

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2022-11364**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
	
<u>25 February 2026</u>	_____
DATE	SIGNATURE

In the matter between:

BOUWA MACHINERY SOUTH AFRICA (PTY) LTD

Applicant

and

AIR ROTARY SERVICES (PTY) LTD

Respondent

In re:

BOUWA MACHINERY SOUTH AFRICA (PTY) LTD

Plaintiff

and

AIR ROTARY SERVICES (PTY) LTD

First Defendant

APX EQUIPMENT (PTY) LTD

Second Defendant

ROSELT, JOHN HENRY

Third Defendant

JUDGMENT

MODIBA, J

[1] The plaintiff (ZH Group)¹ seeks leave to amend its particulars of claim, as set out in the proposed amended particulars of claim attached to its notice of intention to amend dated 7 February 2025 (the proposed amended POC). The first defendant (Air Rotory) objects to the proposed amendment and accordingly opposes this application.

[2] The proposed amended POC sets out three claims against Rotory styled claims A, B and C. Rotory objects to the proposed amendment on the basis that claims B and C introduce new claims which prescribed prior to the notice of intention to amend being served. These contentions give rise to two questions to be determined in this application. The first is whether the debts claimed under claims B and C of the proposed amended POC are the same as those claimed in the original particulars of claim (original POC). The second question only arises if the first is answered in the negative. It is whether the debts sought to be claimed under claims B and C of the proposed amended POC have prescribed.

[3] The applicable legal principles are trite. Although the parties cite different authorities, there is no dispute as to what the applicable principles are. The purpose of an amendment is to allow a proper ventilation of the dispute between

¹ ZH Group (Pty) Ltd, was previously named Bouwa Machinery South Africa (Pty) Ltd. It still cited as such in the pleadings in the action.

the parties.² When considering whether to grant or refuse an amendment, the Court exercises a judicial discretion.³ The Court will generally allow an amendment unless it is *mala fide* or will cause an injustice to the other party that cannot be compensated by costs.⁴

[4] Section 15(1) of the Prescription Act 68 of 1969 (the Act) provides as follows:

“The running of prescription shall, subject to the provisions of subsection (2), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt”.

The Act does not define ‘debt’. The Supreme Court of Appeal (SCA) has ascribed a wide and general meaning to this word.⁵ It held that ‘cause of action’ refers to the material facts relied upon by a party to establish the right of action and ‘debt’ is not the set of material facts. It is that which is begotten by the set of material facts.⁶

[5] The test to determine if an amendment introduces a new debt, is set out in *First Rand Bank Ltd v Nedbank (Swaziland) Ltd*⁷ on which the applicant relies. There, the SCA held that summons may interrupt the running of prescription even where it inadequately set out material facts to disclose a cause of action. The running of

² *Trans-Drakensberg Bank Limited (under judicial management) v Combined Engineering (Pty) Ltd* 1967 (3) SA 632 (D) at 638.

³ *Ciba-Geigy (Pty) Ltd v Lushof Farms (Pty) Ltd* 2002 (2) SA 447 (SCA) at 462.

⁴ *Trans-Drakensberg* *ibid* 638 – 641; *Bankorp Limited v Anderson-Morshead* 1997 (1) SA 251 (W) at 253 C-8

⁵ *CGU Insurance Ltd v Rumdel Construction (Pty) Ltd (“CGU”)* 2004 (2) SA 622 SCA paragraph 6.

⁶ *CGU* *ibid* paragraph 6.

⁷ 2004 (6) SA 317 (SCA) at paragraph 4.

prescription, the SCA further held, is interrupted if the right of action sought to be enforced in the summons after its amendment is recognizable as the same or substantially the same right of action as that disclosed in the original summons.

[6] In what follows, I analyze the proposed amendment against the above principles.

The debts claimed under B of the proposed amended POC are set out in paragraph 27 of the original POC where the ZH Group alleges that the goods referred to in paragraphs 27.1 to 27.5 were sold and delivered by ZH Group to Rotory.⁸ Paragraphs 27.1 to 27.3 refer to specific invoices and amounts. Paragraphs 27.4 and 27.5 refer to various invoices and provide globular amounts. Paragraph 28 references annexure I which sets out a full statement of account for all the purchases.

[7] The proposed claim B is set out at paragraphs 16 to 131 of the proposed amended POC. It is based on agreements for goods sold and delivered by ZH Group to Rotory. The agreements are alleged to comprise accepted purchase orders, with each such purchase order and corresponding invoice pleaded separately under paragraphs (a) to (r). All invoices for these claims are reflected in annexure I and are included in those dealt with in paragraph 27 and 28 of the original POC.

[8] Therefore, a finding that the debts set out in claim B of the proposed amended POC are the same debts as the debts set out in claim C of the original POC is inescapable. The fact that the proposed amended POC pleads material facts which give rise to the debts with particularity that was lacking in the original POC as essentially contended by Rotory is of no moment. This is precisely the defect the

⁸ **Original POC** par 27 12-151 – 12-152

proposed amendment is directed at curing.

[9] Paragraph 25 of the original POC references an equipment rental agreement (ERA). The ERA is attached to the original POC as annexure H. It makes provision for eight instalments and a purchase option as a ninth instalment. In paragraph 26 of the original POC, the ZH Group alleges that Rotory is indebted to it in the amount of R115 000. This debt corresponds to that which is pleaded in paragraphs 132 to 140 of the proposed amended POC where ZH Group alleges that, under the ERA pleaded in the original POC, the leased goods were delivered to Rotory and it is in breach for failing to pay the purchase option instalment of R115 000. Since the original and proposed amended POC include a claim for payment of an outstanding instalment of R115 000 under the ERA, there is no basis for upholding Rotory's objection to the proposed amendment in respect of this claim. The fact that the cause of action of proposed claim C is pleaded with particularity lacking from the original POC does not mean that it introduces a new cause of action.

[10] The second basis for Rotory's objection to this claim, that the claim in the original POC was based on *Standard Terms and Conditions for the Supply of Goods*, referred to as the "*Main Agreement*" is of no moment as it clearly appears that the claim was based on the main agreement as well as two ERAs. For all the above reasons, the application succeeds.

[11] The ZH Group sought punitive costs against Rotory on the basis that the objection is without merit. The fact that the proposed amendment sought to cure a defect in the original POC which Rotory had objected to does not preclude it from objecting to the proposed amendment. The grounds of objections raised triable issues as the ZH Group's claims are extensive and were not pleaded with sufficient particularity. There is no malice on the part of Rotory in understanding the amendment as relating to new debts and causes of action which have since prescribed. Since ZH Group sought an indulgence which the defendant had opposed, it is just and equitable that costs should be costs in the course.

[12] In the premises, I make the following order:

Order

1. The application succeeds.
2. The plaintiff shall file its amended particulars of claim within 5 days of delivery of this judgment.
3. Costs shall be costs on the course.



L.T. MODIBA
JUDGE OF THE HIGH COURT
JOHANNESBURG

Appearances

For the Applicant: Adv HP Pretorius
Instructed by: Edward Nathan Sonnenbergs Inc

For the Respondents: Adv R Bhina
Instructed by: Schulenburg Inc

Date of hearing: 17 February 2026
Date of judgment: 25 February 2026

This judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The time for the handing down is deemed to be 10am.