



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 1917/2025

In the matter between:

OOS VRYSTAAT KAAP BEDRYF BEPERK

PLAINTIFF

[Registration number: 1999/004069/06]

and

OCKERT VENTER N.O.

FIRST DEFENDANT

ALMARI BORNMAN N.O.

SECOND DEFENDANT

JACOBUS JOHANNES BORNMAN N.O.

THIRD DEFENDANT

FREDERICK JOHANNES BORNMAN N.O.

FOURTH DEFENDANT

(In their capacities as trustees for the time being of the
Ven-Bor Trust, IT000462/2016(B)

OCKERT VENTER

FIFTH DEFENDANT

ALMARI BORNMAN

SIXTH DEFENDANT

JACOBUS JOHANNES BORNMAN

SEVENTH DEFENDANT

Neutral citation: *Oos Vrystaat Kaap Bedryf Bpk v Venter N.O. and Others* (1917/2025)
[2026] ZAFSHC 271 (4 May 2026)

Coram: DANISO J

Heard: 14 NOVEMBER 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 04 May 2026.

Summary: Pleadings – exceptions directed at the plaintiff's particulars of claim on the grounds of vagueness and embarrassment and do not disclose a cause of action – the onus of showing that a pleading is excipiable rests on the excipient – onus not discharged – exceptions dismissed.

ORDER

The exceptions are dismissed with costs including the costs of counsel on scale B.

JUDGMENT

Daniso J

[1] This is an opposed exception directed at the plaintiff's particulars of claim on the grounds that the defendants are prejudiced to have to plead thereto as they are vague and embarrassing and lack the averments to sustain a cause of action.

[2] During October 2022, the plaintiff concluded a credit facility agreement with the first to fourth defendants as the co-trustees for the time being of the Ven-Bor Trust (the defendant Trust) there and then duly represented by the seventh defendant.¹

[3] The agreement was in the form of an open credit account to the maximum amount of R100 000 and a nine-month production loan in the amount of R1.5 million, later increased to R2.2 million at the instance of the defendant Trust. The open credit account was repayable on or before the last day of the month following on any purchases made on credit and the nine-month production loan was repayable on or before the last day of the period for which the loan was advanced.

[4] In July 2021, the parties concluded an instalment sale agreement in terms of which the plaintiff advanced an amount of R370 000 to the defendant the trust for the purchase of a 2021 Massey Furgason four-wheel Tractor repayable by way of monthly instalments of R44 306.23 together with interest on any amounts outstanding at the rate not lower than prime minus 2% calculated daily and capitalized monthly.²

¹ Annexures 'POC2' to 'POC4' and 'POC6' of the particulars of claim.

² Annexure 'POC7' of the particulars of claim.

[3] On 15 April 2025, the plaintiff instituted an action against the defendant Trust and the fifth to seventh defendants as sureties and co-principal debtors for defendant Trust's unpaid debts. The claim is premised on uncured breaches of the credit facility agreement and the instalment sale agreement by the defendant's Trust.

[4] In the particulars of claim, the plaintiff alleges that it has complied with the terms of the agreements by advancing credit to the defendant Trust. The defendant Trust has breached the agreement by failing to pay the amounts due in terms of the credit facility agreement. As of 7 April 2025, the amounts of R54 091.90 and R3 847 869.29 were outstanding in respect of the open credit account and the nine-month production loan respectively. Notwithstanding written demand to rectify the breach as provided for in clause 13.2 to 13.4.3 of the credit facility agreement, the defendant Trust failed to cure the breach and in terms of clause 12 of the credit facility agreement, the plaintiff is entitled to cancel the agreement and all the amounts due in shall become immediately payable due together with interest at the lending rate of plus 10%.

[5] In paragraphs 10.8 and 10.9, including the sub-paragraphs, the plaintiff further states that the defendant Trust has also breached the instalment sale agreement by failing to pay the required instalments, and is accordingly in arrears with an amount of R46 142.00. In terms of the instalment sale agreement, ownership of the tractor is vested in the plaintiff until the full purchase price has been paid and in the event of breach, the plaintiff is entitled to summarily cancel the instalment sale agreement, claim damages and take possession of the tractor.

