



**IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2024-008267

- (1) REPORTABLE:
(2) OF INTEREST TO OTHER JUDGES:
(3) REVISED.

31 October 2025
DATE

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SIGNATURE

In the matter between:

BC FUNDING SOLUTIONS (PTY) LTD

Plaintiff/Applicant/Appellant

and

BODY CORPORATE OF SHERWOOD COURT

Defendant/Respondent

WATT-PRINGLE AJ:

1. This is an exception to plaintiff's particulars of claim, brought by the defendant.
2. The plaintiff claims confirmation of cancellation of a loan agreement, payment of R799 380.16, interest and costs on a punitive scale.
3. The cause of action is based on an alleged written loan agreement concluded by the parties. The defendant, a body corporate of a sectional title scheme, is

alleged to have been “*duly represented by two trustees ... and a Portfolio Manager of its Managing Agent...*”

4. The plaintiff pleads the material terms of the loan agreement pursuant to which the plaintiff provided a loan facility of R400 000.00, secured by amounts owing to the defendant. There are terms placing obligations on the defendant to provide information to the plaintiff concerning the collection of amounts due to the defendant.
5. The plaintiff alleges that it advanced an amount in terms of the loan facility, but that the defendant has failed to provide the information it is required to provide so that the plaintiff can determine whether the debts owed to the defendant have been collected.
6. The defendant raises an exception based on the particulars being vague and embarrassing and/or failing to disclose a cause of action.
7. The defendant asserts on its exception that whereas the loan agreement contains provisions requiring the defendant to furnish certain documents to the plaintiff, there is no allegation that these documents were in fact furnished. These include a special resolution of the general meeting or a resolution of the Administrator (if applicable) empowering the defendant to borrow monies as required by section 4 (e) of the Act (Sectional Titles Management Act, no 8 of 2011 “**the Act**”) and a trustee resolution signed by two trustees and the managing agent authorising the trustees to carry out the special resolution.
8. The defendant concludes that the failure of the plaintiff to allege that the defendant furnished any of these required documents means that it has not made the necessary allegations which, if proven, would establish that those who “*duly*

represented” the defendant in concluding the loan agreement were in fact authorised to do so.

9. The defendant further asserts that section 4 (e) of the Act requires a special resolution to authorise the body corporate “*to borrow moneys required by it in the performance of its functions or the exercise of its powers*” and that rule 10 (1) (b) of the Management Rules (referenced in the Regulations to the Act) states that “*no document signed on behalf of the body corporate is valid and binding unless it is signed on the authority of a trustee resolution by two trustees or one trustee and the managing agent, in the case of any other document.*”
10. The defendant therefore concludes that the plaintiff failed to plead: (1) the authority upon which the alleged trustees together with the alleged Portfolio Manager and its Managing Agent concluded the loan agreement on behalf of the defendant; and (2) all the facts necessary to prove that the loan agreement was entered into in compliance with the Act.
11. In my view, the particulars of claim are not vague and embarrassing as that term is understood in the present context. A pleading is only excipiable on this ground when it causes the other party prejudice in its ability to plead or except to the pleading in question.¹ In alleging that the defendant was “*duly represented*”, the plaintiff is by implication alleging that whatever had to be done internally by the defendant to cloth them with authority had been done.²

¹ Nel and Others NNO v Mcarthur and Others 2003 (4) SA 142 (T) at 148G – J.

² Fair Oaks Investment Holdings (Pty) Ltd and Another v Oliver and Others 2008 (4) SA 302 (SCA) at para 12: “*It is for an excipient who alleges that a summons does not disclose a cause of action to establish that, upon any construction of the D particulars of claim, no cause of action is disclosed.*”

12. The defendant, being the very entity alleged to have “*duly authorised*” them, can scarcely complain of embarrassment in its ability to plead thereto, as it is in the best position to admit or deny that allegation. If it contends that the alleged representatives lacked authority, it can place their authority in dispute, either by putting the plaintiff to the proof thereof (bare denial), or by raising specific allegations as to why it is alleged that they lacked authority, such as the alleged absence of a special resolution.
13. For the same reason, that aspect of the matter does not render the particulars excipiable on the grounds that they fail to disclose a cause of action.
14. As to the second point, the defendant is once again not embarrassed in its ability to plead. If it contends that the requirements of the Management Rules read with section 4 (e) of the Act were not complied with, and that this is fatal to the plaintiff’s claims, it is able to plead accordingly.
15. Whether rule 10 (1) (b) of the Management Rules attached to the Act are applicable to this defendant is not obvious to me. In any event, whether non-compliance would a matter of legal certainty leave the plaintiff without a valid loan agreement regardless of the facts of the matter is also not a matter on which I should decide by way of exception. As a general proposition, not all non-compliance with statutory injunctions results in invalidity,³ not to mention the possibility of substantial compliance if there has been a failure precisely to comply.
16. The defendant should plead to the particulars of claim. If there are discrete issues of authority or statutory compliance that can appropriately be raised by way of

³ Steenkamp and Others v Edcon Ltd 2016 (3) SA 251 (CC) at para 102.

special plea, these matters can be dealt with, without the need for the entire matter to go to trial, but that will depend on the state of the pleadings and the decision of a differently constituted court.

17. While this is not a matter for punitive costs, the plaintiff ought in my view be recompensed as well as possible in terms of an ordinary costs order.
18. In the circumstances the exceptions fail, and I make the following order:
 1. The exception is dismissed with costs.
 2. Costs are to be taxed on the C scale.

REGISTRAR



**CE WATT-PRINGLE
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Delivered: This judgement 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 email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 31 October 2025.

Date of hearing: 28 May 2025

Date of judgment: 31 October 2025

Appearances

Attorney for the Applicant: Mr K Ndungu

Attorneys for the Applicant: Ndungu Attorneys Inc

Attorney for the Respondent: Mr C Sutherland

Attorneys for the Respondent: Sutherland Kruger Inc