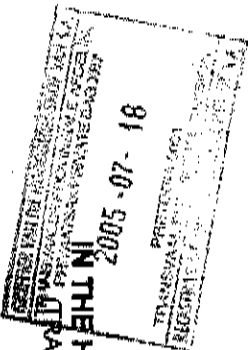
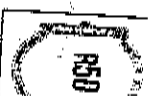
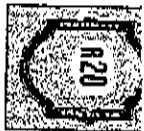


A

COMBINED
SUMMONS



CASE NO :
05 173/05

In the matter between :

WRAPPEX (PTY) LIMITED

PLAINTIFF

AND

ARTHUR BARNES

DEFENDANT

To the Sheriff or his deputy : PRETORIA SOUTH-WEST

INFORM

ARTHUR BARNES

A major male whose full and further particulars are to the Plaintiff unknown, residing at Porton 62, Riverside Estate 497 Jo Tswana, Langa's District, (hereinafter called the Defendant),

that

WRAPPEX (PTY) LIMITED

A private company, with limited liability, duly incorporated and registered in accordance with the company laws of the Republic of South Africa, under registration number 2091871622/07, with its principal place of business at 55 Kingfisher Drive, Fourways, Sandton, (hereinafter called the Plaintiff),

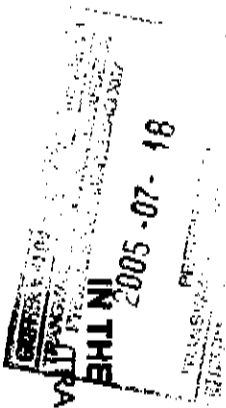
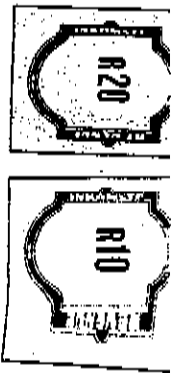
herby institutes action against the Defendant in which action the Plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

Inform the Defendant further that if it disputes the claim and wishes to defend the action, it shall -

- (i) within 10 (ten) days of the service upon it of this summons, file with the Registrar of Court at the High Court Building, Pritchard Street, Johannesburg, a Notice of its Intention to Defend and serve a copy thereof on the Plaintiff's attorney, which notice shall give an address (not being a post office or poste restante) as referred to in rule 19(3) for the service upon the Defendant of all notices and documents in the action.
- (ii) thereafter and within 20 (twenty) days after filing and serving Notice of Intention to Defend as aforesaid, file with the Registrar and serve upon the Plaintiff a Plea, Exception, Notice to Strike Out, with or without a counterclaim.

2

COMBINED SUMMONS



HIGH COURT OF SOUTH AFRICA TRANSVAAL PROVINCIAL DIVISION)
CASE N O

In the matter between :

WRAYPEX (PTY) LIMITED

PLAINTIFF

AND

**ARTHUR BARNES
DEFEN
DANT**

To the Sheriff or his deputy: **PRETORIA SOUTH-WEST**

INFORM

ARTHUR BARNES

A major male whose full and further particulars are to the Plaintiff unknown, residing at
Portion 62 Riverside Estate 497 JQ Tswane, Lanseeria District,
(hereinafter called the Defendant),

that

WRAYPEX (PTY) LIMITED

A private company, with limited liability, duly incorporated and registered in accordance with
the company laws of the Republic of South Africa, under registration number
2001/011622/07, with its principal place of business at 55 Kingfisher Drive, Fourways,
Sandton,
(hereinafter called the Plaintiff),

hereby institutes action against the Defendant in which action the Plaintiff claims the relief

3

and on the grounds set out in the particulars annexed hereto.

Inform the Defendant further that if it disputes the claim and wishes to defend the action, it shall -

within 10 (ten) days of the service upon it of this summons, file with the Registrar of Court at the High Court Building, Pritchard Street, Johannesburg, a Notice of its Intention to Defend and serve a copy thereof on the Plaintiff's attorney, which notice shall give an address (not being a post office or poste restante) as referred to in rule 19(3) for the service upon the Defendant of all notices and documents in the action.

(ii) thereafter and within 20 (twenty) days after filing and serving Notice of Intention to Defend as aforesaid, file with the Registrar and serve upon the Plaintiff a Plea.

Exception, Notice to Strike Out, with or without a counterclaim.

Inform the Defendant further that if it fails to file and serve notice as aforesaid, Judgement as claimed may be given against the Defendant, without further notice to the Defendant, or if having filed and served such notice, to plead, except, make application to strike out or counter-claim, Judgement may be given against the Defendant.

And immediately thereafter serve on the Defendant a copy of this summons and return the same to the Registrar with whatsoever you have done thereupon.

DATED at DUNKELD WEST on 15 JULY 2005.

REGISTRAR OF THE HIGH COURT



M. SATTOR
OR, BULK
F. PLAC

~~YBURGH & PA
SATTOR
OR, BULK
F. PLAC~~

CONNIE MYBURGH & PARTNERS INC.
PLAINTIFF'S ATTORNEYS
1ST FLOOR BUILDING B
PETER PLACE PARK
54 PETER PLACE BRYANSTON
2021
TEL: (011) 463-0055
FAX: (011) 463-0054
CIO EDELSTEIN BOSMAN INCORPORATED
222 LANGE STREET
NEW MUCKLENEUK
PRETORIA
TELEPHONE: (012) 452-8900
FAX: (012) 452-8902
REF.: MR N VAN DEN HEEVER

4

ANNEXURE

PARTICULARS OF PLAINTIFF'S CLAIM

1. The Plaintiff is WRAYPEX (PTY) LIMITED, a private company, with limited liability, duly incorporated and registered in accordance with the company laws of the Republic of South Africa, under registration number 2001/011622/07, with principal place of business at 55 Kingfisher Drive, Fourways, Sandton.
2. The Defendant is ARTHUR BARNES, a major male, whose full and further particulars are to the Plaintiff unknown, residing at Portion 62, Riverside Estate 497 JQ Tswane.
3. The Defendant, wrongfully, and with the intention to injure the Plaintiff, published the following false and malicious statements of and concerning the Plaintiff:
 - 3.1 that the Plaintiff did not comply with due process and associated legal requirements in relation to the proposed Blair Atholl township; and

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3.2 that the Plaintiff had not submitted a comprehensive environmental impact assessment to the responsible authorities for approval in accordance with existing legislation concerning applications for changes in land use; and

3.3 that the Plaintiff had not held a public meeting of interested parties, and that it was required by statute,

("the first statements").

