

PARTICULARS OF PLAINTIFF'S CLAIM

1. The Plaintiff is **Zeenat Pillay**, an adult female event coordinator of Wood Road, Rylands, Cape Town.
2. The Defendant is **Marie Stopes Clinic**, which is a division of **Community Medical Services**, an association duly incorporated under section 21 of the Companies Act, 1973, which trades and operates *inter alia* from its clinic at 91 Bree Street, Cape Town.
3. The Defendant advertises itself as a provider of safe, pain free abortions conducted by trained and qualified staff.
4. The Defendant's premises at 91 Bree Street have been designated in the Government Gazette as provided for in section 3 of the Choice of Termination of Pregnancy Act, Act 92 of 1996.
5. The Defendant and its servants were obliged, in terms of section 5 of Act 92 of 1996 to obtain the informed consent of the Plaintiff prior to terminating her pregnancy.
6. On or about 29 December 2007 and at the Defendant's premises at 91 Bree Street, Cape Town, the Plaintiff, acting personally and the Defendant represented by a person whose identity is unknown to the Plaintiff entered into a written agreement in terms of which the

Defendant undertook, for an agreed price of R2 070,00, to terminate the Plaintiff's pregnancy under general anaesthetic in a safe, professional and pain free manner and in accordance with the provisions of Act 92 of 1996 and the regulations promulgated in terms of Act 92 of 1996.

7. The Plaintiff no longer has a copy of the written agreement.
8. It was a tacit, alternatively implied term of the agreement between the parties that the Defendant would:
 - 8.1 Treat the Plaintiff appropriately;
 - 8.2 Provide the Plaintiff with appropriate counselling and information;
 - 8.3 Exercise the professional skill, care and diligence reasonably required in the circumstances;
 - 8.4 Properly monitor the Plaintiff's condition;
 - 8.5 Inform the Plaintiff of what had happened to her.
9. In addition the Defendant owed the Plaintiff a duty of care to treat her as set out above.
10. On 29 December 2007, the Plaintiff duly paid the agreed price and submitted herself to the treatment meted out by the Defendant at its clinic at 91 Bree Street.

11. The Defendant breached the agreement between the parties and / or contravened the provisions of Act 92 of 1996 and the regulations promulgated in terms of Act 92 of 1996 in one or more of the following respects:

11.1 The Defendant failed to provide the Plaintiff with the counselling necessary for her to give her informed consent;

11.2 The Defendant failed to inform the Plaintiff of the stage of development of her unborn child;

11.3 The Defendant refused to include the Plaintiff's partner, who was the father of her unborn child, in the counselling process despite the Plaintiff's specific request that he be included in the counselling process;

11.4 The Defendant failed to inform her of available alternatives to the termination of her pregnancy;

11.5 The Defendant failed to inform her of the procedure to be followed and the associated risks of the termination of her pregnancy;

11.6 The Defendant failed to provide the Plaintiff with sufficient information to assist her to make an informed choice regarding the termination of her pregnancy;

11.7 In the light of the foregoing failures, the Defendant failed to obtain the Plaintiff's informed consent;

11.8 Prior to administering the anaesthetic the anaesthetist made crude, insensitive and cruel jokes to the effect that he was going to administer “baby drips” when he well knew that the Plaintiff was in a sensitive, vulnerable, emotional and scared frame of mind, about to terminate her own pregnancy;

11.9 At some stage while the Plaintiff was under anaesthetic servants of the Defendant, whose identity is unknown to the Plaintiff, administered a blow or blows to her sternum for reasons unknown to the Plaintiff causing a massive bruise with consequent pain for about two weeks;

11.10 The Plaintiff’s abortion was not pain free. The Plaintiff suffered excruciating pain when she awoke from the anaesthetic;

11.11 The Defendant’s servants failed to inform the Plaintiff why she was feeling such pain and, on the contrary, told her that she was imagining it;

11.12 The Defendant’s servants were unable to take the Plaintiff’s blood pressure;

11.13 The Defendant’s servants were unable to administer the drip;

11.14 The Defendant’s servants appeared flustered, confused, unsure of themselves, incompetent and unfamiliar with the equipment with which they were working and were insensitive and uncaring towards the Plaintiff;

- 11.15 When the Defendant's nurses sought to summon the anaesthetist for advice, the anaesthetist was not available;
- 11.16 The Defendant's servants failed and / or refused to answer the Plaintiff's legitimate questions as to why they needed to take her blood pressure, why they could not insert the drip and why they thought it necessary to summon the anaesthetist;
- 11.17 Subsequent to the 29 December 2007 the Defendant and its servants have failed to answer the Plaintiff's foregoing questions and have failed to explain how she received the aforementioned bruise on her chest;
- 11.18 The Plaintiff bled per vaginam for a number of weeks subsequent to the abortion;
- 11.19 The Defendant failed to respond adequately to the Plaintiff's legitimate requests to know what had happened;
- 11.20 The Defendant's servants, acting within the course and scope of their employment with the Defendant failed to conduct themselves with the skill, competence and professionalism reasonably expected of them.
12. As a consequence of the foregoing the Plaintiff suffered fear, anguish, pain, trauma and uncertainty.
13. The aforementioned conduct on the part of the Defendant and its servants constitutes:

- 13.1 A breach of the contract between the parties;
- 13.2 Unlawful and negligent behaviour;
- 13.3 A breach of the duty of care owed by the Defendant to the Plaintiff.
14. The Defendant is, in the premises, indebted to the Plaintiff in the amount of R150 000,00 in and for general damages but, despite demand fails and/or refuses to pay any amount whatsoever to the Plaintiff.
15. The Plaintiff remains entitled to a full disclosure of the medical treatment received by her and of what happened to her while she was under anaesthetic.

WHEREFORE Plaintiff claims:

- (a) A full report of the medical consequences of the termination of her pregnancy on 29 December 2007 and in particular, how and why she sustained a bruised sternum;
- (b) Payment of R150 000,00;
- (c) Interest thereon at 15,5% *per annum*;
- (d) Costs of suit;
- (e) Further and/or alternative relief.

DATED AT **CAPE TOWN** ON THIS THE DAY OF **JANUARY 2010**

ADV M J M BRIDGMAN
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TO: **THE REGISTRAR OF THE HIGH COURT**
CAPE TOWN

AND TO: **THE DEFENDANT**
No.91 Bree Street
CAPE TOWN