



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Case No: 2025-036551

In the matter between:

**PIETER JOHANNES LODEWYK VENTER
ANIETA VENTER**

**FIRST PLAINTIFF
SECOND PLAINTIFF**

and

**HENRY RICHARD ANDRE BEIROWSKY N.O
THOMAS JACOBUS BEIROWSKY N.O
RUDI DAWID STRYDOM N.O.**

**FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT**

(In their representative capacities as the trustees for
The time being of the REB Holdings Trust)

Neutral citation: *Pieter Johannes Lodewyk Venter and Another v s Henry
Richard Andre Beirowsky and 2 Others* (Case no 2025-036551)

Coram: O'Brien, AJ

Heard: 26 January 2026

Delivered: 12 February 2026

Summary: Civil Procedure – Pleadings - Exceptions to the plaintiffs’ particulars of claim mischaracterisation of plaintiffs’ claim, not a substantive question of law -Exception dismissed.

Contract - Claim for damages - Terms of defective work alleged - pleaded in particulars of claim

ORDER

1. The exception is dismissed.
2. The defendants are to pay the plaintiffs’ costs on Scale A.

JUDGMENT

O’BRIEN, AJ:

Introduction

[1] This is an exception to the plaintiffs’ particulars of claim. The central question is whether the particulars disclose a cause of action against the defendants, who are sued in their capacities as trustees of the REB Holding Trust, and whether the pleading is so vague and embarrassing that it is excusable.

[2] The plaintiffs’ claim arises from what is described as a plot-and-plan transaction in terms of which the defendants undertook to construct a

dwelling on a property which was subsequently registered and transferred to the plaintiffs.

- [3] The plaintiffs allege that the construction was defective and seek damages in the amount of R648,744.99.

The Pleaded Case

- [4] The material averments in the particulars of claim may be summarised as follows.

- [5] On 23 June 2023, the plaintiffs and defendants concluded a written agreement in terms of which:

- (a) The plaintiffs would pay R3,404,750.00 to the defendants for the property and construction of a dwelling on the property in accordance with approved plans and a quotation.
- (b) The defendants would construct the dwelling in a proper and workmanlike manner, fit for habitation, and in compliance with the technical requirements of the National Home Builders Registration Council (“NHBRC”).
- (c) The defendants warranted that they would remedy major structural defects and other non-compliance or deviations from the agreed specifications upon notice within a reasonable period.

- [6] The plaintiffs allege that they performed their obligations. An occupation certificate was issued on 6 October 2023. Transfer and registration of the

property into the plaintiffs' names occurred on 7 December 2023, and they took occupation on 19 December 2023.

[7] It is alleged that the defendants breached the agreement in that various aspects of the work were not performed in accordance with the plans or in a workmanlike manner, including defective roofing, unrectified cracks, incomplete finishes, and a pergola not constructed as specified.

[8] The plaintiffs claim damages as quantified in an attached quotation for remedial works.

The Grounds of Exception

[9] The defendants raise two principal grounds:

- (a) That the particulars of claim fail to disclose a cause of action
- (b) That the particulars are vague and embarrassing.

The Law Relating to Exceptions

[10] An exception is a procedural mechanism intended either to dispose of cases that are legally unsustainable at an early stage or to compel clarity in pleadings. See *Colonial Industries Ltd v Provincial Insurance Ltd* 1920 CPD 627 of 630. The form of pleading known as an exception is a valuable part of our system of procedure when legitimately employed. Its principal use is to raise and obtain a speedy and economical decision on questions of law that are apparent on the face of the pleadings. It also serves as a means of taking

objection to pleadings that are not sufficiently detailed or otherwise lack lucidity and are thus embarrassing.