4. The Defendant made and published the first statements to the Town Planner, Centurion, City of Tswane, on or about 14 September 2004.

5. The first statements are *per se* defamatory of the Plaintiff.

6. Alternatively to paragraph 5, the Defendant intended the following defamatory innuendo when he made the first statements:

- 6.1 that the Plaintiff acts or acted illegally; and/or
- 6.2 that the Plaintiff is dishonest; and/or
- 6.3 that the Plaintiff acts or acted deceitfully and/or fraudulently,

and, in addition, the persons to whom the first statements were made and published as aforesaid, understood the statements to bear such innuendo.

7. As a result of the publication of the first statements, the Plaintiff has:

7.1 been injured in its fair name, and reputation; and

7.2 suffered damages in the sum of R5 000 000,00.

8. The Defendant wrongfully and with the intention to injure the Plaintiff, published the following false and malicious statements of and concerning the Plaintiff:

8.1 that it is carrying out illegal activities on the proposed Blair Atholl development by digging foundations on the property of the proposed development;

Publicity documents.

8.2 that it had committed fraud by representing that it would pay for the relocation of the school currently situated on the property of the proposed Blair Atholl development, whilst, in truth, the Gary Player Foundation was doing so; and

↳ Big concern for many members.

8.3 that it had bribed government officials in order to obtain consent for the proposed development, and in particular that it had promised or given stands on the Blair Atholl development to those officials; and

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8.4 that it had not informed interested parties, in the correct manner and within the prescribed time period of the record of decision regarding the Blair Atholl development; and

8.5 that it had no rights to utilise water from the Crocodile River, and that it was utilising same illegally; and

8.6 that chemicals to be utilised on the proposed golf course on the development would pollute the Crocodile River.

("the second statements").

9. The Defendant made and published the second statements to:

9.1 Adrian Hampson; and/or

*→ not a member of committee
→ probably not even ordinary member.*

9.2 Norman Jeffrey; and/or

9.3 Terry O'Donoghue; and/or

9.4 Audrey O'Donoghue; and/or

9.5 Anthony Duigan; and/or X

9.6 Helen Duigan; and/or X

9.7 Wessel Wessels; and/or

9.8 Cynthia Barnes; and/or X

appeal.

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- 9.9 Janice Kahn; and/or
 - 9.10 Mark Kahn; and/or
 - 9.11 Corlette Wessels; and/or
 - 9.12 Janine Naschenweng; and/or
 - 9.13 Julie Jeffrey; and/or
 - 9.14 Lynne Clarke; and/or X
 - 9.15 Matthew Angus; and/or
 - 9.16 Lilian Buenza; and/or
 - 9.17 Rita van Wyk; and/or
 - 9.18 Tommy van Wyngaard; and/or
 - 9.19 Mervin Gaylard; and/or X
 - 9.20 Wayne Nel; and/or
 - 9.21 Lise Essberger; and/or X
 - 9.22 officials of the Gauteng Department of Agriculture, Conservation and Environment; and/or
 - 9.23 various other persons to the Plaintiff unknown.
10. The second statements are per se defamatory of the Plaintiff.

11. Alternatively to paragraph 10, the Defendant intended the following defamatory innuendo when he made the second statements:

11.1 that the Plaintiff acts or acted illegally; and/or

11.2 that the Plaintiff is dishonest; and/or

11.3 that the Plaintiff acts or acted deceitfully and/or dishonestly, and, in addition, the person and/or persons to whom the second statements were made and published as aforesaid, understood the statements to bear such an innuendo.

12. As a result of the publication of the second statements, the Plaintiff has:

12.1 been injured in its fair name, and reputation; and

12.2 suffered damages in the sum of R10 000 000,00.

13. The Defendant when making the first and/or the second statements knew that the Plaintiff:

13.1 was seeking the necessary statutory approvals for a residential property development; and/or

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13.2 had expended and would expend money to obtain approval for the proposed development; and/or

13.3 would suffer damages in the event of the necessary statutory approvals not being obtained; and/or

13.4 would suffer damages in the event of the necessary statutory approvals being delayed.

14. Alternatively to paragraphs 13.3 and 13.4, the Defendant should have foreseen:

14.1 that the Plaintiff would suffer damages in the event of the necessary statutory approvals not being obtained; and

14.2 that the Plaintiff would suffer damages in the event of the necessary statutory approvals being delayed.

15. The Defendant when making the first and/or second statements intended the delay and/or refusal of the necessary statutory approvals.

16. The necessary statutory approvals were in fact delayed as a result of the Defendant making the first and/or second statements.

17. The Plaintiff has, as a result of the delays, suffered damages in the amount of R20 000 000,00 being inter alia costs of finance and contractual penalties.

18. The Defendant when making the first and/or second statements and publishing it as aforesaid:

18.1 acted unlawfully and wrongfully;

18.2 violated the Plaintiffs fundamental rights to dignity and fair administrative action;

18.3 intended to violate the Plaintiffs fundamental rights to dignity and fair administrative action.

