THE SIGNIFICANCE OF THE PLASCON-EVANS RULE IN MOTION PROCEEDINGS

Category: Commercial Law
written by Zandile Mthabela | November 23, 2021



The Plascon-Evans rule was the ‘order of the day’ in this year’s interview proceedings conducted by the Judicial Service Commission (JSC). The JSC was interviewing prospective candidates who had been shortlisted for appointments as Judges in our courts. One of the recurring questions was for the candidates to explain the Plascon-Evans rule and when it is used in court. This short piece provides a simple explanation of this Rule as used during motion proceedings. Motion proceedings are court proceedings in which litigants’ arguments are decided on papers (pleadings filed by each litigant). A presiding officer, after considering the pleadings, decides whether to grant an order based on the disputes of fact contained in the pleadings.

Definition of and applicability of the Plascon-Evans rule

The Plascon-Evans rule was applied in the case of *Plascon-Evans Paints Limited v Van Riebeeck Paints (Pty) Ltd* (((53/84) [1984] ZASCA.)) that was decided in 1984. This Rule provides that "….*where there is a dispute as to the facts a final interdict should only be granted in notice of motion proceedings if the facts as stated by the respondents together with the admitted facts in the applicant's affidavits justify such an order…. Where it is clear that facts, though not formally admitted, cannot be denied, they must be regarded as admitted*".((Paragraph 8 of the *Plascon-Evans* case.))

The Plascon-Evans rule originated from *Stellenbosch Farmers' Winery Ltd v Stellenvale Winery (Pty) Ltd*((1957 (4) SA 234 (C).)) where it was applied as a general rule and was referred to in other cases such as *Burnkloof Caterers Ltd v Horseshoe Caterers Ltd*((1976 (2) SA 930 (A).)).

The application of the Plascon-Evans rule is not rigid. Rule 6(5)(g) of the Uniform Rules of Court provides that where an application cannot properly be decided on affidavit, the court may dismiss the application or make such order as it deems fit with a view to ensuring a just and expeditious decision.

Certain courts are empowered by section 173 of the Constitution to protect and regulate their own process. In exercising their discretion, such courts can deviate from applying the Plascon-Evans rule and direct that witnesses give oral evidence on specified issues with a view to resolving any dispute of fact. The court may also order that deponents appear personally, or that a person be subpoenaed to appear before court and be examined and cross-examined as a witness.

Shortcomings of the Plascon-Evans rule

The Plascon-Evans rule will not serve a purpose where the material facts are in dispute. Regardless of its existence, the respondents in motion proceedings have the right to apply for the deponents to be called for cross examination under Rule 6(5)(g).

Conclusion

The advantage of using the Plascon-Evans rule is that a matter may be speedily decided on paper without having the litigants make oral submissions to court. If it is not incumbent of the witnesses to give oral evidence, the applicability of Plascon-Evans rule will curtail legal costs that would have been incurred by the witnesses travelling to and from court during legal proceedings.

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