

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 23801/2018

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
17/9/2025	
DATE	SIGNATURE

In the matter between:

ENDEMIC DEVELOPMENTS (Pty) Ltd

Applicant

and

DEPARTMENT OF PUBLIC WORKS

Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 17 September 2025.

JUDGMENT

MAKHOBBA J

- [1] In this exception, the First Defendant is the excipient and the Plaintiff is the Respondent, for ease of reference the parties will be referred to as they are cited in the summons.
- [2] The Plaintiff's cause of action against the First Defendant is premised upon the alleged breach of an 'express' warranty provided by the First Defendant to the Plaintiff, that was orally agreed upon, under what is styled as 'the MBS Agreement'.
- [3] The 'express' warranty arose through the First Defendant having recommended the Second Defendant as an approved installer of a waterproofing product that was supplied by the First Defendant and having undertaken to conduct site inspections of the work and furnish the Plaintiff with site inspection reports in respect thereof.
- [4] The oral express warranty relates to the Second Defendant's workmanship in the course of the application of the waterproofing product at the Valley of the Waves, Sun City.
- [5] The grounds of exception are as follows:
 - 5.1. There is an irreconcilable conflict between the alleged oral express contractual terms of the common cause documents the Plaintiff itself adduces as attachments to its particulars of claim.
 - 5.2. The Plaintiff has failed to comply with the provisions of Rule 18(6) of the uniform Rules of this court regarding the proper pleading of a contract, and as a matter of law.
- [6] Counsel for the First Defendant argued that the First Defendant never sought to warrant the application of the product. The Plaintiff has thus sought to mount a case that is inconsistent with the actual terms of the true governing agreement. Furthermore, it is argued that the Plaintiff has not complied with Rule 18(6).

- [7] In my view there is an express warranty by the First Defendant for the quality and professionalism of the Second Defendant's workmanship. According to the agreement between the parties, the Plaintiff must pay the Second Defendant's for the supply and installation of the product. The works would be completed by or during August 2021.
- [8] It is further my view that, the Plaintiff has succeeded in proving on preponderance of probabilities that the terms recorded in the revised quotation are not in conflict with the terms recorded in the MBS Agreement.
- [9] For the First Defendant to succeed an excipient has the duty to persuade the court that upon every interpretation which the pleading in question, and in particular the document on which it is based, can reasonably bear, no cause of action or defence is disclosed, failing this, the exception ought not to be upheld¹.
- [10] Again a pleading is only excipiable on the basis that no possible evidence led on the pleadings can disclose a cause of action or defence².
- [11] The excipient must make out a very clear case in order to succeed³ and must satisfy the court that there is a real point of law or a real embarrassment⁴.
- [12] Finally, it is my view that there is no reason why the First Defendant could not simply plead to the particulars of claim and, if necessary, deal with this complaint as a special plea. In addition, the First Defendant, does not complain that it would be embarrassed if it were forced to plead to these allegations.
- [13] I make the following order:
- 13.1. The First Defendant's exception is dismissed with costs, including costs of counsel on Scale B.

¹ Lewis v Oneanate (Pty) 1992 (4) SA 811 (A) at 817 F.

² Vermeulen v Goose Valley Investments (Pty) Ltd 2001 (3) SA 986 (SCA) 997.

³ Trustees, Bus Industry Restructuring Fund v Breakthrough Investments CC 2008 (1) SA 67 (SCA).

⁴ Jones v Beatty 1998 (3) SA 1097 (7) 1103



D. MAKHOB

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of Hearing: 26 August 2025

Judgment delivered: 17 September 2025

Appearances

For the applicant: Adv M. Maritz

For the respondent: Adv T. Tshitereke