19. By virtue of the facts herein stated, the Plaintiff:

19.1 has suffered a violation of its fundamental rights to dignity and fair administrative action; and

19.2 has suffered damages in the amount of R10 000 000,00.

20. In the premises the Defendant is liable in damages to the Plaintiff in the sum of R10 000 000,00.

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21. Having regard to the egregious nature of the Defendant's violations of the Plaintiff's fundamental rights to dignity and fair administrative action as set out above, appropriate relief in terms of Section 38 of Act 108

-10

of 1996 include, in addition to the compensatory damages contemplated by paragraph 20 above, punitive constitutional damages of R5 000 000,00, alternatively punitive damages of R5 000 000,00 under the common law of delict developed to promote the spirit, purport and objects of the Bill of Rights.

WHEREFORE the Plaintiff prays for judgment against the Defendant for:

1. Payment of the amount of R35 000 000,00;
2. Payment of the amount of R5 000 000,00;
3. Interest on the aforesaid amount at 15,5% per annum from date of judgment to date of final payment;
4. Costs of suit on the attorney and client scale;
5. Further and/or alternative relief.

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DATED at SANDTON on this the
15th day of JULY 2005

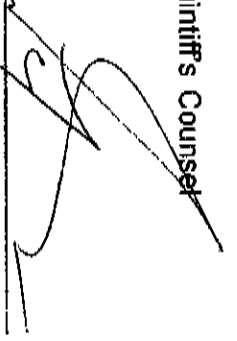


S VAN NIEUWENHUIZEN S

, Theron

E L THERON

Plaintiffs Counsel



CONNIE MYBURGH & PARTNERS INC Plaintiff's Attorneys

1st Floor, Building B Peter Place Park 54 Peter Place

BRYANSTON, 2021 TEL : (011) 463-0055 FAX : (011)

463-0054 REF: C MYBURGH

-12

C/O EDELSTEIN BOSMAN INCORPORATED
222 LANGE STREET NEW MUCKLENEUK PRETORIA
Telephone: (012) 452-8900 Fax: (012) 452-8902

Ref.: MR N VAN DEN HEEVER

14



**DEPARTMENT OF AGRICULTURE,
CONSERVATION AND
ENVIRONMENT**

Office of the MEC

Special Corner Building, 99 Reef A parking Street, Johannesburg
P.O. Box 5776, Johannesburg, 2008

Telephone: (011) 530-9100
Fax: (011) 530-9100
Email: mecc@agriculture.gov.za
Website: <http://www.aga.gov.za>

Reference: Q40020-04-001
Responsible: Wilm Oosters
Tel: 01136 150

Mr Oosters
PO Box 256

Lawsonia
1748

Fax: 011 701 3369

Dear Mr. Oosters

RE: REAIR ATR001, R0D (GADT/002/03-04/256)

Your correspondence in the above regard dated 22 June 2003 refers. Please find below a response to the issues raised in the above correspondence.

1. Alleged non-compliance by the applicant in Contravention of the Record of Decisions:

Please note that investigations into and consequent enforcement actions in relation to non-compliance with conditions of authorisations are the responsibility of the relevant discipline-responsible authority and not the appeal authority. I have accordingly referred the matter of non-compliance to the Head of Department of the Gaming Department of Agriculture, Conservation and Environment. However, Dr Coetzee indicated that these allegations have been investigated and that the developer was in good compliance with conditions related activities subsequently. After a verbal warning was issued to the developer in this regard, all contraventions related activities ceased and the Department is not aware of any further non-compliance.

2. Misrepresentation regarding the validity of the Record of Decisions:

Your understanding that the Record of Decision is "null and void" because the applicant, allegedly, does not accept it is a misrepresentation of the law. The Record of Decision

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issued by the Department and the conditions attached to it are legal and binding until such a time that it is:

- Set aside by the MRC as result of a successful appeal; or
- Set aside by a court of law through a successful review application, or
- Withdrawn by the Department in a legal and procedurally fair manner.

The applicant (appellee) has, as all interested and affected parties, the right to appeal the decision or any conditions attached to the authorisation. He also has the right to request that none of the conditions be amended. The latter request can only be granted after a legally and procedurally fair process.

In this regard you are informed that the B&D issued on the 1st of June is valid and that, as was communicated to you by Dr Blesh, in order for an appeal against this decision to be competent, it must be lodged at my office or at before the 1st of July 2005. Given that there was a delay on the part of the Department to respond to your letter, my office will be willing to grant you a period of one week to supplement your appeal should you wish to do so.

Yours sincerely,



HENDRIK MARKRAM

DEPUTY DIRECTOR, AGRICULTURE, CONSERVATION AND ENVIRONMENT

Date: 11.07.05

CC: Biological Management Services

Biological Management Services

Wingspan City Level Management

City of Transvaal Management Municipality

Wingspan

Attn: Dr. Noshah Blesh
Tel: (053) 484-7739
Fax: (053) 484-1341

Attn: Mr. Dinesh Pandey
Tel: (012) 346-1507
Fax: (012) 346-1289

Attn: Mrs. S. Moshale
Tel: (011) 551-4000
Fax: (011) 440-5729

Attn: Madhuban Choudhary
Tel: (012) 328-4711
Fax: (012) 328-8754
Attn: S. Mrey
Tel: (041) 465 3202
Fax: (041) 465 3606

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case Number: 25173/2005

In the matter between:

