



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 2970/20

In re:

In the matter between:

SOVEREIGN TRUST (CHANNEL ISLANDS) LIMITED

Plaintiff

and

OLOFF WALTER HENNIG

Defendant

CASE NO: 2971/20

In re:

In the matter between:

SOVEREIGN TRUST (GIBRALTAR) LIMITED

Plaintiff

and

OLOFF WALTER HENNIG

Defendant

In re:

In the matter between:

SOVEREIGN TRUST (GIBRALTAR) LIMITED

First Plaintiff

SOVEREIGN TRUST (MALTA) LIMITED

Second Plaintiff

and

OLOFF WALTER HENNIG

Defendant

Coram: **JONKER AJ**

Heard: 26 August 2025

Delivered: Electronically on 3 September 2025

JUDGMENT

JONKER AJ:

Introduction

[1] Before me are three matters involving the same defendant, though each concerns a different plaintiff except in one where one of the plaintiffs are the same. In all three matters, the defendant has raised exceptions, some overlapping and others unique to each case. For convenience, I deliver a single judgment but will address the grounds of exception separately under each matter. The applicable legal principles remain the same throughout.

Background

[2] The factual background in all three matters is substantially the same. The different plaintiffs claim monies from the defendant in respect of services rendered to defendant at defendant's instance pursuant to written agreements concluded between the parties.

[3] The various plaintiffs are all described in the particulars of claim, as: *"belonging to an international corporate conglomerate known as the Sovereign Group".* It is pleaded: *"that the core business of this group is setting up and managing tax-efficient structures and/or entities to assist in wealth management, fiduciary services, foreign property ownership/registration, and cross-border businesses ("the services")".* Although the plaintiffs are described differently across the matters, it appears that the plaintiff in each instance is the entity responsible for the execution of the services ordinarily rendered by the Sovereign Group or at the behest of the plaintiff.

[4] The particulars of claim refer to two documents (an application form and certain terms and conditions), which are attached to the particulars of claim, and is described collectively as the service agreement on which the relevant plaintiff relies (*"the service agreement"*). In some instances, these are not the precise agreements concluded between the parties, but rather versions said to reflect what was concluded at the time. It is further pleaded that the defendant required the rendering of services to entities associated with him from time to time, and that the defendant, or a person acting on his behalf, would instruct the plaintiff to perform such services.

[5] The material, express, alternatively implied, alternatively tacit terms of the service agreement, which consists of the application and the terms and conditions form, are pleaded. Certain definitions relied upon in this regard require emphasis:

"Sovereign: the Sovereign company identified on the front of this form and any member associated company within the Sovereign group whether as a subsidiary, holding company, joint venture company, or franchise of the Sovereign Group or any of its subsidiaries or in any other capacity whatsoever, and shall where the context admits include any employee,

servant, agent, director, or representative of same which provides services pursuant to this Agreement.

Client: the applicant whose description and address are set out in this form.

Services: any company formation, management or administration services whatsoever provided in respect of a company.”

[6] It is pleaded that the defendant completed the application form and sent the service agreement (the application form including the terms and conditions) to the plaintiff, who reviewed and accepted the agreement.

[7] It is pleaded that the respective plaintiffs, as an associated company within the Sovereign Group, as defined in the terms and conditions, complied with rendering the services at the defendant's instance.

[8] In the various matters, the plaintiff attaches invoices (some of which contain admitted errors) in support of both the description of the services rendered and the quantification of the claim.

[9] The plaintiff ultimately seeks payment from defendant for the services rendered.

[10] The foundation for most of the exceptions raised is found not only in the wording of the attached documents, but also in their silences and omissions.

[11] In essence, most of the exceptions are premised on the contention that the particulars of claim lack the necessary averments to sustain a cause of action. To the extent that the matters differ from one another, I shall address such differences under the specific matter.

Case number 2970/20:

[12] In this matter, the defendant, in my view, takes issue with the following:

- [12.1] the non-recordal of, lack of reference to, no mention of the cited plaintiff, as contracting party, on the agreements relied upon, which the defendant submits, does not establish any contractual nexus between the specific plaintiff and the defendant from the agreements and other documents attached to the particulars of claim;
- [12.2] the non-recordal of, or lack of reference to, the defendant, on the application form as the client and ultimate person responsible for payment but rather the form refers to the Sovereign Group. Insofar as the plaintiff attempts to rectify this error by explaining that it must read defendant, it fails to seek rectification of this aspect in its prayers. The documents attached and as relied upon by the plaintiff, does not indicate any liability of Defendant; and
- [12.3] the invoices attached are raised against parties not cited, no rectification is ultimately sought in the prayers of the claim to rectify the invoices and no cause of action is made out against defendant and his liability for payment of the invoices.

