

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: 6391/2022

(1)	<u>REPORTABLE: YES/NO</u>
(2)	<u>OF INTEREST TO THE JUDGES: YES/NO</u>
(3)	<u>REVISED.</u>
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.....	
DATE: 03 October 2025 SIGNATURE.....	

In the matter between:

WESSEL JOHANNES CHRISTIAAN VISSER

FIRST APPLICANT

BARBARA JACOMINA VISSER

SECOND APPLICANT

And

RODEOLOR CC

FIRST RESPONDENT

ZHIYI CHEN

SECOND RESPONDENT

YANYUN LI

THIRD RESPONDENT

WOD MART SA (PTY) LTD

FOURTH RESPONDENT

YUECHEN WANG

FIFTH RESPONDENT

PAKAMA STEAK RANCH (PTY) LTD

SIXTH RESPONDENT

JUDGMENT

DU PLESSIS AJ:

Introduction:

- [1] Before Court is an Application to amend, in terms whereof the Applicant applies for leave to amend their plea in accordance with their notice of intention to amend which was served and filed on 28 August 2024.
- [2] The Respondents opposition to this application is based on two grounds. The first ground being that the proposed amendment attempts to withdraw prior admissions made by the Applicants and the second ground is based thereon that the amendment attempts to introduce grounds of exception.

Background:

- [3] The Plaintiffs (Respondents) instituted action against the Applicants (Defendants) which include four different monetary claims based on breach of various agreements between the parties.

- [4] The Respondents issued the summons on 6 June 2022. On 25 August 2022 the Applicants filed their plea which was then amended on 13 February 2023 (the First Amendment).
- [5] On 28 August 2024 the Applicants filed a further Notice of intention to amend in terms of Rule 28(1)(a), which was objected to by the Respondents in terms of Rule 28(3). On 18 September 2024 the Applicants proceeded to launch the application in terms of Rule 28(4) that is serving before this Court.

Discussion:

- [6] In their Plea the Defendants admitted that they concluded various agreements with the Plaintiffs and they also admitted breaching these agreements.
- [7] The Defendants further admitted that the parties concluded a final agreement on 20 May 2019 in which the repayment of the money owing by the Defendants is set out.
- [8] The Defendants raised the defence that they were not liable to repay the Plaintiffs. The Defendants pleaded this defence by virtue of the fact that the agreements were subject to the provisions of the National Credit Act, 34 of 2005 (the NCA). However, in so far as the Plaintiffs were not registered as credit providers when the agreements were concluded, the Defendants pleaded that these agreements are null and void.
- [9] The Plaintiffs thereafter amended their particulars of claim on 28 September 2023 in which an alternative claim was introduced. The Plaintiffs claimed that if the above mentioned defence was upheld, the Defendants would be enriched.

On the basis of unjustified enrichment, the Defendants should then be liable to pay the Plaintiffs.

- [10] The Defendants then filed a Notice of Intention to Amend their plea on the 28th of August 2024, in which they denied that the agreements came into existence. This denial is based on the fact that the agreements were not signed on behalf of the Plaintiffs.
- [11] The problem with this is that the Defendants have acknowledged entering into these agreements with the Plaintiff in their Affidavit resisting summary judgment.¹

Principles regarding amendments:

- [12] Rule 28 of the Uniform Rules provides that the Court has a discretion to either grant or to refuse amendments, but this discretion must be exercised in line with certain principles.²
- [13] In **Affordable Medicines Trust and Others v Minister of Health and Others**³ The Constitutional Court summarised these principles as follows:
- “[9]...[A]mendments will always be allowed unless the amendment is mala fide (made in bad faith) or unless the amendment will cause an injustice to the other side which cannot be cured by an appropriate order for costs, or ‘unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which it is sought to amend was filed.’”*

¹ Answering Affidavit, page 30-47, Index: Summary Judgment.

² Caxton Ltd and Others v Reeve Forman (Pty) Ltd and Another 1990 (3) SA 547 (A) at 565.