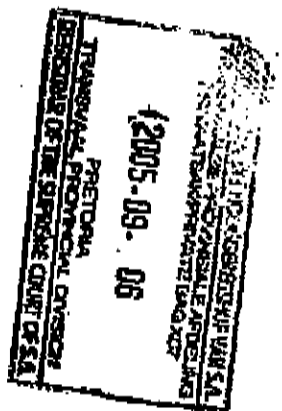
WRAPPEX LIMITED

Plaintiff

and

ARTHUR BARNES

Defendant



FILING NOTICE

DOCUMENT FILED : DEFENDANTS PLEA

FILED BY :
DENEYS REITZ INC.
ATTORNEYS FOR THE DEFENDANT
C/O CELLERS ATTORNEYS
C/O VENN & MULLER INC
114 BRONKHORST STREET
NEW MUCKLENEUK
PRETORIA
TEL: 082 578 4901
FAX: 088 684 5739
REF: M CELLERS/CD0001

TO: THE REGISTRAR
HIGH COURT
PRETORIA

and
TO:

CONNIE MYBURG ATTORNEYS
C/O EDELSTEIN & BOSMAN INC.
220 LANGE STREET
NEW MUCKLENEUK
PRETORIA
TEL: (012) 452 8900
FAX: (012) 452 8902
REF: N VID HEEVER

EDELSTEIN - BOSMAN INC
RECEIVED WITHOUT PREJUDICE
ONTWANG SONDER BEHOEDELING
DATE: 6/9/05
TIME: 11:12

Copy hereof received on the 6
day of SEPTEMBER 2005.

2/2002

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

CASE NO: 25173/05

In the matter between:

WRAYPEX LIMITED

Plaintiff

and

ARTHUR BARNES

Defendant

PLEA

The defendant pleads as follows to plaintiff's particulars of claim.

1. AD PARAGRAPHS 1 & 2

1.1. The defendant admits paragraph 1 of plaintiff's particulars of claim ('the claim').

1.2. Save to state that defendant's full names are Arthur Robert Barnes, and that he is a metallurgist, the allegations in paragraph 2 of the claim are admitted.

2. AD PARAGRAPHS 3 TO 5

2.1. The defendant denies each allegation in paragraphs 3 to 5 of the claim, including the subparagraphs.

2.2. In amplification of the foregoing, defendant pleads as follows:

2.2.1. On or about 14 September 2004, the committee of the Rhenosterspruit Nature Reserve ('RNR'), a conservancy registered with the Gauteng Department of Agriculture, Conservation and Environment ('GDACE'), and which has legal personality, objected to aspects of a development of the plaintiff;

2.2.2. the objection was contained in a letter addressed to the Town Planner, Centurion, City of Tshwane;

2.2.3. the letter of objection contained reference to certain concerns of the RNR in relation to the development of the plaintiff and requested that such concerns be given proper consideration;

2.2.4. the defendant, *qua* secretary of the RNR signed the letter for and on behalf of the RNR, and together with the chairman of the RNR;

2.2.5. all submissions contained in the letter of 14 September 2004:

2.2.5.1. were made for and on behalf of the RNR, being an entity that has legal personality;

2.2.5.2. were not made by the defendant;

2.2.5.3. were made to an organ of state responsible for protecting the environment; and were made in the reasonable and *bona fide* belief at the time of making the submissions that such submissions constituted disclosure of an environmental risk; and/or

2.2.5.4. were true and the publication thereof was in the public interest.

3. AD PARAGRAPH 6

3.1. The defendant denies each allegation in paragraph 6 of the claim.

3.2. In amplification of the foregoing, the defendant repeats the allegations in paragraph 2.2 (including subparagraphs) above.

4. AD PARAGRAPH 7

4.1. The defendant denies each allegation in paragraph 7 of the claim.

5. AD PARAGRAPHS 8 AND 9

5.1. The defendant denies each allegation in paragraphs 8 and 9 of the claim, including subparagraphs.

5.2. Alternatively, and insofar as this Honourable Court finds that defendant made any of the statements alleged to the recipients identified or all:

5.2.1. the statements were true; and

5.2.2. the publication of the statements was in the public interest;

5.3. Further alternatively, and insofar as this Honourable Court finds that the statements were made to officials of GDACC, such publication constituted statements made to an organ of state responsible for protecting the environment, which statements were made in the reasonable and *bona fide* belief at the time of making the statements that such statements constituted disclosure of an environmental risk

6. AD PARAGRAPH 10

6.1. The defendant denies each allegation in paragraph 10 of the claim.

7. AD PARAGRAPH 11

7.1. The defendant denies each allegation in paragraph 11 of the claim, including its subparagraphs.

7.2. In amplification of the foregoing, defendant repeats the allegations contained in paragraphs 5.2 and 5.3 above.

8. AD PARAGRAPH 12

9. The defendant denies each allegation in paragraph 12 of the claim, including its subparagraphs.

10. AD PARAGRAPH 13

10.1. Defendant denies making the first statements as alleged or at all;

10.2. Alternatively, defendant pleads that the first statements were made to an organ of state responsible for protecting the environment; and were made in the reasonable and *bona fide* belief at the time of making the submissions that such submissions constituted disclosure of an environmental risk;

10.3. Defendant admits that plaintiff is a developer that sought statutory approvals for a residential property development as alleged in paragraph 13.1 of the claim;

10.4. Defendant has no knowledge of the allegations in paragraphs 13.2, 13.3 and 13.4, accordingly denies same and puts plaintiff to the proof thereof

11. AD PARAGRAPH 14

11.1. Defendant denies each of the allegations in paragraph 14 and puts plaintiff to the proof thereof.

12. AD PARAGRAPH 15

12.1. Defendant denies each of the allegations in paragraph 15 and puts plaintiff to the proof thereof.

12.2. In amplification of the foregoing, defendant pleads that:

12.2.1. it did not make the first and/or second statements as alleged or at all;

12.2.2. insofar as this Honourable Court finds that defendant made the first and/or second statements as alleged or at all, such statements were made were made in the process of preparing submissions to an organ of state responsible for protecting the environment; or constituted submissions to such an organ of state, and were made in the reasonable and bona fide belief at the time of making the submissions that such submissions constituted disclosure of an environmental risk.

