



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST HIGH COURT MAHIKENG**

CASE NO: 3921/2024

In the matter between:

H C PRETORIUS

APPLICANT

and

THEO VAN NIEKERK FINANCIAL

SERVICE CC

FIRST RESPONDENT

THEO VAN NIEKERK

SECOND RESPONDENT

Date considered: 31 October 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 14:00 on 30 January 2026.

JUDGEMENT

TSAUTSE AJ

Introduction

- [1] This judgment concerns two exceptions noted by the Defendants in terms of Rule 23 of the Uniform Rules of Court against the Plaintiff's amended particulars of claim. The exceptions were enrolled and argued together, as they rest on substantially overlapping grounds.
- [2] The Defendants contend that the amended particulars are excipiable on the basis that they are vague and embarrassing, contrary to Rule 18, and alternatively that they fail to disclose a cause of action. The Plaintiff opposes both exceptions.
- [3] The Plaintiff's claim arises *ex contractu*. He alleges that the First Defendant, acting as his insurance broker, breached its contractual duty to exercise reasonable care, skill, and diligence in procuring and maintaining appropriate insurance cover for immovable property later damaged by fire, resulting in under-indemnification.
- [4] The Plaintiff further seeks to hold the Second Defendant personally liable in terms of section 63 of the Close Corporations Act 69 of 1984 ("the Act").

Procedural background

- [5] The defendant filed an initial notice of exception, to which the Plaintiff amended his particulars of claim in an attempt to cure the alleged defects. The Defendants nonetheless delivered two further notices of exception, dated 30 January 2025 and 25 February 2025 respectively. These are the exceptions presently before this Court.

The governing legal principles

- [6] It is trite that an exception is concerned with the legal sufficiency of a pleading, not with the truth of the allegations contained therein. For purposes of exception, the Court must accept the pleaded facts as correct and determine whether, on every reasonable interpretation, the pleading fails to disclose a cause of action. The onus rests on the excipient to demonstrate that this is so, it nevertheless lacks a cognisable cause of action.
- [7] In *Trope v South African Reserve Bank and Another* 1993 (3) SA 264 (A) and *Lewis v Oneanate (Pty) Ltd* 192 (4) SA 811 (A), the Appellate Division emphasised that a plaintiff is required to plead the material facts on which the claim rests with sufficient particularity to enable the defendant reasonably to understand the case to be met and to plead thereto; the onus rests on the excipient to show that, on any reasonable reading, no cause of action is disclosed.
- [8] The purpose of an exception is to weed out pleadings that are bad in law so as to avoid unnecessary evidence and the expense of a trial where no sustainable claim or defence exists. In *Jowell v Bramwell-Jones and Others* 1998 (1) SA 836 (W) at 898G–I Heher J cited with approval the well-known passage from Jacob and Goldrein, which explains that parties and the Court are bound by the pleadings; the Court may not wander beyond the four corners of the pleaded case or decide issues not raised, lest it descend into speculation and adjudicate on matters not properly placed in dispute. An exception is thus not a vehicle to test the probabilities, to resolve factual disputes, or to re-cast a party's case.

- [9] This approach has been consistently applied in more recent High Court jurisprudence, including *Masakhane Mining Supply and Construction CC t/a Masakhane Megawatt Services v FPM Business Solutions (Pty) Ltd t/a FPM Security Services* [2025] ZANWHC 190, where the court refused to entertain complaints that went beyond the pleaded issues when adjudicating an exception.
- [10] Rule 18(4) requires every pleading to contain “a clear and concise statement of the material facts” upon which the pleader relies, with sufficient particularity to enable the opposite party to reply; it does not demand evidential detail or argument.
- [11] In *McKenzie v Farmers’ Co-operative Meat Industries Ltd* 1922 AD 16 at 23, Innes CJ explained that a cause of action comprises every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support the right to judgment; it does not include every piece of evidence required to prove each fact. The distinction is between the essential *facta probanda*, which must be pleaded, and the *facta probantia*, which are matters for proof at trial. Anything less than the former leaves a claim without a legal foundation; anything more tends to obscure the real issues rather than clarify them.
- [12] Broadly speaking, two primary species of exception are recognised
- [10.1] an exception that a pleading fails to disclose a cause of action (or defence), and

[10.2] an exception that it is vague and embarrassing. In relation to the latter, the vagueness must strike at the root of the cause of action and result in real prejudice.

