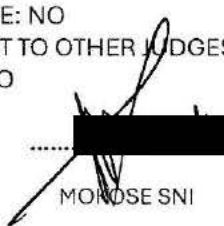


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 2024-082158

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
<u>8/9/2025</u>	
DATE	 MOKOŠE SNI

In the matter of:

SANDOWN MOTOR HOLDINGS (PTY) LIMITED

Plaintiff

and

GCBS (PTY) LIMITED

Defendant

JUDGMENT

MOKOŠE J

[1] The plaintiff (the excipient in this matter) brings an exception before this court on the grounds that the plea lacks averments which are necessary to sustain a defence. The defendant opposes the application.

[2] The excipient alleges that the exception is raised in circumstances where the pleading does not justify the conclusions drawn therein alternatively, the defence raised although adequately pleaded, does not in law constitute a defence to the claim.

[3] Briefly, the facts are that the plaintiff issued summons on the 18 August 2023 in which it was alleged that the defendant was in breach of its obligations in terms of a lease agreement concluded by the parties in or about January 2020. The plaintiff claimed the sum of R999 980,00 together with interest and costs.

[4] The plaintiff's claim was for the period December 2020 to May 2021. It was admitted by the plaintiff that the buses were withheld in October 2021, nine months after the defendant had initially fallen into *mora*. Accordingly, the plaintiff is of the view that this does not constitute a supervening impossibility as pleaded by the defendant and that the defendant is precluded in law from relying on that defence that may have arisen after the defendant had fallen into *mora*.

[5] The defendant filed its plea to the summons and counterclaim on 15 July 2024 in which it averred that the plaintiff had withheld two of its buses, resulting in an inability to generate income, thus causing a "supervening impossibility" rendering the defendant's performance in terms of the lease agreement, impossible. A counterclaim was filed wherein the defendant sought an order that the plaintiff had acted unlawfully in withholding the buses which had resulted in a loss of R280 000 per month.

[6] The onus is always on the excipient to prove that the pleading in question is excipiable. The excipient must establish that the pleading is excipiable on every interpretation that can reasonably be attached to it.

[7] The defendant alleges in its plea that the plaintiff withheld two busses belonging to the defendant which resulted in an inability to generate income, thus causing a supervening impossibility. In the matter of *Tweedie v Park Travel Agency (Pty) Limited t/a Park Tours*¹ the court affirmed the

¹ [1998] 3 All SA 57 (W)

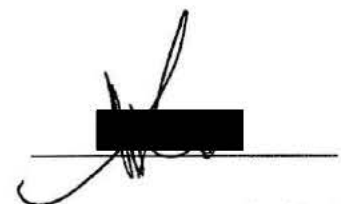
position of I van Zyl Steyn in the book *Mora Debitoris volgens die Hedendaagse RomeinsHollandse Reg* (1929) as follows:

"We have already pointed out that the impossibility of performance which occurs before the debtor's mora is an excusatio a mora. If the impossibility is due to casus fortuitus, the obligation is terminated. The debtor's mora brings about a change in this: impossibility of performance, which occurs after the onset of mora does not terminate the obligation mora perpetuat obligationem. In the case of the debtor's mora, an exception is therefore made to the rule: casus a nemine preaestantur. This general rule of Roman Law has been received into Roman Dutch Law. It is treated by our writers under the head of the contract of sale or in connection with it." [Translated from Afrikaans to English]

[8] On the defendant's version, it is clear that the alleged withholding of the busses occurred in October 2021. This is approximately 9 months after the defendant had fallen into arrears and its obligation to the plaintiff. The defendant does not deal with the reason why the contract was breached as alleged in the particulars of claim. I am of the view that the defendant is accordingly precluded from relying on the defence of "supervening impossibility". I agree with the plaintiff that the plea lacks averments necessary to sustain a defence.

[9] Accordingly, the order granted is as follows:

- (i) The exception is upheld, and the defendant's plea is set aside.
- (ii) The defendant shall amend its plea within 10 days of service of this order.
- (iii) The defendant shall pay the costs of the exception.



SNI MOKOSE J

Judge of the High Court
Of South Africa,
Gauteng Division, Pretoria

For the Applicant / Excipient: Adv MM Moodley
On instructions of: Jeff Donenberg & Co

For the Respondent: Mr Marweshe
On instructions of: Marweshe Attorneys

Date of hearing: 27 August 2025
Date of Judgement: 8 September 2025