13. AD PARAGRAPH 16

13.1. Defendant denies the allegations in paragraph 16 and puts plaintiff to the proof thereof.

13.2. Insofar as this Honourable Court finds that statutory approvals were delayed as a result of the defendant making the first and/or second statements, defendant pleads that it was entitled to prepare and to make statements to an organ of state responsible for protecting the environment in the reasonable and

bona fide belief at the time of making the submissions that such submissions constituted disclosure of an environmental risk, and that any delays that ensued were the consequence not of his statements, but of the process envisaged by the applicable legislation.

14. AD PARAGRAPH 17

14.1. Defendant has no knowledge of the allegations in paragraph 17, accordingly denies same and puts plaintiff to the proof thereof;

15. AD PARAGRAPH 18

15.1. Defendant denies each of the allegations in paragraph 18, including its subparagraphs and puts plaintiff to the proof thereof.

16. AD PARAGRAPH 19

16.1. Defendant denies each of the allegations in paragraph 19, including its subparagraphs, and puts plaintiff to the proof thereof.

17. AD PARAGRAPH 20

17.1. Defendant denies each of the allegations in paragraph 20 and puts plaintiff to the proof thereof;

18. AD PARAGRAPH 21

18.1. Defendant denies each of the allegations in paragraph 21 and puts plaintiff to the proof thereof.

WHEREFORE defendant prays for:

(a) judgment in its favour;

(b) costs of suit.

DATED at PRETORIA on this the 5th of September 2005.

MO ENGELBRECHT
Counsel for defendant

M. Celliers
M. CELLIERS

Attorney for the Plaintiff
Under Section 4(2) of the right of Appearance Act 62 of 1995

M. Celliers
DENEYS REITZ INC.
ATTORNEYS FOR THE DEFENDANT
C/O CELLIERS ATTORNEYS
C/O YENN & MULLER INC
114 BRONKHORST STREET
NEW MUCKLENEUK
PRETORIA
TEL: 082 578 4901
FAX: 086 684 5739
REF: M CELLIERS/CD0001

MACINTOSH,
CROSS &
FARQUHARSON
PH 50
TEL: 323-1408

**IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

FILED
CASE NR: 251773/05
71-11-9002
PLAINTIFF

In the matter between:

WRAYPEX LIMITED

and

ARTHUR BARNES

DEFENDANT

FILING NOTICE

DOCUMENTS : DEFENDANT'S SPECIAL PLEA AND AMENDED PLEA

**FILED BY : DENEYS REITZ INC.
ATTORNEYS FOR PLAINTIFF
MACINTOSH CROSS & FARQUHARSON
210 NEDBANK BUILDING
C/O PRETORIUS STREET & BANK LANE
PRETORIA
TEL.: (012) 323-1408
FAX.: (012) 328-6390
REF.: C ERASMUS/8308/06**

**TO : THE REGISTRAR OF THE HIGH COURT
PRETORIA**

**AND TO : CONNIE MYBURGH ATTORNEYS
ATTORNEYS FOR DEFENDANT
C/O EDELSTEIN & BOSMAN INC.
220 LANGE STREET
NEW MUCKLENEUK
PRETORIA
TEL.: (012) 321-2433
FAX.: (012) 323-8358
REF.: N VID HEEVER**

**EDELSTEIN — BOSMAN INC
RECEIVED WITHOUT PREJUDICE
ONTWANG SONDERS BEWESLING
DATE: 2006-11-16
TIME: 3:30 Saup**

Amended page

1

**IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

Case No. 25173/05

In the matter between -

WRAYPEX LIMITED

Plaintiff

and

ARTHUR BARNES

Defendant

DEFENDANT'S SPECIAL PLEA

A. Section 16 of the Constitution of the Republic of South Africa, Act 108 of 1996 (the Constitution of the Republic of South Africa) guarantees the defendant's rights to freedom of expression, including the statements complained of by the plaintiff in its particulars of claim.

B. This action is brought by the plaintiff to intimidate and/or silence the defendant during the currency of the action, and not to vindicate its reputation.

C. This is evidenced by -

- (1) The inflated damages amounts purportedly sought by the plaintiff and, in respect of which, the plaintiff can have no bona fide belief that they could ever be granted;

1

Amended page

2

(ii) The actions brought against other persons who raised objections to the plaintiff's conduct in pursuing a residential property development under case numbers 30729/05, 32648/05, 32649/05 and 30730/05;

(iii) The institution of the action despite the statutory exclusion of liability and the obviously privileged nature of the statements complained of.

WHEREFORE, the defendant prays that the plaintiff's claim be dismissed with costs on the attorney and client scale."

DEFENDANT'S AMENDED PLEA

The Defendant pleads as follows to the Plaintiff's Particulars of Claim.

1. AD PARAGRAPHS 1 & 2

1.1 The Defendant admits paragraph 1 of the Plaintiff's Particulars of Claim (the claim').

1.2 Save to state that the Defendant's full names are Arthur Robert Barnes, and that he is a metallurgist, the allegations in paragraph 2 of the claim are admitted.

2. AD PARAGRAPHS 3 TO 5

2.1 The Defendant denies each allegation in paragraphs 3 to 5 of the claim,

Amended page

3

including the subparagraphs.

