IN THE HIGH COURT OF SOUTH AFRICA, MPUMALANGA DIVISION,
(MBOMBELA MAIN SEAT)

Case No.: 1619/2024

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: **NO**
(2)	OF INTEREST TO OTHER JUDGES: **NO**
(3)	REVISED **YES/NO**

02 OCTOBER 2025 — DATE
NGWENYA AJ — SIGNATURE

In the application between:

ZENANE PROPERTIES (PTY) LTD **PLAINTIFF**

And

PDL PROPERTY MANAGEMENT (PTY) LTD **DEFENDANT**

JUDGMENT

NGWENYA AJ

[1] On 11 February 2021, the Plaintiff entered into a purchase agreement with a company called Dayizenza Plaza (Pty) Ltd ("Dayizenza") in terms of which the latter sold its business as a going concern, including its immovable property known as Portion 3 of the Farm

M'timba 20 Registration Division JU Mpumalanga Province ("the property").

[2] The Defendant was the property management and broking company, appointed by Dayizenza before the property was transferred into the name of the Plaintiff.

[3] On 21 November 2021, the Plaintiff entered into a further agreement ("management agreement") with the Defendant, whereby the latter was appointed as the managing agent of the Plaintiff, effective as of 13 September 2021.

[4] The Plaintiff claims that the Defendant breached the management agreement in the following terms:

"15. The Defendant:

15.1 Failed and/or refused to open a new account for the plaintiff at the Executive date. In failing and/or refusing to open a new account for the plaintiff on the effective date, the defendant acted negligently and without due care, with the resulting effect that there was no separation of the income and expenditure of the business before and after the Effective date. Copies of the September 2021 and October 2021 cash flow statements are attached hereto and marked annexure "F" & "G".

15.2 Failed and/or refused to arrange that all rentals be paid into a specified bank account opened specifically by the Landlord as contemplated in terms of clause 1.1.1 of the agreement. In failing and/or refusing to arrange that all rentals be paid into the specific bank account as afore-shadowed, the Defendant acted negligently and without due care.

15.3 Failed and/or refused to account to the plaintiff monthly as required. In doing so, the defendant acted negligently and without due care.

15.4 Claimed commission for the full rental period from the plaintiff, in respect of new lease agreement entered into, and demanded immediate payment after signing the new lease agreements and not as and when the applicable rental is paid as contemplated in clause 4.3 of the agreement."

[5] As a result of the alleged breach, the Plaintiff is claiming damages in the amount of R6 631 377.28 (Six Million Six Hundred and Thirty One Thousand, Three Hundred and Seventy Seven and Twenty Eight Cents).

[6] The Defendant has raised four exceptions on the basis that the Plaintiff's particulars of claim do not contain averments necessary to disclose a cause of action, *alternatively*, they are vague and embarrassing.

[7] At the hearing of the exception, the Defendant abandoned the third ground of exception.

Applicable legal principles

[8] Herbstein and Van Winsen, the Civil Practice of the High Courts of South Africa, 5th edition, Volume 1, at page 639, the authors say the following:

> *"The excipient has the duty to persuade the court that upon every interpretation in which the pleading can reasonably bear, no cause of action or defence is disclosed."*

[9] The authors further refer to numerous cases, one of which is Francis v Sharipe 2004 (3) SA 230 (C) at 233.

[10] In Amalgamated Footwear and Leather Industry v Jordan & Co Ltd 1948 (2) SA 891 (C) at 893, it was held that:

> *"It seems to me that insofar that it can an onus on either party on a pure question of law, it rests not upon the Plaintiff, but upon the excipient. It is the excipient who is alleging that the summons does not disclose a cause of action and he must establish that in all its possible meanings no cause of action is disclosed."*

[11] According to Herbstein and Van Winsen, above, Volume 1, pages 638 to 639, a Plaintiff has the following duty:

"In order to disclose a cause of action, the Plaintiff's pleading must set out every fact (material fact) which would be necessary for the Plaintiff to prove, if traversed, in order to support his right to judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved."

[12] In this regard, the authors referred to Mackenzie v Farmers' Co-operative Meat Industries 1922 AD 1623 and other various decisions.