[5] In addition to defending the claim, the defendants raised six grounds of Exceptions against the particulars of claim. In terms of Uniform rule 23(1), an exception may be taken against a pleading on the grounds that it is vague and embarrassing or lacks averments which are necessary to sustain an action or defence. Such an exception strikes at the formulation of the cause of action and not its legal validity.³ A pleading is vague when it is either meaningless or capable of more than one meaning⁴ and lacks averments which

³ *Trope v South African Reserve Bank* 1993 (3) SA 264 (A) at 269I.

⁴ *Lockhat and Others v Minister of The Interior* 1960 (3) SA 765 (D) at p 777D.

are necessary to sustain a valid action if it can be shown that: 'ex facie the allegations made by the plaintiff and any other document upon which [his] cause of action may be based, the claim *is* (not may be) bad in law.'⁵

[6] The onus is on the excipients, the defendants *in casu*, to show both vagueness amounting to embarrassment and embarrassment amounting to prejudice. The defendants must persuade the court that it is, on every interpretation that can reasonably be attached to the particulars of claim, excipiable in that the contents do not support a discernible and legally recognized cause of action, thus not justifying the relief the plaintiff intends to obtain. Consequently, the defendants cannot, as such, plead a defence to a non-existent cause of action and they would be seriously prejudiced in the event the exception is not upheld.⁶ I now turn to deal in sum with the defendants' exceptions below.

Exception 1

[7] It is the defendants' case that in the particulars of claim (para 16), the plaintiff alleges that, notwithstanding a written breach notice to rectify the breach of the credit facility agreement, the defendant Trust failed to rectify the breach. The alleged written breach notice is not annexed to the particulars of claim and the fact that it has not been annexed evidences that the plaintiff has not complied with its contractual obligations. Therefore, the debt is not due and owing. The particulars of claim is thus vague and embarrassing and consequently, the defendants are prejudiced to have to plead to them.

[8] The plaintiff countered that there is no merit to the defendants' exception. The particulars of claim as it stands, sets out the terms of the credit facility agreement including the breach and the rights that accrue to the innocent party in the event of breach. The fact that the written breach notice has not been annexed to the particulars of claim one cannot assume that there was no compliance with the terms of the credit facility agreement. The demand has been sufficiently pleaded to enable the defendants to plead, and they can plead that they did not receive the breach notice and deny the plaintiff's compliance with the terms of the agreement pertaining to the breach clause.

⁵ *Vermeulen v Goose Valley Investments (Pty) Ltd* 2001 (3) SA 986 (SCA) para 7.

⁶ *Luke M Tembani and Others v President of the Republic of South Africa and Another* [2022] ZASCA 70; 2023 (1) SA 432 (SCA) para 14.

Exception 2

[9] The defendants take issue with the amounts claimed by the plaintiff and contend that the amounts do not accord with the values of the credit advanced by the plaintiff in terms of the credit facility agreement annexed to the particulars of claim. It is the defendants' case that the amounts claimed far exceed the amount of the credit extended to the defendant Trust by the plaintiff. The defendants are thus prejudiced to have to plead to these particulars of claim as they are vague and embarrassing and they also do not disclose a cause of action.

[10] However, on the other hand, it is the plaintiff's submission that the credit facility agreement provides for the payment of the capital amount, interest and related costs. The plaintiff is also entitled to charge interest on the outstanding amounts together with a higher interest rate in the event of default. Furthermore, the parties agreed that a certificate of balance signed by any of the plaintiff's directors, senior management, secretary or manager shall constitute prima facie proof of the lending rate. Likewise, this exception has no merit.