Case number 2971/20:

[13] In this matter, the defendant, in my view, takes issue with the following:

- [13.1] The plaintiff pleads that additional services were rendered to entities still to be formed. The agreements, however, make no provision for services beyond the formation of such entities. This clashes with the version pleaded, namely that the services were rendered at the instance of the defendant and not at the instance of another entity. It is contended that the plaintiff failed to comply with the obligation in Rule 18(4) of the Uniform Rules of Court to plead all material facts with sufficient particularity, thereby rendering the pleading vague and embarrassing;

- [13.2] The non-recordal, absence of reference to, or omission of the cited plaintiff as the contracting party in the agreements relied upon is, according to the defendant, fatal. The defendant contends that this failure does not establish any contractual nexus between the specific plaintiff and the defendant on the basis of the agreements and other documents attached to the particulars of claim.
- [13.3] The agreements relied upon by the plaintiff do not constitute service agreements, are not signed by the plaintiff, contain no reference to any fee structure, no such fee arrangements were agreed to or signed, and the agreements are accordingly unenforceable.
- [13.4] The invoices attached are raised against entities that were formed and not against the defendant. Accordingly, no cause of action is disclosed against the defendant in respect of liability for payment of the invoices.
- [13.5] The agreements relied upon are not a copy of the alleged agreements but a blank form; and
- [13.6] The agreements relied upon are unsigned, and the entities listed therein do not form part of the list of entities set out in Annexure X to the particulars of claim.

Case number 2972/20:

[14] In this matter, the issues overlap with those raised above, inter alia, the defendant takes with issue with the following:

- [14.1] The plaintiff has not complied with the obligation set out in Rule 18(4) of the Uniform Rules of Court to plead all material facts with sufficient particularity, which renders the pleading vague and embarrassing.

[14.2] The agreements in respect of certain entities referred to in the particulars of claim are not attached; and

[14.3] The plaintiff pleads that additional services were rendered to entities still to be formed. The agreements, however, make no provision for services beyond the formation of such entities. This conflicts with the version pleaded that the services were rendered at the instance of the defendant and not at the instance of another entity. The defendant contends that the plaintiff has not complied with the obligation in Rule 18(4) of the Uniform Rules of Court to plead all material facts with sufficient particularity, rendering the pleading vague and embarrassing.

THE APPLICABLE LAW

[15] The law on exceptions has been comprehensively set out through a long line of authorities. Our jurisprudence makes it clear that the function of an exception is to test the legal validity of a pleading, and not to decide factual disputes or the merits of the case. Both counsel appearing agrees on the legal principles. It is the application thereof, to the three pleadings, that differ.

[16] It is, however, apposite to restate the relevant legal principles, as they provide the framework through which the court must assess the particulars of claim in determining the validity of the exceptions.

[17] In *Tem bani*¹ the Supreme Court of Appeal (“the SCA”) stated the following at paragraph 14:

“Whilst exceptions provide a useful mechanism ‘to weed out cases without legal merit’, it is nonetheless necessary that they be dealt with sensibly. It is where pleadings are so vague that it is impossible to determine the nature of the claim or where pleadings are bad in law in that their contents do not

¹ *Tem bani and others v President of the Republic of South Africa and another* 2023 (1) SA 432 (SCA).

support a discernible and legally recognised cause of action, that an exception is competent. The burden rests on an excipient, who must establish that on every interpretation that can reasonably be attached to it, the pleading is excipiable. The test is whether on all possible readings of the facts no cause of action may be made out; it being for the excipient to satisfy the court that the conclusion of law for which the plaintiff contends cannot be supported on every interpretation that can be put upon the facts.”

[18] The SCA again confirmed the test for exceptions in *Venator*² at paragraph 20 as follows:

“It is trite that it is for an excipient to show that on every reasonable interpretation of the facts, the pleading is excipiable. On interpretation, ‘the question is not whether the meaning contended for by the [plaintiff] is necessarily the correct one, but whether it is a reasonably possible one’. The excipient must satisfy the court that the conclusion of law set out in the particulars of claim is unsustainable on every interpretation that can be put on those facts. It is important to note that ‘the facts are what must be accepted as correct; not the conclusions of law’. What is before us is a question of law.”

[19] The general approach to exceptions was also well set out in *Herold Gie*³ at paragraph 31:

“Exceptions are not to be dealt with in an over-technical manner, and as such a court looks benevolently instead over-critically at a pleading.”