The Exceptions

[13] In its heads of argument, the Defendant combined the first, third and fourth grounds of exceptions.

[14] The Defendant attacks paragraph 10 of the Plaintiff's particulars of claim, which reads as follows:

> *"10. The defendant was the property management and broking company, appointed by Dayizenza Plaza prior to the transfer of the ownership of the property in the name of the plaintiff. In executing its mandate and obligation as property manager and broking company to Dayizenza Plaza, the defendant held security deposits on behalf of Dayizenza Plaza as at date of the sale the agreement being concluded between the plaintiff and Dayizenza. In compliance with clause 9.3 of the sale agreement (annexure "C" hereto), the defendant credited the security deposits held by Dayizenza Plaza*

and/or it under the transferred contracts to plaintiff on the effective date."

[15] The Defendant contends that there is no cause of action regarding the security deposits as the Plaintiff, in paragraph 10 quoted above, averred that the Defendant transferred the security deposits. This contention is incorrect. The Plaintiff averred that the Defendant credited the Plaintiff with the security deposits. The Plaintiff is now claiming payment or transfer of the security deposits on the basis that the management agreement has been terminated. Paragraph 10 must be read together with paragraph 17 of the particulars of claim, which reads thus:

> *"17. Having terminated the management contract and mandate of the defendant, and as is implied by law, the defendant was obliged to pay over all security deposits held by it on behalf of the plaintiff, to the plaintiff or another party designated by the plaintiff."*

[16] Accordingly, there is no merit in this contention.

[17] The Defendant further argues that the security deposits were held on behalf of Dayizenza; therefore, the Plaintiff's claim lies against Dayizenza in accordance with the terms of the sale agreement. In its heads of argument and during argument, the Plaintiff contended that effective from 13 September 2021, the Defendant also became the management agent for the Plaintiff and therefore, in executing its obligations under the management agreement, it credited the security

deposits, which the Defendant previously held in its capacity as agent of Dayizenza, to the Plaintiff.

[18] In clause 9.1 of the sale agreement, it is stated that with effect from the effective date, the purchaser assumes all the seller's rights and future obligations related to the business under the transferred contracts. Accordingly, from the effective date when the management contract came into effect, the Plaintiff assumed all rights to the security deposits previously held by the Defendant, which the Defendant now holds on behalf of the Plaintiff. Therefore, the claim lies against the Defendant and not Dayizenza. The plaintiff has pleaded sufficient facts in this regard to enable the Defendant to plead.

[19] The Defendant further contends that the pro-rated rental claim is based on the sale agreement and not the management agreement. This contention is flawed in that, as already stated above, from the effective date, the Defendant became the agent of the Plaintiff. Under the management agreement, the Defendant had a duty to account to the Plaintiff for rental collections as of September 13, 2021.

[20] Regarding the second ground of exception, the Defendant contends that the Plaintiff did not open an account to enable the payment of the rental to the Plaintiff. It argues that the Plaintiff did not plead that it opened an account. The Plaintiff pleaded the opening of a bank account in paragraph 23 of the particulars of claim, unless the Defendant wants the Plaintiff to plead the account number, which I find to be a matter of detail or evidence.

[21] Having evaluated the grounds of exception and applied the relevant legal principles, there is no merit to the grounds of exception. The Defendant wanted this Court to look at the particulars of the claim through a magnifying glass. This is not the correct approach. As Plaintiff's counsel submitted, the Court must have a benevolent approach when evaluating particulars of claim.

[22] Regarding costs, they should follow the result.

[23] In the circumstances, I make the following order:

23.1 The Defendant's exception is dismissed with costs.

[redacted]

NGWENYA AJ
ACTING JUDGE OF HIGH COURT, MBOMBELA

Counsel for the Plaintiff:	Adv. D Greyling-Coetzer
Instructed by:	Braam Van Rensburg Attorneys
Tel :	013 755 2484
Email Address	pieter@bvrinc.co.za

Counsel for the Defendant:	Adv. M Sethaba
Instructed by:	Eversheds Sutherland South Africa C/O Tersia Marshall Atttorneys Inc
Tel :	013 612 0742
Email Address	info@tmatt.co.za

Date of hearing:	29 May 2025
Date of judgment:	02 October 2025