

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO.: 2024-005583

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 20 January 2025

E van der Schyff

In the matter between:

LEBOTSI RENOVATIONS AND

PROJECT MANAGEMENT (PTY) LTD

ELIZABETH ADRIANA BRUWER

and

HELGARD MICHAEL VREY

ANNET VERY

ELGARD VREY NO

FIRST EXCIPIENT / DEFENDANT

SECOND EXCIPIENT / DEFENDANT

FIRST RESPONDENT / PLAINTIFF

SECOND RESPONDENT / PLAINTIFF

THIRD RESPONDENT / PLAINTIFF

JUDGMENT

Van der Schyff J

Introduction

- [1] This is an exception. The parties are collectively referred to as plaintiffs and defendants, respectively.

- [2] The plaintiffs issued summons against the defendants. The particulars of claim were subsequently amended. The defendants contend that the plaintiffs' particulars of claim are excipiable on the basis thereof that it does not disclose a cause of action against the defendants, alternatively is vague and embarrassing. The plaintiffs contend that the exception has no merit and must be dismissed with costs.

- [3] The plaintiffs aver that the first plaintiff and second defendant have been in a relationship since approximately 3 January 2017. They intended to marry and live as husband and wife. In contemplation thereof, the first plaintiff and second defendant entered into the agreements set out in the particulars of claim to regulate the consequences of their relationship and joint residence and their respective properties.

- [4] The first claim is based on a written contractual agreement allegedly concluded between the parties on or about 10 February 2017. The second claim is based on an oral agreement allegedly entered into between the parties in 2017 on the advice of the parties' erstwhile legal representatives.

- [5] The grounds of exception are mainly rooted in the defendants' view that certain alleged and implied terms of the agreement concluded between the first plaintiff and second defendant are at variance with the express written terms of the agreement; the effect of a non-variation clause and the effect of various agreements on each other. The defendants also take issue with the plaintiffs relying on certain simulated agreements.

- [6] As far as claim 1 is concerned, the terms of the written contract need to be proven, and the contract in its entirety needs to be interpreted to ascertain whether the plaintiffs are entitled to the relief they claim. The existence and content of the alleged

oral agreement, which forms the basis for claim 2, also need to be proven on a balance of probabilities by the plaintiff. It will be necessary to lead evidence to establish the factual matrix for the application of both agreements.

- [7] The non-joinder of Serve Investments One Two Three (Proprietary) Ltd, with registration number 2019/0764, is, as the plaintiffs point out, ordinarily a matter for a dilatory plea and should not be raised by way of exception.¹ The proposition regarding the applicability of the Alienation of Land Act can be raised as a special plea.
- [8] I am of the view that the amended particulars of the claim alert the defendants to a sufficient degree of clarity of all the issues upon which the plaintiffs rely. I agree with the plaintiffs that when the amended particulars of the claim as it relates to the respective claims are considered contextually as a whole, it is not excipiable.
- [9] The defendants will not be prejudiced if the exception is not upheld. It is possible for the defendants to request further particulars or plead to the averments contained in the particulars of claim. The particulars of claim provide a clear idea of the material facts which make the cause of action intelligible,² and the defendants can meet the plaintiffs' case and will not be taken by surprise.³
- [10] The general principle that costs follow success applies. I am of the view that the issues considered are not overly complicated and that a costs order for costs on scale B is just.

ORDER

In the result, the following order is granted:

- 1. The exception is dismissed with costs, such costs on Scale B.**

¹ *Titan Asset Management (Pty) Ltd v Lanzerac Estate Investments* [2023] 3 All SA 589 (WCC) para 59.

² *Jowell v Bramwell-Jones and Others* 1998 (1) SA 836 (W).

³ *Trope v South African Reserve Bank* 1992 (3) SA 208 (T).



E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the excipients:

Adv. D. Prinsloo

Instructed by:

Coombe Commercial Attorneys Inc.

For the respondents:

Adv. C.M. Rip

Instructed by:

Tintingers Inc.

Date of the hearing:

19 November 2024

Date of judgment:

20 January 2025