

EDELSTEIN-BOZMAN

220

452-8900

**COMBINED SUMMONS**

32648105

CASE NO:

GRIFPER VAN DIE HOOGGEREGSHOF VAN S.A.  
 TRANEVAALSE PROVINSIALE APPËLINGS  
 PRIVAATRE KANTOOR  
 ALDEWENE KANTOOR

2005 -09- 21

IN THE HIGH COURT OF SOUTH AFRICA  
 GENERAL OFFICE  
 PRETORIA 0001  
 PROVICIAL DIVISION  
 (THE ~~PROVINCIAL~~ DIVISION)  
 REGISTRAR OF THE PROVICIAL DIVISION)

In the matter between:

WRAYPEX (PTY) LTD

PLAINTIFF

and

HELEN DUGAN

DEFENDANT

TO THE SHERIFF OR HIS DEPUTY:

**INFORM**

HELEN DUGAN, a major female whose full and further particulars are to the Plaintiff unknown, residing at Pin 43 of the farm Roodekrans, Tanseria

(hereinafter called the Defendant) that

Wraypax (Pty) Ltd, 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

(hereby called the Plaintiff), hereby 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 she disputes the claim and wishes to defend the action, she shall

(i) Within 10 days of the service upon her of this Summons, file with the Registrar of this Court at the High Court Building, cor Paul Kruger and Vermuelen Streets, Pretoria, notice of her 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.

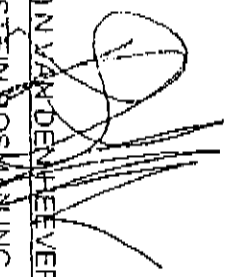
(ii) Thereafter and within twenty days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff a Plea, Notice to strike out, with our without a counterclaim.

**INFORM** the Defendant further that if she fails to file and serve notice as aforesaid, judgement as claimed may be given against her without further notice to herself, or if having filed and served such notice, fails to plead, except, make application to strike out or counterclaim, judgement may be given against her.

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 PRETORIA on this 20<sup>th</sup> day of September 2005.

M. E. Malpas  
REGISTRAR OF THE HIGH COURT

  
(SGD) N. VAN DEN HEEVER  
EDELSTEIN BOSMAN INC  
ATTORNEYS FOR PLAINTIFF  
222 LANGE STREET  
NEW BUCKLENEUK  
MR N VAN DEN HEEVER/LD/BM001119

ANNEXURE

PARTICULARS OF PLAINTIFFS 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 HELEN DUGAN, a major female whose full and further particulars are to the Plaintiff unknown, residing at Ptn 43 of the farm Roodekrans, Lanseria.
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

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 statements").

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

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

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

- 6.1 that the Plaintiff acts or acted illegally; and/or
- 6.2 that the Plaintiff is dishonest; and/or

-3-

6.3 that the Plaintiff acts or acted deceitfully and/or fraudulently, and, in addition, the persons to whom the statements were made and published as aforesaid, understood the statements to bear such innuendo.

7. As a result of the publication of the 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 when making the statements knew that the Plaintiff:

- 8.1 was seeking the necessary statutory approvals for a residential property development; and/or
- 8.2 had expended and would expend money to obtain approval for the proposed development; and/or
- 8.3 would suffer damages in the event of the necessary statutory

approvals not being obtained; and/or

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

9. Alternatively to paragraphs 8.3 and 8.4, the Defendant should have foreseen:

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

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

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

11. The necessary statutory approvals were in fact delayed as a result of the Defendant making the statements.

12. 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.

13. The Defendant when making the statements and publishing it as aforesaid:

13.1 acted unlawfully and wrongfully;

13.2 violated the Plaintiff's fundamental rights to dignity and fair administrative action;

13.3 intended to violate the Plaintiff's fundamental rights to dignity and fair administrative action.

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

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

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

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

16. 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 of 1996 include, in addition to the compensatory damages contemplated by paragraph 15 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 amounts 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.

DATED at SANDTON on this the day of AUGUST 2005

  
S VAN NIEUWENHUIZEN S.C.

  
E L THERON

Plaintiffs Counsel

  
CONNIE MYBURGH & PARTNERS INC  
 Plaintiffs Attorneys  
 1st Floor, Building B  
 Peter Place Park  
 54 Peter Place  
 BRYANSTON, 2021  
 TEL : (011) 463-0055  
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 REF : C MYBURGH

ET2161

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

Case No. 32648/05

In the matter between :

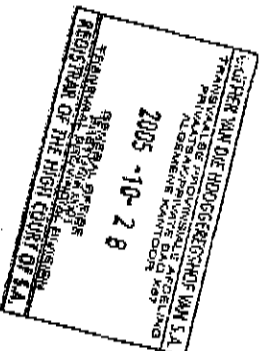
WRAYPEX (PTY) LTD

Plaintiff

and

HELEN DUGAN

Defendant



DEFENDANT'S PLEA

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

AD PARAGRAPH 1

1. The defendant has no knowledge of these allegations and denies them.

AD PARAGRAPH 2

2. The defendant denies that her address is as pleaded by the Plaintiff. The defendant's address is 50 Rietfontein, 532 JD Tshwane.

**AD PARAGRAPH 3 TO 6**

3. These allegations are denied.

**Alternatively**

4. If it was held that the Defendant did publish the statements complained of and that they are defamatory of the plaintiff in the senses alleged, then the Defendant denies, on the following grounds, that the publication was wrongful/unlawful and/or made with the intention to injure the plaintiff's reputation –

***Truth and Public Interest***

4.1. The statements of fact were true, or substantially true, and their publication was in the public interest.

***Fair Comment***

4.2. The comments made in the statements complained of,

(a) Were comments made in good faith;

(b) Were comments on matters of public interest or concern;

(c) Were based on facts that were generally known or disclosed, alternatively true or substantially true, and

- (d) Were, in circumstances, fair.