³ Affordable Medicines Trust and Others v Minister of Health and Others 2006 (3) SA 247 (CC).

[14] In addition to the principles as set out above, the Courts have also held that the proposed amendment must raise a triable issue that is sufficiently important to justify the prejudice and costs to the other parties.⁴

[15] The Applicant therefore bears the onus to prove the following four requirements:

15.1 that the amendments are made in good faith;

15.2 that it will not result in injustice or prejudice to the Respondent;

15.3 that any prejudice could be cured by a suitable costs order; and

15.4 that the proposed amendment raise triable issues of sufficient importance to justify possible prejudice.

[16] It must be stated at this point that the effect of an admission is to render it unnecessary for a plaintiff to prove the admitted fact.⁵

[17] In the event of withdrawal of admissions, the test to be applied is the same as for other amendments, however it is far more difficult to satisfy this test. In **President Versekeringsmaatskappy Bpk v Moodley**⁶ the Court held as follows:

“The approach is the same [as for other admissions], but the withdrawal of an admission is usually more difficult to achieve because (i) it involves a change of front which requires full explanation to convince the court of the bona fides thereof, and (ii) it is more likely to prejudice the other party, who had by the admission been let to believe that he need not prove the relevant fact and might, for that reason, have omitted to gather the necessary evidence.”⁷

⁴ Caxton Ltd and Others v Reeva Forman (Pty) Ltd and Another 1990 (3) SA 547 (A) at 565, citing de Villiers JP in Krogman v Van Reenen 1926 OPD 191 at 195.

⁵ S15 of the Civil Proceedings Evidence Act 25 of 1965.

Gordon v Tarnow 1947 (3) SA 525 (A) at 531.

AA Mutual Insurance Association Ltd v Biddulph 1976 (1) SA 725 (A) at 735.

Bellairs v Hodnett 1978 (1) SA 1109 (A) at 1150D.

⁶ President Versekeringsmaatskappy Bpk v Moodley 1964 (4) SA 109 (T) at 110H -111A.

⁷ My emphasis.

- [18] A defendant is therefore required to provide a full and honest explanation of the circumstances surrounding the making of an admission and the reasons for seeking its withdrawal.⁸
- [19] In this instance the Applicants' only explanation for wanting to withdraw the admissions is that they only realised that the Contracts were unsigned when they prepared the Affidavit resisting summary judgment. According to the Applicants this fact means that no agreements came into existence.
- [20] The Applicants did not file a replying affidavit to the Respondents answering affidavit. The Respondents averments that the attempt to withdraw the admissions lack *bona fides* has therefore not been disputed by the Applicant.⁹
- [21] The Appellate Division emphasised in **Bellairs v Hodnett**¹⁰ that the withdrawal of admissions requires "*a satisfactory explanation of the circumstances in which the admission was made and the reasons for now seeking to withdraw it.*" If the Applicant do not provide a satisfactory explanation, it is the end of the matter.¹¹
- [22] The Applicants' only explanation for withdrawing the admission is that: "*during the cause (sic) of the litigation process, we noticed that the alleged agreements, attached to the particulars, were not signed by all the relevant parties.*"¹²
- [23] The Applicants further explained that: "*Considering the aforementioned it became glaringly evident that our previous admission was an incorrectly admitted legal consequence and had to be retracted.*"¹³

⁸ Bellairs v Hodnet and Another 1978 (1) SA 1109 (A) at 1150; (Bellairs) Northern Mounted Rifles v O'Callaghan 1909 TS 174; Frenkel, Wise & Co Ltd v Cuthbert 1946 CPD 735.

⁹ Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634.

¹⁰ Bellairs v Hodnet and Another 1978 (1) SA 1109 (A) at 1150F - H;

¹¹ Frenkel, Wise and Co Ltd v Cuthbert; Cuthbert v Frenkel, Wise and Co Ltd 1946 CPD 735 at 749: "The enquiry into whether or not the application to amend is bona fide – in other words, whether a satisfactory explanation has been given – is the first enquiry and, if it is found that the applicant for the amendment does not clear this hurdle, there is no need to consider the second leg of prejudice."

