



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case number: 35668/2021
(1) REPORTABLE: **YES / NO**
(2) OF INTEREST TO OTHER JUDGES: **YES / NO**
(3) REVISED: **YES**
DATE 25 March 2026
SIGNATURE

In the matter between:

RIYADH DOOLA
[IDENTITY NUMBER: 7[...]]

EXCIPIENT

and

**BMW FINANCIAL SERVICES (SOUTH AFRICA)
(PTY) LTD**

RESPONDENT

IN RE:

**BMW FINANCIAL SERVICES (SOUTH AFRICA)
(PTY) LTD**

PLAINTIFF

and

RIYADH DOOLA
[IDENTITY NUMBER: 7[...]]

DEFENDANT

JUDGMENT

VAN ROOYEN, AJ:

Introduction

[1] This is an opposed exception to the Respondent's ("*Plaintiff*") amended particulars of claim dated 5 February 2025. The Excipient ("*Defendant*") gave notice to the Plaintiff that he intends taking exception to the amended particulars of claim on the basis that it is vague and embarrassing. The Plaintiff was afforded an opportunity to remove the causes of complaint.

[2] The Plaintiff did not respond to the notice referred to above and the Defendant subsequently filed an exception.

Plaintiff's Claim

[3] In the main action, Plaintiff, a financial institution, instituted a claim against the Defendant, as surety and co-principal debtor of Northend Showroom CC ("*Northend Showroom*") the principal debtor of the Plaintiff.

[4] According to the amended particulars of claim, Northend Showroom and the Plaintiff entered into a written instalment sale agreement on 7 September 2017¹ for a BMW motor vehicle that was financed by the Plaintiff.

[5] On 23 February 2018, the Defendant concluded a written suretyship agreement² binding himself to the Plaintiff as surety and co-principal debtor of Northend Showroom relating to the above agreement.

¹ Annexure "A" to the particulars of claim

- [6] Northend Showroom failed to comply with the payments in terms of the agreement. In terms of paragraph 8.2, read with Annexure “C1” of the particulars of claim, Northend Showroom acquired an acceptable offer to purchase (out of hand sale) of the relevant vehicle from a third party. Plaintiff agreed to the release of the registration document of the relevant vehicle upon receipt of the purchase price obtained from the sale (R 930 000.00). Plaintiff further required that Northend Showroom acknowledge liability for the shortfall in the *amount outstanding* in terms of the agreement.
- [7] In terms of paragraph 14 of the particulars of claim, the *balance* owing by the Defendant under the agreement is R 573 145.66. It is this outstanding amount that is now claimed from the Defendant.

The Exception

- [8] In a rather clumsily worded notice, in terms of Rule 23(1)(a), the Defendant raised 3 complaints that, according to Defendant, rendered the particulars of claim vague and embarrassing.
- [9] These three complaints are³:
- 9.1 First complaint: It is unclear whether the Plaintiff credited the principal debtor's account with the proceeds;
- 9.2 Second complaint: It is unclear whether the Plaintiff claims a shortfall (damages) or amounts due;

² Annexure “E” to the particulars of claim

³ Case Lines 028-125 – 028- 128

9.3 Third complaint: Inconsistencies exist regarding the Plaintiff's statement and letter of demand.

Legal principles

[10] It is settled that an exception should be dealt with sensibly and not in an over-technical manner.⁴

[11] In **Nel and Another NNO v McArthur and Others**⁵ the principal is laid down that an exception that a pleading is vague and embarrassing will not be allowed unless the excipient would be seriously prejudiced if the offending allegations were not expunged. The test applicable in deciding exceptions based on vagueness and embarrassment is set out:

“the Court is obliged to first consider whether the pleading lacks particularity to an extent amounting to vagueness (in the sense of rendering it meaningless or capable of more than one meaning); thereafter there must be a qualitative analysis of such embarrassment; and it is only where the embarrassment is so serious as to cause prejudice to the excipient that the exception will be allowed. The onus is on the excipient to show both vagueness amounting to embarrassment and embarrassment amounting to prejudice.”

[12] Pleadings must be read as a whole and no paragraph should be read in isolation.⁶

⁴ **Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA** 2006 1 SA 461 (SCA) at 465H.

⁵ 2003 (4) SA 142 at 148G-I

⁶ Nel and Others NNO at 149F

Evaluation

[13] Although the amended particulars of claim could have been drafted more concisely, a holistic evaluation thereof however does not, in my view, render the pleading vague and embarrassing.

[14] The amended particulars of claim contain the necessary averments demonstrating that the Plaintiff did not rely on a cancellation of the agreement but rather on a claim for the outstanding balance.

[15] In computing the outstanding balance, Plaintiff relied *inter alia* on Annexure “C1”, “C2” and “D” to the particulars of claim.

[16] In my view, the Plaintiff has pleaded with sufficient particularity to enable the Defendant to answer thereto, and the complaints raised by the Defendant cannot be sustained.

[17] I therefore make the following order:

17.1 The exception is dismissed with costs;

17.2 The Defendant is ordered to deliver his plea to the Plaintiff’s amended particulars of claim within 20 days of date of this order;

17.3 The Defendant is ordered to pay the costs of the exception on a party and party scale B.

M VAN ROOYEN
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

This judgment 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 19 March 2026.

APPEARANCES:

For the Excipient : Adv JM Killian
Instructed by : Combrink Nel & Ballack Inc.

For the Respondent : Adv SF Fischer-Klein
Instructed by : Velile Tinto & Associates Inc.

Matter heard on : 5 February 2026
Judgment date : 25 March 2026