

PH207A

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NO 27507/16

In the matter between:

SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED

Plaintiff

and

[REDACTED]

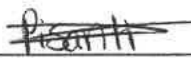
Defendant

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**FILING SHEET – DECLARATION**

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DATED at SANDTON on 7 July 2017

  
**WERKSMANS INCORPORATED**  
Plaintiff's Attorneys  
155 - 5<sup>th</sup> Street  
Sandown, Sandton, 2196  
Tel: +27 11 535 8459 / + 27 11 535 8157  
Email: [REDACTED]  
Ref: Mr T Boswell/Ms D Pisanti/SOUT1.1/6  
**c/o BRAZINGTON MCCONNELL ATTORNEYS**  
Second Floor Hatfield Mall  
424 Hilda Street  
Hatfield, Pretoria  
Tel: 012 430 4303  
Email: [REDACTED]  
Ref: [REDACTED]

TO:  
THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT  
PRETORIA






AND TO:  
**LEN DEKKER & ASSOCIATES**  
Defendant's Attorneys  
41 Elephant Road  
Monument Park, Pretoria  
Tel: +27 12 346 8774  
Fax: +27 86 517 4770  
Email: [REDACTED]  
Ref: LD/IH0585

Received copy on July 2017.

FOR: LEN DEKKER & ASSOCIATES


<b>LEN DEKKER ATTORNEYS</b>
41 Denham Road Cnr Rhinoceros Avenue Monument Park Pretoria Tel: (012) 346 8774
RECEIVED WITHOUT PREJUDICE
Date: 7/7/17
Time: 10h45
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## DECLARATION

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- 1 The plaintiff is the South African National Roads Agency Limited ("SANRAL"). SANRAL is a public company, with a share capital, duly incorporated and registered in accordance with the laws of the Republic of South Africa, having its principal place of business at 48 Tambotie Avenue, Val de Grace, Pretoria.
- 2 SANRAL has standing to bring this action in terms of section 30(1) of The South African National Roads Agency Limited and National Roads Act 7 of 1998 ("SANRAL Act").
- 3 The defendant is [REDACTED] a company with limited liability duly incorporated under the company laws of the Republic of South Africa and carrying on business within the jurisdiction of this Court from premises situated at, *inter alia*, [REDACTED]  
[REDACTED]
- 4 On 28 March 2008, in Government Gazette 30912, SANRAL declared certain roads in Gauteng as toll roads.
- 5 The roads that were declared to be toll roads were the following -
  - 5.1 sections 20 and 21 of the N1;

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5.2 section 12 of the N3;

5.3 section 1 of the N4; and

5.4 sections 18 and 19 of the N12.

6 On 28 July 2008, in Government Gazette 31273, SANRAL declared further roads as toll roads.

7 The roads that were declared to be toll roads were the following -

7.1 section 1 of the R21; and

7.2 section 2 of the R21.

8 All of these roads fall within the jurisdiction of this court and shall be referred to as the "GFIP toll roads".

9 In terms of section 59A(1) of the SANRAL Act, the owner of a vehicle is deemed to be the person who drove, operated or used a vehicle when a liability to pay toll was incurred.

10 In terms of section 59A(2) of the SANRAL Act, where the owner referred to in section 59A(1) is a juristic person, it shall be deemed that such vehicle was

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driven, operated or used as contemplated in that subsection by an employee of the owner of the vehicle in the course and scope of its business.

11 In terms of section 27(1)(b) of the SANRAL Act, read together with the e-Road Regulations (published by the Minister of Transport on 9 October 2013 in Government Gazette Notice No. R. 793 in terms of sections 58(1)(dA) and (dC) of the SANRAL Act ("the e-Road Regulations")), the owner of a vehicle that passes under a gantry (defined as "a toll plaza where the liability to pay toll is recorded by an electrical or electronic device" in Regulation 1 of the e-Road Regulations) on the GFIP toll roads is liable to pay toll to SANRAL.

12 On 19 November 2013 -

12.1 SANRAL published "Conditions for payment of e-tolls" in terms of section 27(1)(b) of the SANRAL Act in GNR 888 in Government Gazette 37038 ("the 2013 Conditions of Toll"); and

12.2 the Head of the Department of Transport made known by publication in GNR 887 in Government Gazette 37038 that the Minister had determined, in terms of section 27(3)(a) of the SANRAL Act, the tolls to be levied on *inter alia*, the GFIP toll roads, from 3 December 2013 ("the 2013 Toll Tariffs").

