instructed by Andreas Vaatz & Patners Windhoek	Ms K. Angula Instructed by AngulaCo. Inc. Windhoek