IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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

[redacted]

25 March 2026
DATE **SIGNATURE**

Case number: 2024-073367

In the matter between:

TEMBEKA KOEKIE MDLULWA Plaintiff

and

PSR SOLUTIONS PROPRIETARY LIMITED First Defendant

PHELADU SUZAN RAPHELA Second Defendant

KAGISO SETSESE Third Defendant

JUDGMENT

VAN ROOYEN, AJ:

Introduction:

[1] This is an opposed exception against Plaintiff's amended particulars of claim that was filed on 8 January 2025[1].

[2] First, Second and Third Defendants filed an exception on the basis that Plaintiff's particulars of claim lack averments necessary to sustain a cause of action[2].

Plaintiff's claim:

[3] Plaintiff instituted a contractual claim for damages and alternative claims against the three Defendants for payment in the amount of R3 345 211.00. The factual basis for the claims is an alleged misrepresentation made by Defendants to Plaintiff during negotiations that led to the conclusion of an agreement between the parties.

[4] The alternative claims are based on section 424 of the Companies Act, No 61 of 1973 and section 20(9) as well as sections 22 and 218 of the new Companies Act, No 71 of 2008.

Background Facts:

[5] The facts leading to the claim are rather peculiar and create a suspicion of an unlawful transaction. According to the particulars of claim the facts were pleaded as follows:

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[1] Case Lines 004-49
[2] Case Lines 003-8

5.1. Plaintiff was telephonically introduced to Third Defendant who indicated that he acted on behalf of First Defendant.

5.2. An oral agreement was reached between the parties in terms whereof Plaintiff would advance a loan of R19,9 million to First Defendant, alternatively Second Defendant, further alternatively Third Defendant. The loan would allegedly enable First Defendant to perform a tender for personal protective equipment to be delivered to an end user.

5.3. Plaintiff paid the amount referred to above, directly to the suppliers of First Defendant to facilitate the delivery of the equipment.

5.4. First Defendant, alternatively Second Defendant alternatively Third Defendant would repay the loan, with interest, to Plaintiff in a total amount of R33 million.

5.5. Plaintiff paid the amount to the supplier and a few days later Defendants repaid the amount of R33 million to Plaintiff.

5.6. Defendants allegedly failed to fulfil their tax obligations in terms of the above transaction and SARS subsequently obtained a provisional preservation order against Plaintiff, First and Second Defendants in terms of Section 163 of the Tax Administration Act, 28 of 2011.

5.7. All Plaintiff's realizable assets were subject to the provisional preservation order, which order was confirmed.

5.8. Plaintiff subsequently reached an agreement with SARS (which agreement was made an Order of Court) in terms whereof Plaintiff's preserved funds in the amount of R3 345 211.00 will be utilized in partial settlement of the alleged tax debt of First Defendant, whereupon SARS released Plaintiff from the preservation order[3].

5.9. The Plaintiff now claims the amount of R3 345 211.00 from the Defendants on the bases as set out above.

The Exception:

[6] Defendants filed an exception in terms of Rule 23 against Plaintiff's particulars of claim on the basis that it lacks averments necessary to sustain a cause of action. The underlying basis for the exception is that the payment made by Plaintiff, *ex facie* the particulars of claim, primarily intended to benefit Plaintiff and/or that Plaintiff had no lawful obligation to make the payment on behalf of First Defendant to SARS.

[7] When considering the legal requirements to sustain a claim for contractual damages, based on negligent misrepresentation, a plaintiff must allege (and subsequently prove) that:

7.1. that there was a representation by defendant or his agent

7.2. that such representation was false

7.3. that the representation was wrongful

7.4. that the representation was made by the defendant negligently

7.5. that the representation was material and would have influenced a reasonable person to enter into the agreement

[3] Annexure "POC3" to the particulars of claim

7.6. that the representation was intended to induce the plaintiff to enter into the agreement

7.7. that the representation did, in fact, induce the contract

7.8. if damages are claimed, the quantum thereof.

[8] The approach to be followed when considering an exception in terms of Rule 23 of the Uniform Court Rules is trite. An exception has been described as a legal objection to the opponent's pleading: It complains of a defect inherent in the pleading – admitting for the moment (at the stage of exception) that all the allegations in the summons or plea are true. The Court, to allow an exception, must be of the view that, even with such admission, the pleading does not disclose a cause of action or a defence, as the case may be.

[9] It follows that that a plaintiff's particulars of claim should contain averments alleging all material facts necessary to give rise to an enforceable claim, failing which the pleading is excipiable.

[10] The Court is careful not to allow its own skepticism, relating to the lawfulness of the eventual transaction resulting from the agreement between the parties, to influence the assessment on the question of whether the averments in the particulars of claim, if true, sustain a cause of action.

[11] When considering the particulars of claim, it appears that all allegations necessary to sustain a claim for damages have been made.

[12] As already stated, this Court has concerns about the lawfulness of the transaction envisaged in the agreement between the parties. The Court further

has reservations whether the Plaintiff will be able to prove the allegations in the particulars of claim. The Court cannot, however, at this stage find that the allegations are manifestly false.

[13] Regarding the issue of costs, and considering the reservations expressed, I am of the view that the Trial Court will be in a better position to deal with the issue of costs.

[14] With reference to the alternative claims, and particularly in view of the approach set out above, I will not deal with the exception in detail to those claims.

[15] I therefore make the following order:

15.1. The exception is dismissed.

15.2. The Defendants are ordered to deliver their plea to the Plaintiff's amended particulars of claim within 20 days of date of this order.

15.3. Costs are reserved for determination by the Trial Court.

[redacted]

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 20 March 2026.

APPEARANCES:

For the Plaintiff	:	Adv L VR van Tonder
Instructed by	:	Faber Goertz Ellis Austin Inc.
For the Defendants	:	Mr KJ van Huyssteen
Instructed by	:	Fluxmans Attorneys
Matter heard on	:	5 February 2026
Judgment date	:	25 March 2026