**Alternatively**

***Privilege***

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

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

**Further alternatively:**

***Reasonable Publication***

- 4.4. It was reasonable to publish the statements complained of in that:
- (a) The statements complained of were published in the *bona fide* and reasonable belief that they were true;

- (b) They were not published recklessly;
- (c) Reasonable steps had been taken to ensure that the factual allegations therein were true;
- (d) In the circumstances, the Defendant was not negligent;
- (e) The information contained therein was such that it was in the public interest that it be published to the publishee.

**Further alternatively:**

***Statutory Protection***

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

- (a) The Defendant, in good faith, reasonably believed, at the time of disclosure, that she was disclosing evidence of an environmental risk;
- (b) 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.

**Further alternatively:**

***Constitutional Protection***

4.6 The Defendant is excused liability in terms of section 16 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 in that:

(a) The Defendant had the right to freedom of expression, which includes the freedom to receive or impart information or ideas;

(b) In making the statements the Defendant was exercising her right of freedom of expression and was imparting information or ideas about a perceived environmental threat 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;

(c) The Defendant had the right to freely express herself and to impart ideas, and the statements, through which the Defendant expressed herself, and the information and ideas imparted, did not propagate war, incited imminent violence or advocated hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

4.7 The Defendant is excused liability in terms of section 17 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 in that:

(a) The Defendant, in good faith, presented a petition to an organ of state of a perceived environmental risk;

(b) The statements alleged by the Plaintiff is a petition 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;

(c) The Defendant had the right to petition the organ of state and the organ of state had a duty to receive such petition.

4.8 The Defendant is excused liability in terms of section 24 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 in that:

(a) The Defendant has the right to an environment that is not harmful to her health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

(b) In making the alleged statements the Defendant was attempting to prevent a threat to her right to an environment that is not harmful to her health or well-being; and to have the environment protected, for the benefit of present and future generations;

(c) The Defendant made the alleged statements 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;

- )
- (d) The Defendant made the alleged statements to the organ of state because the organ of state has the responsibility to prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development, through reasonable legislative and other measures.

)

4.9 The Defendant is excused liability in terms of section 33 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 in that:

- )
- (a) The Defendant has the right to administrative action that is lawful, reasonable and procedurally fair;
- (b) The alleged statements were made 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;

),  
(c) The Plaintiff's actions, which were the subject of the Defendant's statements required authorization by the above mentioned organ of state;

(d) Such authorization would have constituted administrative action, which would have adversely affected the rights of the Defendant;

),  
(e) The Defendant had the right to be given written reasons of the administrative action by the organ of state;

(f) The Defendant made the alleged statements to the organ of state to give effect to the Defendant's rights to administrative action that is lawful, reasonable and procedurally fair and to obtain written reasons of the

administrative action and because the Defendant had the right to request such reasons and because the organ of state had a duty to provide such reasons.

**AD PARAGRAPH 7 TO 16**

5. These allegations are all denied.

WHEREFORE the Defendant prays that the Plaintiff's claims be dismissed with costs, including costs of two Counsel.

**DATED and SIGNED at JOHANNESBURG on this 24<sup>th</sup> day of OCTOBER 2005.**

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

**CASE NUMBER: 32648 / 05**

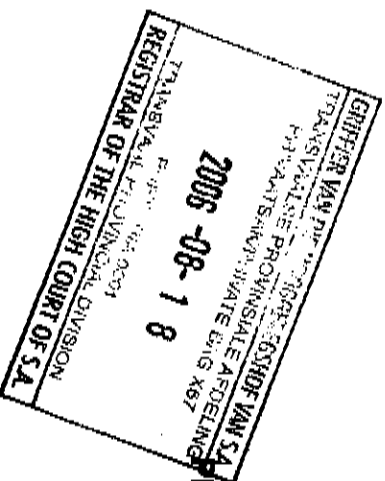
In the matter between:

**WRAYPEX (PTY) LTD**

and

**HELEN DUGAN**

**PLAINTIFF  
DEFENDANT**



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**FILING SHEET**

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**PRESENTED FOR SERVICE AND FILING BY:**

**ADRIAN VORSTER ATTORNEYS**

29 Minni Street, Clydesdale, 0002

P. O. Box 11028, Hatfield 0028

Telephone number: (012) 344 - 2040

Facsimile number: (012) 344 - 0819

E-mail: [adrian@impactlaw.co.za](mailto:adrian@impactlaw.co.za)

**DOCUMENTS PRESENTED FOR FILING:**

1. Amended pages to Defendant's plea.

**Signed at Pretoria on the 17<sup>th</sup> day of August 2006**



**ATTORNEYS FOR THE DEFENDANT**

**ADRIAN VORSTER ATTORNEYS**

29 Mimi Street, Clydesdale, 0002

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E-mail: [adrian@impactlaw.co.za](mailto:adrian@impactlaw.co.za)

Reference: **ENVIRON/VOR/05/ES**

TO:

**THE REGISTRAR OF THE HIGH COURT  
PRETORIA**

AND TO:

**ATTORNEYS FOR THE PLAINTIFF  
CONNIE MYBURGH & PARTNERS INCORPORATED  
ATTORNEYS FOR THE PLAINTIFF**

Care of Edelstein & Bosman Incorporated

220/2 Lange Street, New Muckleneuk, PRETORIA

Telephone: (012) 452-8900

Reference: **Mr. N. van den Heever/BM001117**

**EDELSTEIN — BOSMAN INC**  
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