

Short notes on:

THE REQUIREMENTS TO BRING A CLASS ACTION IN SOUTH AFRICA

Introduction

Class Actions have for various reasons been a novelty in South Africa, with the unlikely chance of ever reaching the trial phase because of settlements. With the recent outbreak of Listeriosis and a Listeriosis Class Action in the pipeline, this procedural tool “enables a large group of people who have been wronged by someone or something to join together and claim redress in a single action.”¹

A Class Action means an “Action instituted by a representative on behalf of a Class of persons in respect of whom the relief claimed and the issues involved are substantially similar in respect of all members of the Class, and which action is certified as a Class Action.”²

The requirements for a Class Action

1. Certification

Certification is arguably the most crucial requirement of a Class Action because it involves; “the definition of the Class; identification of some common claim or issue that can be determined by way of Class Action; some evidence of the existence of a valid cause of action; the court being satisfied that the representative is suitable to represent the members of the Class; and the court being satisfied that a Class Action is the most appropriate procedure to adopt for the adjudication of the underlying claims.”³

Because the matter at hand is an Action, Certification happens before issuing of Summons, and this involves the Representatives having to apply to Court to have the Action certified as a Class Action.

2. Class definition

¹ Katherine Myrtle Robertson “An analysis of the Class Action in South Africa” University of Pretoria (2015) 4.

² Robertson (2015) 5..

³ *Trustees for the Time Being for the Children’s Resource Trust Centre and Others v Pioneer Foods* 2013 (2) SA 213 (SCA) at 9 at 23.

The Class should not be defined in too broad terms, because then it could quite possibly not constitute a Class. The purpose of the Class definition is basically to identify those with a claim; define the perimeters of the Action and enable people to decide whether or not they want to opt-out or opt-in.⁴

3. Cause of action giving rise to a triable issue

This requirement requires the Plaintiff to establish a *prima facie* case that the Action is possible of being heard by a Court. Therefore, this needs factual evidence supporting the claim. This will be set out in Affidavits which must accompany the Application.⁵

4. Common issues of Law

The claim advanced by a Class requires that the matters of fact, or law or both, that are common to all Members of the Class can be appropriately be determined in one Action.

5. A suitable Representative

This requirement looks specifically at the Legal Representative. The following must be taken into consideration: the aspects of a possible conflict of interest and that the Representative is motivated by the genuine interest of the Members of the Class and not taking the matter simply for their own personal gain.⁶

Conclusion

Class Actions are becoming more prevalent in South Africa. This procedural tool is a step in the right direction to prevent our Courts from being overcome with numerous individual claims concerning the same Members or the same Interest Group. The South African Law has materially advanced in fulfilling its fundamental purpose, which is to afford the majority of the poor population access to justice. Contact SchoemanLaw Inc for expert advice and assistance in all litigious and potential Class Action disputes.

⁴ Robertson (2015) 27.

⁵ Robertson (2015) 28.

⁶ Supra note 3 at 48.