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13 On 17 June 2015 -

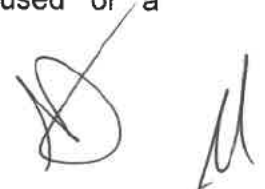
13.1 SANRAL published new "Conditions for payment of e-tolls" in terms of section 27(1)(b) of the SANRAL Act in GN 525 in Government Gazette 38884 ("the 2015 Conditions of Toll"); and

13.2 the Head of Department made known in GN 524 in Government Gazette 38884 (as corrected by GN 579 in Government Gazette 38949, GN 645 in Government Gazette 39027 and GN 972 in Government Gazette 39298) that the Minister had determined, in terms of section 27(3)(a) of the SANRAL Act, the tolls to be levied on, *inter alia*, the GFIP toll roads, from 2 July 2015 ("the 2015 Toll Tariffs").

14 Over the period 3 December 2013 to 31 August 2015, and on the days and at the times reflected in the schedule attached hereto as "A", vehicles of which the defendant is the owner, passed under gantries, on the GFIP toll roads.

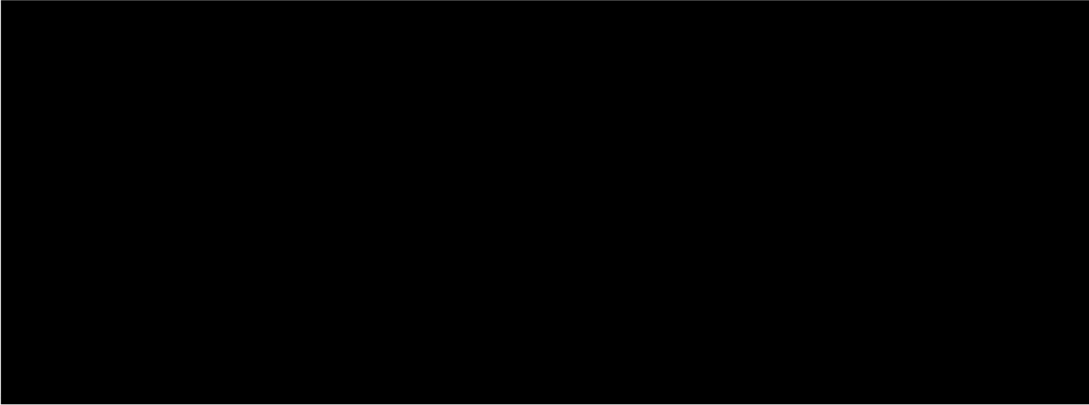
15 An e-toll transaction, as defined in Regulation 1 of the e-Road Regulations, was recorded each time that the defendant's vehicles passed under the gantries on the GFIP toll roads.

16 When its vehicles passed under the gantries on the GFIP toll roads during the period identified in schedule "A", the defendant was an alternate user, as defined in the e-Road Regulations, because it was not a registered e-tag user, a registered VLN user, a day-pass user for the e-road used or a

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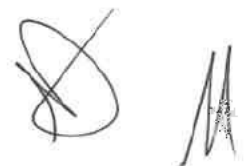
non-registered e-tag user (as those terms are defined in the e-Road Regulations).

- 17 Over the period 3 December 2013 to 31 August 2015, vehicles with VLN



and [REDACTED] which the defendant had failed to register with SANRAL as required by Regulation 3(2)(c) of the e-Road Regulations, passed under gantries on the GFIP toll roads. When this occurred, the defendant became liable, as an unregistered alternate user as contemplated in terms of paragraph 8.1 of the 2013 and 2015 Conditions of Toll to pay the alternate user toll tariff to SANRAL as an unregistered alternate user.

- 18 The 2013 and 2015 Toll Tariffs prescribe the toll tariffs that must be paid by registered and unregistered alternate users for the various classes of vehicle during the period referred to in schedule "A".
- 19 The defendant did not pay the toll liability it incurred within the applicable grace period as defined in the 2013 and 2015 Conditions of Toll.