2.2 In amplification of the foregoing, the Defendant pleads as follows:

2.2.1 On or about 14 September 2004, the committee of the Rhenosferspruit Nature Reserve ('RNR'), a conservancy registered with the Gauteng Department of Agriculture, Conservation and Environment ('GDACE'), and which has legal personality, objected to aspects of a development of the Plaintiff;

2.2.2 the objection was contained in a letter addressed to the Town Planner, Centurion, City of Tshwane;

2.2.3 the letter of objection contained reference to certain concerns of the RNR in relation to the development of the Plaintiff and requested that such concerns be given proper consideration;

2.2.4 the Defendant, *qua* secretary of the RNR signed the letter for and on behalf of the RNR;

2.2.5 all submissions contained in the letter of 14 September 2004:

2.2.5.1 were made for and on behalf of the RNR, being an entity that has legal personality;

2.2.5.2 were not made by the Defendant;

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Amended page

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2.2.5.3

were made to an organ of state responsible for protecting the environment; and were made in the reasonable and bona fide belief at the time of making the submissions that such submissions constituted disclosure of an environmental risk, and/or

2.2.5.4

were true and the publication thereof was in the public interest

Alternatively,

Fair comment

2.2.6

The comments made in the statements complained of,

- were made in good faith;
- were comments on matters of public interest or concern;
- were based on facts that were generally known or disclosed, alternatively true or substantially true, and
- were, in the circumstances, fair.

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Alternatively,

Privilege

2.2.7

The statements complained of were published on a privileged occasion in that:

- the statements complained of were published in the discharge of a duty or exercise of a right;
- the statements complained of were published to the Town Planner, Centurion, City of Tshwane ("town planner"), and the town planner had a duty or right to receive the statements.

Further alternatively

Reasonable publication

2.2.8

It was reasonable to publish the statements complained of in that

- the statements complained of were published in the bona fide and reasonable belief that they were true;
- they were not published recklessly;
- reasonable steps had been taken to ensure that the factual

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Amended page

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allegations therein were true;

- in the circumstances, the Defendant was not negligent
- the information contained therein was such that it was in the public interest that it be published to the publishee.

Further alternatively

Statutory protection

2.2.9

The Defendant is excused liability in terms of section 31(4) of the National Environmental Management Act, 107 of 1998 in that

- The Defendant, in good faith, reasonably believed that he was disclosing evidence of an environmental risk;
- the disclosure alleged by the Plaintiff is disclosure to an organ of state in that the town planner is administration in the local sphere of government alternatively is a functionary exercising public power or performing a public function in terms of section 22 of the Environment Conservation Act, 73 of 1989 and section 16 of the National Environmental Management Act, 107 of 1998.

Alternatively

Intention

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2.2.10 The Defendant lacked the requisite intention to defame the Plaintiff in that

- He bona fide believed the statements published to the town planner, Centurion, City of Tshwane were true; and/or
- He was not negligent in holding such belief; and/or
- He bona fide believed that his communication to the town planner, Centurion, City of Tshwane, was protected in that it was privileged and/or he was excused liability in terms of the National Environmental Management Act, 107 of 1998 for the reasons set out above, and/or was not negligent in holding such belief.

3. AD PARAGRAPH 6

3.1 The Defendant denies each allegation in paragraph 6 of the claim.

3.2 In amplification of the foregoing, the Defendant repeats the allegations in paragraph 2.2 (including subparagraphs) above.

4. AD PARAGRAPH 7

4.1 The Defendant denies each allegation in paragraph 7 of the claim.

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6. AD PARAGRAPHS 8 AND 9

5.1 The Defendant denies each allegation in paragraphs 8 and 9 of the claim, including subparagraphs.

5.2 Alternatively, and insofar as this Honourable Court finds that the Defendant made any of the statements alleged to the recipients identified or at all:

5.2.1 the statements were true; and

5.2.2 the publication of the statements was in the public interest;

Alternatively

Fair comment

5.4 The comments made in the statements complained of,

- were comments made in good faith;
- were comments on matters of the public interest or concern;
- were based on facts that were generally known or disclosed, alternatively true or substantially true, and
- were, in the circumstances, fair.

Alternatively

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Privilege

5.5 The statements complained of were published on a privileged occasion in that

- The statements complained of were published in the discharge of a duty or exercise of a right;
- the statements complained of were published to the Town Planner, Centurion, City of Tshwane ("town planner"), and the town planner had a duty or right to receive the statements.

Further alternatively

Reasonable publication

5.6 It was reasonable to publish the statements complained of in that:

- The statements complained of were published in the bona fide and reasonable belief that they were true;
- They were not published recklessly;
- Reasonable steps had been taken to ensure that the factual allegation contained therein were true;
- In the circumstances, the defendant was not negligent;
- The information contained therein was such that it was in the public interest

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Amended page

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that it be published to the publisher.

Further alternatively

Statutory protection

5.7 The Defendant is excused liability in terms of section 31(4) of the National Environmental Management Act, 107 of 1998 in that:

- The Defendant, in good faith, reasonably believed that he was disclosing evidence of an environmental risk;
- the disclosure alleged by the Plaintiff is disclosure to an organ of state in that the town planner is administration in the local sphere of government, alternatively is a functionalary exercising public power or performing a public function in terms of section 22 of the Environment Conservation Act, 73 of 1989 and section 16 of the National Environmental Management Act, 107 of 1998.

Alternatively

Intention

- 5.8 The Defendant lacked the requisite intention to defame the Plaintiff in that
- He bona fide believed the statements published to the town planner, Centurion, City of Tshwane were true; and/or

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- He was not negligent in holding such belief; and/or
- He bona fide believed that his communication to the town planner, Centurion, City of Tshwane, was protected in that it was privileged and/or he was excused liability in terms of the National Environmental Management Act, 107 of 1998 for the reasons set out above, and/or was not negligent in holding such belief.

