REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

3 February 2026 [redacted]
DATE SIGNATURE

CASE NO: 33942/2022

In the matter between:

CLINTON LUKE ZAVERDINO **Plaintiff/Respondent**

and

FIRST NATIONAL BANK

(A Division of First National Bank Ltd) **Excipient/Defendant**

JUDGMENT

(The matter was heard in open court and judgment was reserved. The judgment was uploaded onto the electronic file of the matter on CaseLines and the date of uploading of the judgment onto CaseLines is deemed to be the date of the judgment).

BEFORE: HOLLAND-MUTER J:

[1] Rule 23 of the Uniform Rules of Court provides for a mechanism to dispose of a case or a portion thereof in an expeditious manner, or to protect a party against an embarrassment which is so serious as to merit the costs even of an exception. An exception provides a useful mechanism for weeding out cases without legal merit. Thus, an exception founded upon the contention that a summons discloses no cause of action, or that a plea lacks averments necessary to sustain a defence, or regarded to contain a decision on the point of law which will dispose of the case in whole or in part, and avoid leading unnecessary evidence at the trial. If it does not have that effect the exception should not be entertained. **Erasmus, Superior Court Practice Vol 2 D1 Rule 23-5.**

[2] In **Merb (Pty) Ltd v Matthews GJ Case No 2020/15069 (2021 JDR 2889 GJ)** Maier-Frawley J gave a summary of some of the general principles applicable to exceptions with reference to Makgoka J in **Living Hands (Pty) Ltd v Ditz 2013 (2) SA 368 (GSJ) at 374G:**

"Before I consider the exceptions, an overview of the applicable general principles distilled from case law is necessary:

(a) In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the allegations pleaded by the plaintiff to assess whether they disclose a cause of action;

(b) The object of an exception is not to embarrass one's opponent or to take advantage of a technical flaw but to dispose of a case or a portion thereof in an expeditious manner, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception;

(c) The purpose of an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If the exception is not taken for that purpose, an excipient should make out a clear case before it would be allowed to succeed.

(d) An excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim, no cause of action is disclosed.

(e) An over-technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit.

(f) Pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained'

(g) Minor blemishes and unradical embarrassment caused by a pleading can or should be cured by further particulars"

[3] In view of the above the court approached the exception and the pleadings in general as stands at present.

[4] The Plaintiff (Zaverdino) issued action against the defendant on 24 June 2022. The Defendant (First National Bank- referred to as the "Bank"), delivered a Rule

23(1) to remove complaint but although the Plaintiff sought to amend his particulars of claim, the proposed amendments according to the Bank failed to cure the complaint.

[5] The Plaintiff did not respond to the objection by the Bank against the proposed amendments. The Bank was of the view that the Plaintiff failed to cure and/or remedy the Bank's cause of complaint and failed to pursue his proposed amendments, resulting in that the Bank pursued its exception. The opposed exception was heard by Collis J and on 21 May 2024 she upheld the exception, struck the Plaintiff's particulars of claim and afforded the Plaintiff an opportunity amend his particular of claim. The Plaintiff was burdened with a cost order on a party-and-party-scale (Scale C). Collis J granted a court order but no judgment setting out why the exception was upheld, can be found on CaseLines. (As far as could be established from the electronic file of the matter on CaseLines).

[6] The Plaintiff filed an amended particulars of claim on 10 September 2024 but the Bank again held the view that the amended particulars of claim was excipiable and afforded the Plaintiff an opportunity to remove the further causes of complaint. The Plaintiff did not respond to the notice of complaint resulting in the exception before this court.

[7] The Bank listed eight grounds of complaints against the amended particulars of claim. During arguments counsel for the Bank indicated that the Bank was not proceeding with the eight ground and resulting in counsel for the Plaintiff to move for an order dismissing the eight ground with costs. In view of what is to follow, this will be entertained in the whole of the judgment below.

[8] Pleadings serve a number of functions, the most important are:

* to define the issues upon which the court will be called upon to adjudicate;

* to enable the parties to prepare for trial on the issues as defined;

* to serve as a record of the respective claims, counterclaims, admissions and defences which may be relevant in any other or future litigation between the parties;

* to set the parameters within which the proceedings will be conducted on evidence admitted or excluded; and

*to determine the burden of the onus of adducing evidence and the duty to to begin.