[13] In *Levitan v Newhaven Holiday Enterprises CC* 1991 (2) SA 297 (C) at 298F–H the Court held that an exception of vagueness and embarrassment will only be upheld if the excipient shows that the defective pleading causes serious prejudice to the ability to plead; pleadings must state facts rather than bare conclusions, but exceptions are not intended to resolve factual disputes. *Quinlan v MacGregor* 1960 (4) SA 383 (D) at 393D–E reinforces that only the material or essential facts founding the cause of action need be pleaded; supportive evidential detail should ordinarily be left to trial, as its inclusion may burden and confuse the issues.

[14] The thread running through McKenzie, Quinlan and related authority is that pleadings are instruments of definition, not persuasion therefore they must define with precision the issues that fall for adjudication, so that the parties and the Court engage on clearly delimited ground. The burden on an excipient is therefore a heavy one: unless the pleading is bad in law on every reasonable construction, the exception must fail.

[15] This “cautious” approach has been re-affirmed in the North West Division in, inter alia, *Estabiz (Pty) Ltd v Starflash (Pty) Ltd (Appeal)* (CIV APP MG32/24) ZANWHC 108 (26 June 2025), where the court stressed that exceptions are a “blunt instrument” and should not be used to dispose of disputes that can properly be ventilated at trial.

The amended particulars of claim

[16] The Plaintiff's amended particulars of claim, in summary, plead the following material facts:

- the existence of an insurance relationship between the Plaintiff and the First Defendant, acting as broker, and the scope of the latter's mandate;
- the express and/or tacit obligations resting on the First Defendant to exercise due care, skill and diligence in procuring appropriate cover;
- a recommendation by the First Defendant that the Plaintiff transfer his insurance to Santam Limited and the steps taken pursuant thereto;
- an erroneous or inadequate description of the insured property in the policy schedule;
- a consequent partial repudiation or reduced indemnity by the insurer following a fire; and
- the quantifiable shortfall in indemnity said to constitute the Plaintiff's loss.

These are the kind of primary facts that, if proved, are capable of sustaining a contractual claim in law.

[17] The pleading outlines the reasons why the Plaintiff seeks to hold the Second Defendant personally liable under section 63 of the Act. It is alleged that the First Defendant conducted business without including the mandatory "CC" suffix, and that the Second Defendant knowingly allowed this omission. As a result, the Plaintiff entered into a contract under the mistaken belief that he was dealing with an entity that had limited liability.

According to the legal precedents concerning sections 63 to 65 of the Act, if these allegations are proven, they could potentially establish the personal liability of the Second Defendant.

First exception – the alleged failure to disclose a cause of action

[18] The Defendants' first exception is that the amended particulars do not adequately allege breach, causation and damages, and therefore fail to disclose a cause of action.

[19] On a proper reading of the particulars of claim as set out in Para [13], the Plaintiff has pleaded all the essential contractual elements that is

- the conclusion of a contract or mandate with the First Defendant;
- the duties of care, skill and diligence arising therefrom;
- the factual conduct said to constitute breach (including the defective description of the property and the procurement of inadequate cover);
- the causal nexus between that breach and the under-indemnification by the insurer; and the amount of the alleged loss.

[20] *In Doyle v Fleet Motors (Pty) Ltd* 1971 (3) SA 760 (A) the Appellate Division confirmed that, for purposes of an exception, the question is not whether the claim is likely to succeed but whether, accepting the allegations as true, they disclose a legally sustainable cause of action.

[21] This approach was recently echoed in *Masakhane Mining Supply and Construction CC t/a Masakhane Megawatt Services*, where the court held

that even where a pleaded case may ultimately prove weak, it will survive an exception if the essential elements of a cause of action are present.