6. AD PARAGRAPH 10

6.1 The Defendant denies each allegation in paragraph 10 of the claim.

7. AD PARAGRAPH 11

7.1 The Defendant denies each allegation in paragraph 11 of the claim, including its subparagraphs.

7.2 In amplification of the foregoing, the Defendant repeats the allegations contained in paragraph 5.

8. AD PARAGRAPH 12

9. The Defendant denies each allegation in paragraph 12 of the claim, including its subparagraphs.

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10. AD PARAGRAPH 13

10.1 Defendant denies making the first statements as alleged or at all;

10.2 Alternatively, defendant pleads that the first statements were made to an organ of state responsible for protecting the environment; and were made in the reasonable and bona fide belief at the time of making the submissions that such submissions constituted disclosure of an environmental risk;

10.3 Defendant admits that Plaintiff is a developer that sought statutory approvals for a residential property development as alleged in paragraph 13.1 of the claim;

10.4 Defendant has no knowledge of the allegations in paragraphs 13.2, 13.3 and 13.4, accordingly denies same and puts Plaintiff to the proof thereof.

10.5 Paragraph 2 above is repeated, *mutatis mutandis*.

11. AD PARAGRAPH 14

11.1 Defendant denies each of the allegations in paragraph 14 and puts Plaintiff to the proof thereof.

11.2 Paragraph 2 above is repeated, *mutatis mutandis*.

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12. AD PARAGRAPH 15

12.1 Defendant denies each of the allegations in paragraph 15 and puts Plaintiff to the proof thereof.

12.2 In amplification of the foregoing, Defendant pleads that:

12.2.1 It did not make the first/second statements as alleged or at all;

12.2.2 Insofar as this Honourable Court finds that the defendant makes the first and/or second statements as alleged or at all, such statements were made in the process of preparing submissions to an organ of state responsible for protecting the environment; or constituted submissions to such an organ of state, and were made in the reasonable and bona fide belief at the time of making the submissions that such submissions constituted disclosure of an environmental risk.

13. AD PARAGRAPH 16

13.1 Defendant denies the allegations in paragraph 16 and puts plaintiff to the proof thereof.

13.2 Insofar as this Honourable Court finds that statutory approvals were delayed as a result of the defendant making the first and/or second statements, defendant pleads that it was entitled to prepare and to make statements to an organ of state responsible for protecting the

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environment in the reasonable and bona fide belief at the time of making the submissions that such submissions constituted disclosure of an environmental risk, and that any delays that ensued were the consequence not of his statements, but of the process envisaged by the applicable legislation.

14. AD PARAGRAPH 17

14.1 Defendant has no knowledge of the allegations in paragraph 17, accordingly denies same and puts plaintiff to the proof thereof.

15. AD PARAGRAPH 18

15.1 Defendant denies each allegation in paragraph 18, including subparagraphs and puts Plaintiff to the proof thereof

15.2 Paragraph 2 above is repeated, *mutatis mutandis*.

16. AD PARAGRAPH 19

) 16.1 Defendant denies each of the allegations in paragraph 19, including its subparagraphs, and puts plaintiff to the proof thereof.

17. AD PARAGRAPH 20

17.1 Defendant denies each of the allegations in paragraph 20, including its subparagraphs, and puts plaintiff to the proof thereof.

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18. AD PARAGRAPH 21

18.1 Defendant denies each of the allegations in paragraph 21, including its subparagraphs, and puts plaintiff to the proof thereof.

WHEREFORE Defendant prays for:

- (a) Judgment in its favour;
- (b) Costs of on the scale of attorney and client.

DATED AT PRETORIA on this 13th day of November 2006.

J CAMPBELL SC

Counsel for Defendant

MJ ENGELBRECHT

Counsel for Defendant

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R SCOTT

Attorney for the Defendant

Under Section 4(2) of the Right of Appearance Act 62 of 1995



DENEYS REITZ INC.

ATTORNEYS FOR THE DEFENDANT

C/O MACINTOSH CROSS & FARQUHARSON

2ND Floor People's Bank

246 Paul Kruger Street

PRETORIA

TEL: 012 323 1406

REF: Mr Charl Erasmus

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R. 323-1405

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

REGISTERED VIA THE JUDGES' OFFICE OF THE
TRANSVAAL PROVINCIAL DIVISION
REGISTERED VIA THE JUDGES' OFFICE OF THE
TRANSVAAL PROVINCIAL DIVISION
PROVINCIAL DIVISION
TRANSVAAL PROVINCIAL DIVISION OF S.A.
REGISTERED NO. 25173/05

Basel 43
"A"

In the matter between -

WRAPPX LIMITED

Plaintiff

and

ARTHUR BARNES

Defendant

**DEFENDANT'S REQUEST FOR FURTHER PARTICULARS
FOR TRIAL**

PLEASE TAKE NOTICE that the defendant requests the following further particulars of the plaintiff, being strictly necessary to enable him to prepare for trial -

AD PARAGRAPH 3 OF THE PARTICULARS OF CLAIM

1. As at 14 September 2004;

- (a) Had the plaintiff commenced construction work on the proposed Blair Athol township; alternatively had the plaintiff commenced any work on the proposed Blair Athol township?
- (b) If so, had the plaintiff obtained the approval from the Gauteng Department of Agriculture, Conservation and Environment (GDACE) to commence the work?
- (c) Had there been any public participation process in respect of the proposed development?
- (d) If so, what was the exact nature of the public participation?
- (e) Did the proposed development entail an application for change of land use?
- (f) Had an environmental impact assessment report in respect of the proposed development been submitted to the responsible authorities?
- (g) If so, when?

(h) Had the public meeting of Interested parties been held?

(i) If so, when?

AD PARAGRAPHS 8 AND 9 OF THE PARTICULARS OF CLAIM

2

2.1. In what manner is it alleged the statements were made to each of the identified persons and/or entities?

2.2. Precisely when is it alleged that the alleged statements were made to each of the identified persons and/or entities?

2.3. On precisely what date did the plaintiff commence to dig foundations on the property of the proposed development?

2.4. If so, was the plaintiff authorised to dig foundations as at the date of the commencement of digging operations?

2.5. Which entity paid, or is to pay, for the relocation of the school situated on the property of the proposed development?