¹² Founding Affidavit, Par 20, page 7.

¹³ Founding Affidavit, Par 21, page 7

- [24] It is not enough for an applicant merely to assert an admission was made in error. The error must be fully explained to the court in order to satisfy it that the attempted withdrawal of the admission was made in good faith, and not with the intent to simply secure a tactical advantage.¹⁴
- [25] The Applicants seek to withdraw admissions that relate to factual and not legal issues. The Applicants should have been able to identify and correct these admissions when perusing their plea during or after having a consultation with their attorneys.
- [26] The Applicants admitted to the negotiations between the parties and entering into the different agreements with the Respondents (Plaintiffs) in the Defendants' Plea.
- [27] Only once they prepared their affidavit resisting summary judgment did they realise that some of the contracts were not signed. The Applicants admit that this is the only reason why they wish to withdraw their admission. The Applicants are of the view that the fact that the contracts are unsigned by the Respondents, mean that the agreements did not come into existence.
- [28] This is contradicted however by the Applicants explaining in their affidavit resisting summary judgment how the terms of the agreements were negotiated and entered into.
- [29] In the context of this matter the Applicants failed to give a reasonable explanation for the withdrawal of the admissions. The Applicants are not merely average laypersons but business owners with experience in entering into agreements. It is therefore inconceivable that they did not have the capacity to consider and

¹⁴ Trans-Drakensberg Bank Ltd (under Judicial Management) v. Combined Engineering (Pty) Ltd and Another 1967 (3) SA 632 (D) at 640 and the cases cited therein.

comprehend the plea and the admission made therein, especially in the light that they related to factual allegations.

[30] In their opposition to the application for amendment, the Respondents raised the issue of prejudice. Although the relevant authorities indicates that in the absence of a satisfactory explanation the Court does not need to consider prejudice, it is apposite to consider it briefly for the sake of completeness.

[31] The Respondents raised the issue of prejudice in their Answering Affidavit and stated that should the application for amendment be granted, they would have to lead evidence which was previously unnecessary and to secure the attendance of the relevant witnesses resulting in additional legal costs.

[32] It must also be stated that, during the trial stage, if evidence is led or provided by the Applicants that clearly contradicts admissions made by them in their plea, their legal representatives may apply to the Court at that point for an amendment based on the evidence. The Court will then reconsider such an application at that time.

[33] At present, no evidence in support of the withdrawal of the admissions were provided by the Applicants.

Introducing exceptions:

[34] A further objection against the proposed amendments were that it constitutes in impermissible attempt to introduce exceptions.

- [35] The Applicants did seek to introduce exceptions and technical objections to the particulars of claim, stating that the Respondents' claim lacked sufficient averments to sustain a cause of action.¹⁵
- [36] If the Applicants wished to raise these objections, they were required to file an exception, application to strike out or a notice of an irregular step before filing their plea¹⁶.
- [37] In the matter of **Beinash v Wixley** the Court held that: *"It can be said in general terms...that an abuse of process takes place where the procedures permitted by the Rules of the Court to facilitate the pursuit of truth are used for a purpose extraneous to that objective..."*¹⁷.
- [38] Therefore the Applicants cannot use the amendment procedure to introduce exceptions and objections.
- [39] As a result of all the facts set out above the application for amendment cannot be succeed.

Order:

- [40] **In the result the following order is made:**

1. The application for leave to amend in terms of Rule 28(4) is dismissed;
2. The Applicants are ordered to pay the costs of this application, such costs to include cost of counsel on party and party scale B.

¹⁵ Notice of Intention to Amend delivered 28 August 2024.

¹⁶ Uniform Rules 23, 30, 30A.

¹⁷ Beinash v Wixley 1997 (3) SA 721 (SCA) at 734.




S DU PLESSIS
ACTING JUDGE OF THE HIGH COURT,
LIMPOPO DIVISION, POLOKWANE

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DATE OF HEARING : **28 March 2025**

DATE OF JUDGMENT : **03 October 2025**