[11] Historically, under the name of “demurrer”, this procedure developed in old English practice into what was regarded as a pernicious abuse, with courts abrogating their functions as courts of justice by countenancing and encouraging the ingenuity of counsel in drafting fine demurrers that ignored the substantive rights they were called upon to adjudicate. This history underscored the need to guard against abuse of the exception procedure. Accordingly, where an exception is taken for the purpose of raising a substantive question of law that may have the effect of finally determining the dispute between the parties, the excipient must make out a clear and strong case before entitled to succeed. See *Colonial Industries supra*.

[12] In deciding an exception, the court assumes the correctness of the factual allegations pleaded and determines whether, on every reasonable interpretation, the pleadings fail to disclose a cause of action or are so vague and embarrassing as to cause prejudice. See *Brooks v Minister of Safety and Security* 2008 (2) SA 397 (C) at 402J and *Lewis v Oneanate (Pty) Ltd* 1992 (4) SA 811 AT 817 F.

[13] Mr Potgieter, for the defendants, submitted that although the particulars of claim state the property was transferred and registered in the plaintiffs' names, no factual or contractual basis for the transfer was pleaded. He argues that there are no allegations regarding the contractual framework for the purchase,

the passing of risk, whether the sale was voetstoots, or whether any warranties or guarantees were provided.

[14] He contends that the claim involves a transaction in immovable property, which under section 2(1) of the Alienation of Land Act, 68 of 1981 (“the Act”), requires a written agreement signed by the parties. The material terms must be pleaded to sustain the cause of action. He submits that a damages claim could arise only after the acquisition of the property, making the acquisition a material part of the cause of action that has not been pleaded.

[15] His argument regarding vagueness repeats the point that the rules require essential averments material to the claim to be pleaded, which he contends are lacking here.

[16] Mr Gagiano, for the plaintiffs, submitted that the plaintiffs pleaded the quotation forming the basis of the written agreement, which requires the dwelling to be constructed skilfully, fit for occupation, and in compliance with NHBRC requirements. The plaintiffs also pleaded that the property was transferred on 7 December 2023. He argues that the defendants' contention regarding compliance with section 2(1) of the Act misconstrues the claim.

[17] Furthermore, the agreement was for construction services, not the sale of land, so no deed of sale is required. In summary, the plaintiffs' claim is based on a written agreement for construction work, which the defendants allegedly failed to perform in a workmanlike manner.

Discussion

[18] The defendants' primary difficulty lies in characterising the plaintiffs' claim as one for the sale of the land. The issue is not who owns the property, but whether it was registered and transferred to the plaintiffs on 7 December 2025. This is common cause on the pleadings.

[19] Properly construed, the plaintiffs' case is not founded upon a deed of sale, but upon a written agreement for construction services in a plot-and-plan context.

[20] The plaintiffs do not seek to enforce a contract of sale. They claim damages arising from the defective performance of building obligations. The plaintiffs could only have found the alleged defects after occupation. They then obtained a quotation to fix the alleged defective work and are now claiming damages for poor workmanship.

[21] Section 2(1) of the Act is therefore not engaged. In any event, our system of ownership is based on the abstract theory of transfer of ownership, which, in the case of immovable property, occurs upon registration of transfer in the Deeds Office, coupled with a so-called "real agreement". See *Legator McKenna Inc vs Shea* 2010 (1) SA 49 (SCA). The fact that the property was transferred and registered in the plaintiffs' names establishes, prima facie, that they may produce the deed of sale as evidence at trial. See *Cloete vs Edet Investments* 2019 (5) SA 486 (WCC) para 20.

[22] The particulars of claim identify the agreement, its terms, the breaches and the damages. The defendants have failed to demonstrate that the particulars of claim do not disclose a cause of action or that they are vague and embarrassing.

Order

- (a) The exceptions are dismissed.
- (b) The defendants are to pay the plaintiffs' costs on Scale A.

O' BRIEN, AJ
Acting Judge of the High Court of South Africa
Western Cape Division, Cape Town

APPEARANCES:

For the Plaintiffs:

Adv Gagiano

Instructed by:

MHI Attorneys

For the Defendants:

Adv Potgieter

Instructed by:

Van der Spuy