2.6. Is the plaintiff utilising or has the plaintiff at any time utilised water from the Crocodile River?

2.7. If the plaintiff has utilised or is utilising water from the Crocodile River, was it or is it authorised to do so? The plaintiff is requested to provide particulars of the authorisation.

AD PARAGRAPH 13 OF THE PARTICULARS OF CLAIM

3.

3.1. Precisely what "statutory approvals" is the plaintiff alleged to have been "seeking"? Copies of all applications and documents submitted to the relevant authorities in regard to such "statutory approvals" are required.

3.2. What is the amount the plaintiff expended in seeking statutory approvals for the proposed development? Full and detailed particulars are requested.

3.3. Were the approvals sought and referred to in paragraph 13.3 obtained? If any approvals were obtained, which approvals were obtained?

AD PARAGRAPHS 14 OF THE PARTICULARS OF CLAIM

- 4.
- 4.1. On what basis is it alleged that the defendant should have foreseen that the plaintiff would suffer damages if statutory approvals were not obtained or were delayed?
- 4.2. Why would the plaintiff have suffered damages in either of these two instances?

AD PARAGRAPHS 15 TO 17 OF THE PARTICULARS OF CLAIM

- 5.
- 5.1. Which statutory approvals is it alleged were necessary for the plaintiff to do the development in question?
- 5.2. Which statutory approvals did the plaintiff seek?
- 5.3. In each instance, when was the application for statutory approval sought?
- 5.4. The plaintiff is requested to provide the documentation associated with each of the applications for statutory approval, indicating dates of receipt of these applications.

5.5. Which of these statutory approvals have been granted?

5.6. On what dates were the relevant statutory approvals granted?

5.7. Plaintiff is requested to provide documentation indicating the dates of the grant of the statutory approvals.

5.8. Which statutory approvals is it alleged the defendant intended to be delayed?

5.9. Which statutory approvals were, in fact, delayed?

5.10. The plaintiff is requested to provide full particulars of the damages alleged to have been suffered.

5.11. Is it the plaintiff's position that all delays were caused by the actions of the defendant only?

5.12. Specifically, the plaintiff is requested to provide full particulars of:

(a) The number of actual delays;

(b) The total period of delays (in days);

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(c) In which instances and in what manner these delays were caused by the statements of the first and second statements;

(d) In what manner the delays alleged caused the damages alleged;

(e) The actual contractual penalties paid by the plaintiff that resulted from delays ascribed to delays in obtaining statutory approval not ascribable to the actions of the plaintiff itself; and

(f) The actual cost of finance resulting from delays ascribed to delays in obtaining statutory approval not ascribable to the actions of the plaintiff itself.

AD PARAGRAPH 18.1 OF THE PARTICULARS OF CLAIM

6.

6.1. In what manner is it alleged that the defendant acted unlawfully through making the second statements?

6.2. In what manner is it alleged that the defendant acted wrongfully through making the second statements?

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AD PARAGRAPHS 18.2, 18.3 AND 19.1 OF THE PARTICULARS

OF CLAIM

7.

7.1. In what manner is it alleged that the plaintiff's fundamental right to dignity was violated through the second statements?

7.2. In what manner is it alleged that the plaintiff's right to fair administrative action was compromised? Specific incidences of the infringement of the right are required.

7.3. In what manner is it alleged that the statements resulted in the violation of the plaintiff's alleged right to dignity?

7.4. In what manner is it alleged that the second statements resulted in the violation of the plaintiff's right to fair administrative action?

AD PARAGRAPH 19.2 OF THE PARTICULARS OF CLAIM

8. The plaintiff is requested to provide full particulars of the damages alleged to have been suffered.

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AD PARAGRAPH 21 OF THE PARTICULARS OF CLAIM

9.

9.1. The plaintiff is requested to prepare full particulars of the allegations of "egregiousness" of the alleged violations of fundamental rights.

9.2.

The plaintiff is requested to provide full particulars of the circumstances peculiar to this matter that give rise to the alleged entitlement to punitive compensatory damages.

9.3.

The plaintiff is requested to provide full particulars of the circumstances peculiar to this matter that give rise to the alleged entitlement to punitive damages under the common law.

9.4.

The plaintiff is requested to provide full particulars of the damages alleged to have been suffered.

PLEASE TAKE NOTICE FURTHER that the plaintiff is required to comply with this request for further particulars within ten (10) days of receipt hereof.

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PLEASE TAKE NOTICE FURTHER that if the plaintiff fails to deliver the further particulars sought, either timeously or sufficiently, the defendant may apply to this Honourable Court for a dismissal of its claim, or for an order for the delivery of the further particulars sought.

DATED and SIGNED at JOHANNESBURG on this 23rd day of MARCH 2007

R SCOTT

Attorney for defendant
Under section 4(2) of the Right of
Appearance Act 62 of 1995

DENEY'S REITZ INC

Attorneys for defendant
c/o MACINTOSH CROSS &
FAROUHARSON
2nd Floor, People's Bank
246 Paul Kruger Street
Pretoria
Tel: (012) 323-1405
Ref: Mr Charl Erasmus

TO:
The Registrar of the above
Honourable Court
PRETORIA

AND TO:
EDELSTEIN-BOSSMAN INC.
Plaintiff's Attorneys
220/2 Lange Street
New Muckleneuk
PRETORIA
Tel: (012) 452 8900 Fax: (012) 452 8901
Ref: MR N Van Der Heever/RF/BS001533

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EDLSTEIN - BOSMAN, INC
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DATE: 02/21/07
TIME: 3:40

Received a copy herof on this the
22 day of MARCH 2007
Shaw
for: Plaintiff's Attorneys