[22] The present inquiry focuses on the legal sufficiency of the pleaded case, rather than its evidential strength. At the appropriate time, the trial court must determine whether the First Defendant acted negligently or breached its mandate, whether the insurer's position was justified, and whether the amount of loss can be proven. These are all issues that should be resolved based on the evidence, rather than at the exception stage.

[23] Read sensibly, and as a whole, the amended particulars of claim clearly admit of evidence which, if led and accepted, would support the Plaintiff's claim in contract. The first exception therefore, cannot be upheld.

Section 63 of the Close Corporations Act

[24] The Second Defendant contends that section 63 of the Act finds no application because the Plaintiff knew, or ought to have known, that he was dealing with a close corporation. This argument misconceives the nature of an exception.

[25] The Plaintiff pleads that the First Defendant conducted business without using the required "CC" suffix, and that the Second Defendant knowingly allowed or permitted this omission. If we accept these claims as true, Section 63 clearly states that personal liability can arise when the name of a close corporation is used without the necessary abbreviation, leading to confusion for a third party, as long as a member authorised or allowed this omission.

[26] In *Bophuthatswana National Bank Ltd v Killarney Auto Centre (Pty) Ltd* 1999 (1) SA 307 (B) the Court stressed that a pleading must be read as a whole and in a common-sense way, avoiding an overly technical approach and if, on a fair reading, the essential averments necessary to sustain the cause of action are present, the exception must fail.

[27] Whether those allegations can ultimately be proved is a matter for trial. At this stage, the claim against the Second Defendant is legally sustainable.

Second exception: alleged vagueness and embarrassment

[28] The second exception substantially reprises the complaints advanced under the first, recast as allegations of vagueness and embarrassment.

[29] Read as a whole and construed sensibly, the amended particulars of claim set out a coherent and intelligible case, sufficient to inform the Defendants of the issues they are required to meet.

[30] In *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority* SA 2006 (1) SA 461 (SCA) para 3, the Supreme Court of Appeal reaffirmed that an exception must show that on every reasonable interpretation of the pleading no cause of action or defence is disclosed; the Court must accept the pleaded facts as true and resist the temptation to dispose of disputes at the threshold where a reasonably arguable, legally sustainable case can be discerned.

- [31] The same disciplined approach is evident in *Estabiz (Pty) Ltd v Starflash (Pty) Ltd*, (CIV APP MG32/24) [2025] ZANWHC 108 where the Court emphasised that exceptions are not to be deployed as tactical devices to secure premature pronouncements on the merits.
- [32] Minor ambiguities, imperfections of drafting or a lack of evidential detail do not amount to vagueness and embarrassment going to the root of the cause of action or resulting in serious prejudice. Where a party requires greater particularity for purposes of trial preparation, the Uniform Rules make provision for further particulars and discovery; exceptions are not intended to serve as occasions for word-games or to police technical compliance with Rule 18 in the absence of real prejudice
- [33] In *Burger N.O v Nel and Others* (1744/2024) [2024] ZANWHC 217 the court argued that the lack of detail may justify a request for particulars, but does not, without more, render a pleading excipiable if the essential averments of a cause of action are present.

Conclusion

- [34] It is my conclusion that the Defendants have failed to establish that the Plaintiff's amended particulars of claim, when read holistically and construed in a sensible and benevolent manner, do not disclose a cause of action or are so vague and embarrassing as to occasion serious prejudice. The exceptions they advance are aimed not at the legal sufficiency of the pleading, but at the level of factual detail and evidential substantiation, issues which fall to be determined at trial rather than on exception. In substance, the excipients seek to deploy Rule 23 as a vehicle to challenge

the factual merits and anticipated proof of the Plaintiff's case, rather than to demonstrate an absence of a sustainable cause of action or true prejudice arising from vagueness, which is contrary to the authorities cited above.

[35] It follows that the exceptions cannot be sustained and must be dismissed.

Order:

In the result, I make the following order

1. The first and second exceptions are dismissed.
2. The Defendants are ordered, jointly and severally, the one paying the other to be absolved, to pay the costs of the exception proceedings, such costs to include the costs of counsel where so employed.
3. The Defendants are directed to deliver their plea within ten (10) days of the date of this order.



Tsautse AJ

Judge of the High Court

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