[20] An exception, as Ntsebetza AJ points out in *Alphina*⁴:

“serves one purpose, and one main purpose only, namely to avoid the leading of unnecessary evidence”.

² *Venator Africa (Pty) Ltd v Watts and Another* 2024 (4) SA 539 (SCA).

³ *Herold Gie & Broadhead v Harris* NO 2025 (2) SA 144 (SCA) and *Standard Bank of South Africa Ltd v Hunkydory Inv 194 (Pty) Ltd (No 1)* 2010 (1) SA 627 (C) at paragraph 9.

⁴ *Alphina Investments Ltd and Another v Blacher* 2008 (5) SA 479 (C).

[21] It is trite that the excipient is strictly held to the confines of the exception raised.⁵ The onus rests on an excipient to show that the pleading is excipiable, either because it lacks the necessary averments to sustain a cause of action⁶ or because it is vague and embarrassing.⁷

[22] A claim that a pleading is vague and embarrassing is directed at the formulation of the cause of action and not at its legal validity. An exception of this kind will succeed only where the vagueness goes to the root of the cause of action. In such circumstances, the excipient bears the onus of showing both vagueness that gives rise to embarrassment and embarrassment that results in prejudice.⁸ Prejudice usually arises where a party is compelled to plead to particulars of claim in their present form, resulting in an inability properly to prepare and meet the plaintiff's case.⁹

[23] As pointed out by Heher J in *Jowell*¹⁰, relying on the dicta in *Carelsen*¹¹ where the following was said:

"...where a defendant can obtain the desired information by asking for further particulars, he should do so. He can only employ the exception that the summons is vague and embarrassing when it goes to the root of the action, and when the cause of action is not clearly set forth in the declaration, and he is embarrassed in that way."

[24] Minor blemishes therefore must be solved by asking further particulars.¹²

APPLICATION OF THE LAW

⁵ *Feldman v EMI Music Publishing* 2010 (1) SA 1 (SCA) at 5A.

⁶ *Kotsopoulos v Bilardi* 1970 (2) SA 391 (C).

⁷ *Nel and Others NNO v McArthur and Others* 2003 (4) SA 142 (T) at 148 I.

⁸ *Venter v Barritt* 2008 (4) SA 639 (C).

⁹ *Standard Bank of South Africa Ltd v Hunkydory Inv 194 (Pty) Ltd (No 1)* 2010 (1) SA 627 (C) at para 10.

¹⁰ *Jowell v Bramwell-Jones & Others* 1998 (1) SA 836 (W) at 899G – H.

¹¹ *Carelsen v Fairbridge, Arderne and Lawton* 1918 TPD 306 at 309.

¹² *Living Hands (Pty) Ltd v Ditz* 2013 (2) SA 368 (GSJ).

[25] The task of this Court is to apply the established principles to the particulars of claim to determine whether the exceptions raised should be upheld. I proceed to do so in respect of each matter separately.

Case number 2970/20:

[26] The first issue raised is that the agreements relied upon do not record, refer to, or mention the plaintiff as a contracting party. It is contended that this omission fails to establish any contractual nexus between the plaintiff and the defendant. In considering this ground, it must be borne in mind that, on exception, the court assumes the correctness of the factual allegations. The plaintiff pleads that, as an associated company within the Sovereign Group, it was entitled to render the services and to claim payment. Although the agreements do not expressly name the plaintiff, the definition of “Sovereign” is pleaded in broad terms, encompassing associated companies within the group. At this stage, such a pleading, if ultimately proved, is sufficient to sustain a cause of action. The absence of explicit reference to the plaintiff in the agreements is accordingly not fatal at the exception stage.

[27] The second issue concerns the defendant’s position in the application form. The defendant contends that the application form refers to the Sovereign Group and not to him personally. The plaintiff, however, pleads that the defendant was the applicant who completed the form (or completed on his behalf) and that it must be construed as referring to him. Although this may ultimately require evidence or even rectification, the test on exception is not whether the plaintiff will succeed but whether the pleading discloses a cause of action. The interpretation advanced by the plaintiff is reasonably possible, and this ground of exception cannot be upheld.