See **Herbstein & Van Winsen, The Civil Practice of the High Courts of South Africa 5th ed vol 1 p 559-560.**

[9] The Plaintiff listed eight different accounts entered into between himself and the Bank on different dates. It is alleged that these accounts were in writing and that the Bank is in possession of the original and copies. It is the Bank's business to trade with individuals. When opening an account with the Bank, it is common knowledge that the Bank uses a proforma document containing in some instances several pages of fine print setting put the terms and conditions of a particular account. These pro forma documents originate from the Bank's legal division justifying the inference that the Bank is aware of all terms and conditions applicable on various products (accounts) and ought to know what can be pleaded or not. In this instance is seems that the Bank is over technical in its approach regarding the particulars of claim.

[10] The Plaintiff in the particulars of claim alleges that certain terms and conditions are applicable on the specific account but need not refer to terms not applicable on the dispute between the parties. The Bank ought to be able to have the whole agreement per account to compare with the averments made in

the particulars of claim and only if impossible to determine the exact terms and conditions of each individual account raise the objection that it is unable to plead on the particulars of claim. It is only when the particulars of claim are of such nature that the Bank is unable to plead thereto that an exception should be entertained. See **Lockhat v Minister of the Interior 1960 (3) SA 765 (D) at 777E.**

[11] When reading the particulars of claim it is clear that the plaintiff sets out the reference to each account in such way that it is clear what the terms of the different agreement are and what obligations rests upon each participant of the agreement. The court also accepts that the averments made are true (as set out above case law) that the Bank can plead to each averred account without any further facta probantia. The alleged facta probanda are sufficient to enable the Bank to plead thereto. The main issue on the accounts is the failure by the Bank to deliver the IT3(b) certificates timeously to enable the plaintiff to submit such to the Suth African Revenue Services (SARS) which according to the plaintiff is one of the causes of the damages claim he pursues against the Bank.

[12] The various contracts are properly identified; the accounts created as a result of the contracts are adequately particularised, the terms on which the plaintiff relies have been pleaded and the breaches by the Bank alleged. The court is satisfied that the averments in the particulars of claim are sufficient to to conclude that if proven, in all probabilities be sufficient to establish a cause of action.

[13] It is only when the particulars discloses no cause of action that the court will uphold an exception. See **Gallager Group Ltd and Another v IO Tech Manufacturing (Pty) Ltd 2014 (2) SA 157 in [par 19]** held that the excipient has to persuade the court upon every interpretation which pleading in question and in particular that the facts relied upon do not disclose any cause of action to succeed with the exception. Also see **Erasmus, Superior Court Practice at B1-151.**

[14] It is only when the particulars of claim are vague, meaningless or capable of than one meaning that an exception should be upheld. The court fails to find that the particulars of claim as amended is embarrassing or vague and that it is not possible for the Bank to plead upon. The Bank may make an application for further particulars ***if*** necessary to plead but the court will not as a rule strike out paragraphs as vague and embarrassing. The court is of the view that the exception is rather technical and that the Bank has not made a case for the relief sought. The exception is dismissed.

COSTS:

[15] The award of costs of exception lies within the discretion of the court although in the absence of peculiar features, costs will normally follow success. The court mat deviate from the ordinary rule if there are peculiar features to differ and not award costs on success. See **Herstain & Van Winsen supra p 648.** Having read all the papers and in particular the framed exception, the court is of the view that there is no reason to deviate from the normal rule.

ORDER:

The exception is dismissed with costs to be paid by the Excipient (Bank) on a party-and-party Scale B within the discretion of the Taxing Master.

[redacted]

HOLLAND-MUTER J

3/2/2026

Judge of the Pretoria High Court

Matter was heard in open court on 3 November 2025

Judgment was delivered by uploading thereof onto the electronic file of the matter in CaseLines on 3 February 2026.

[redacted]

Appearances:

Excipient: Adv N Konstantinides SC

Respondent: Adv J Moller