- 20 Over the periods 31 December 2013 to 9 February 2014, 11 February 2014 to 2 June 2014, 18 June 2014 to 21 September 2014, 23 January 2015 to 15 July 2015, 17 July 2015 to 31 July 2015 and 2 August 2015 to 16 September 2015, SANRAL sent invoices via post to the last known address of the defendant provided in terms of the National Road Traffic Act 93 of 1996 within the period contemplated in Regulation 6(5) of the e-Road Regulations.
- 21 During the following periods / on the following dates, as a result of circumstances beyond SANRAL's control, SANRAL was not able to send invoices via post to the defendant's last known address provided in terms of the National Road Traffic Act: 30 December 2013, 10 February 2014, 3 June 2014 to 17 June 2014, 22 September 2014 to 22 January 2015, 16 July 2015, 1 August 2015 and 17 September 2015 to 22 October 2015.
- 22 On various dates reflected in schedule "A", between 12 December 2013 and 11 September 2015, SANRAL sent four hundred and forty (440) invoices via post to the last known address of the defendant provided in terms of the National Road Traffic Act 93 of 1996 after the period contemplated in Regulation 6(5) of the e-Road Regulations.
- 23 During the period 23 January 2015 to 16 September 2015, SANRAL again sent invoices to the defendant in respect of each of the corresponding e-toll transactions via post to the defendant's last known address provided in terms of the National Road Traffic Act. These invoices were sent together with

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statements reflecting the outstanding balance of unpaid e-tolls including for the period during which SANRAL could not send invoices via post.

- 24 The full outstanding amount of e-tolls as at 31 August 2015 was brought to the defendant's attention on or about 30 November 2015 when a statement was sent to an email address of the defendant's representative.
- 25 On or about 18 February 2016, the defendant orally informed SANRAL that it refused to pay the outstanding amount of e-tolls set out in the statement referred to in paragraph 24 above.
- 26 Despite demand, the defendant has refused to pay the amounts reflected on the invoices and statements.
- 27 Schedule "A" reflects -
- 27.1 the date and time of each e-toll transaction recorded in respect of the defendant's vehicles;
- 27.2 the class of the defendant's vehicle/(s) that passed under each gantry and the VLN of the vehicle in question;
- 27.3 whether the defendant was a registered or unregistered alternate user in each instance;

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- 27.4 the toll tariff applicable to that passage;
- 27.5 the date on which an invoice reflecting the defendant's toll liability was sent to the defendant's last known address; and
- 27.6 the date on which payment was due in terms of the invoice.
- 28 The e-toll liability incurred as set out in schedule "A" includes Value Added Tax payable in respect of the e-toll transactions.
- 29 Over the period to which the invoices relate, the plaintiff passed certain credits in favour of the defendant. The credits passed in favour of the defendant are reflected in credit notes which are also included in schedule "A". The credits were passed to correct errors in invoices.
- 30 Accordingly, the defendant is liable to SANRAL for the amount of each e-toll transaction reflected in schedule "A". The aggregate amount outstanding for those e-toll transactions (less credits that were passed) is **R587,065.92**.
- 31 SANRAL accordingly claims from the defendant –
- 31.1 payment of the sum of **R587,065.92**;
- 31.2 interest on each amount making up the sum of **R587,065.92** at a rate determined, from time to time, in terms section 1 of the Prescribed

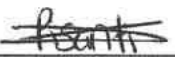


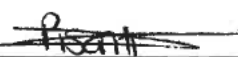
Rate of Interest Act 55 of 1975 calculated from the day reflected in the column headed "*Date on which liability for interest arises*" in schedule "A", to date of payment;

31.3 costs of suit; and

31.4 further and/or alternative relief.

Dated at SANDTON on 7 July 2017

  
**DANIELA PISANTI**  
A practising attorney with Right of Appearance  
in the High Court of South Africa in terms of  
section 4(2) of the Right of Appearance in  
Court Act 62 of 1995

  
**WERKSMANS INCORPORATED**  
Plaintiff's Attorneys  
155 - 5<sup>th</sup> Street  
Sandown, Sandton  
Tel: +27 11 535 8459 / + 27 11 535 8157  
Email: [REDACTED]  
Ref: Mr T Boswell/Ms D Pisanti/SOUT1.1/6  
c/o **BRAZINGTON MCCONNELL ATTORNEYS**  
Second Floor Hatfield Mall  
424 Hilda Street  
Hatfield, Pretoria  
Tel: +27 12 430 4303  
Email: [REDACTED]  
Ref: [REDACTED]