[28] The third issue raised is that the invoices are directed at parties not cited in the action and that no rectification is sought in the relief claimed. The correctness of the invoices is not a matter to be determined on exception. The question is whether the pleaded facts disclose a cause of action. The plaintiff alleges that the invoices represent services rendered at the instance of the defendant. That allegation, if ultimately proved, is sufficient to sustain a cause of action at this stage. Ultimately, the invoices relate to *facta probantia*, which are the secondary allegations upon

which the plaintiff will rely in support of its primary factual allegations.¹³ Moreover, in *D & H Piping*¹⁴ the SCA stated that:

“[15] Neither a delivery note nor an invoice is a contractual document i.e. the type of document in which the recipient would expect to find terms and conditions intended to form part of the contract between the sender of the document and the recipient.⁸ Both the delivery notes and the invoices received by the appellant’s employees reflected performance, or part performance, of a contract already concluded.”

[29] In this matter, the exceptions do not establish that the particulars of claim are bad in law, nor do they demonstrate that the pleadings are so vague or embarrassing as to prevent the defendant from pleading. The exceptions in case number 2970/20 must accordingly fail.

Case number 2971/20:

[30] The first ground raised is that the plaintiff pleads additional services to entities still to be formed, whereas the agreements relied upon allegedly extend only to the formation of such entities. The defendant contends that this renders the particulars of claim vague and embarrassing. The plaintiff’s pleading, however, is clear in alleging that the services were rendered at the instance of the defendant. Whether the agreements extended to such services is a matter of interpretation and evidence. It cannot at this stage be said that no cause of action is disclosed.

[31] The second ground, similar to that advanced in case number 2970/20, concerns the absence of reference to the plaintiff as a contracting party. For the reasons already set out, this omission is not decisive at the exception stage. The pleaded definition of “Sovereign” permits a reasonably possible interpretation that encompasses the plaintiff.

¹³ *Jowell v Bramwell-Jones & Others* 1998 (1) SA 836 (W) at 903A-B.

¹⁴ *D & H Piping Systems (Pty) Ltd v Trans Hex Group Ltd and Another* 2006 (3) SA 593 (SCA).

[32] The third ground is that the agreements are unsigned by the plaintiff, contain no fee structure, and are therefore unenforceable. The issue on exception, however, is not enforceability but whether the particulars of claim disclose a cause of action. The plaintiff alleges the existence of a concluded service agreement, the rendering of services, and non-payment. That is sufficient at this stage. Whether the absence of a signature or fee structure ultimately defeats the claim is a matter for trial and not for exception.

[33] The fourth ground concerns the attachment of invoices raised against entities that were formed rather than against the defendant. As before, the plaintiff pleads that the services were rendered at the instance of the defendant. That is sufficient at the exception stage.

[33] The remaining complaints, namely that the agreements are blank, unsigned, and that certain entities do not correspond with the annexures, raise evidential and factual issues. They do not strike at the root of the cause of action, nor do they render the pleading so vague that the defendant cannot plead. Such matters may be relevant to the merits but do not justify the upholding of an exception.

[34] The exceptions in case number 2971/20 must accordingly be dismissed.

Case number 2972/20:

[35] In this matter, the defendant raises overlapping objections. The first is that the plaintiff has failed to plead all material facts with sufficient particularity, thereby rendering the pleading vague and embarrassing. On consideration, while the particulars of claim may lack detail, they nevertheless set out a cause of action with sufficient clarity: namely the existence of a service agreement, services rendered at the instance of the defendant, and non-payment. The pleading is intelligible and capable of being answered.

[36] The second objection is that certain agreements in respect of identified entities are not attached. The plaintiff, however, pleads reliance on a standard form of service agreement together with instructions given from time to time. The failure to

annex every agreement does not render the pleading excipiable. At most, the defendant may call for further particulars.

[37] The third objection is that the plaintiff pleads additional services to entities to be formed, whereas the agreements relied upon allegedly provided only for the formation of those entities. This raises a matter of interpretation and evidence rather than one for exception. The plaintiff's version is reasonably possible and must be accepted as correct at this stage.

[38] The exceptions in case number 2972/20 must accordingly be dismissed.

CONCLUSION

[39] In all three matters, the defendant has not established that the particulars of claim, on every reasonable interpretation, fail to disclose a cause of action or are so vague and embarrassing as to preclude a meaningful response. The objections raised concern issues more appropriately addressed at trial or by way of requests for further particulars.

[40] I accordingly conclude that the exceptions in all three cases must be dismissed with costs. Counsel for the parties were in agreement that the costs order should be on scale B, and such an order will be made.

ORDER

[41] The following order is made in case numbers 2970/20, 2971/20 and 2972/20 respectively:

1. The exception is dismissed.
2. The defendant is ordered to pay the costs as taxed or agreed in accordance with scale B.

E JONKER
ACTING JUDGE OF THE HIGH COURT

Appearances:

For plaintiff: Adv A Kantor SC

For defendants: Adv A Newton