Exceptions 3 and 4

[11] The defendants complain that the plaintiff has failed to plead what period of time has been contractually included in the *lex commissoria* of the pleaded installment sale agreement. The plaintiff has also failed to provide proof of the written demand to rectify the breach and that a reasonable period to remedy the alleged breach was provided to the defendants. Furthermore, in para 19, the plaintiff pleads that it has cancelled, alternatively cancels, the instalment sale agreement. Therefore, the plaintiff's right to cancel the instalment sale agreement has not accrued. Based on all these reasons, the particulars of claim are vague and embarrassing, and the cause of action is also not supported by the agreement relied upon by the plaintiff.

[12] It is the plaintiff's case that the submission that the plaintiff has failed to plead the terms of the *lex commissoria* is factually incorrect. In para 10.9 of the particulars of claim, including its subparagraphs, the plaintiff has averred what constitutes breach as envisaged in clause 16 of the installment agreement and further that in the event of breach, clause 17 entitles the plaintiff to summarily cancel the installment agreement.

The instalment sale agreement makes no provision similar to the credit facility agreement that the action must be preceded by a breach notice. As regards the pleaded cancellation of the instalment agreement, the plaintiff has pleaded the alternative: the defendants can discern what the plaintiff's case is all about, plead and deny the plaintiff's compliance with the terms of the agreement pertaining to the validity of the alleged cancellation of the agreement. There is no ambiguity.

Exceptions 5 and 6

[13] These exceptions are essentially directed at the words '*inter alia*.' The defendants state that in para 14 of the particulars of claim, the plaintiff pleads that it has duly complied with terms of the agreement by *inter alia* advancing the credit to the defendant Trust as contemplated in the agreement. Only one obligation is pleaded. In para 15, the plaintiff further pleaded that the defendant Trust breached both the credit facility agreement and the instalment sale agreement by *inter alia* failing to pay the amounts due. No other breaches are pleaded, despite the fact that on the reading of the particulars of claim, the reference to *inter alia* points to more than one obligation that the plaintiff was obligated to comply with and to more than one breach allegedly committed by the defendants. The defendants cannot ascertain what other obligations the plaintiff complied with and what other breaches the defendant Trust allegedly committed – the particulars of claim are thus vague and embarrassing. The defendants are accordingly prejudiced to have to plead thereto.

[14] In response, it is the plaintiff's case that the *facta probanda* of the plaintiff's contractual claim includes that the plaintiff must allege compliance on its part. If the plaintiff pleads one form of breach by the defendants that only means that at trial, the plaintiff will not be permitted to rely on more breaches. There is no vagueness, and even if there was, such vagueness does not cause embarrassment to the defendants they are more than able to plead to the plaintiff's compliance and the defendants' breach.

[15] I am in agreement with the plaintiff's contentions. Uniform Rule 18(4) requires that: 'Every pleading shall contain a clear and concise statement of the material facts upon which the pleader relies for his claim, defence or answer to any pleading, as the case may be, with sufficient particularity to enable the opposite party to reply thereto.' Sub-rule (6), which relates to pleadings based on contracts, only requires a party who in his

pleading relies upon a written contract to state whether the contract is written or oral and when, where and by whom it was concluded, and to annex the true copy of the contract to the particulars of claim. Pleadings must state facts only, not evidence required to prove the facts, namely the *facta probanda* as opposed to the *facta probantia*, which comprises of every piece of evidence which is necessary to prove the alleged facts.

[16] Regarding exception 1, the plaintiff's failure to annex the breach notice to the particulars of claim is not a defect which renders the particulars of claim excipiable. At this stage of the proceedings it is sufficient for the plaintiff to allege compliance with the terms of the agreement pertaining to the breach clause, proof of such compliance is a matter for evidence at trial.

[17] With regard to exception 2, as correctly pointed out by plaintiff's counsel, Mr van der Merwe, the credit facility agreement relied upon by the plaintiff and annexed to the particulars of claim clearly sets out the total cost of the credit advanced to the defendant Trust. I am satisfied that the plaintiff has alleged the facts which are necessary to prove its claim in order to support its right to the judgment it seeks in this regard. If evidence can be led to support the cause of action as averred in the particulars of claim, the particulars of claim are not excipiable.

[18] Exceptions 3 and 4 are unsound as the proper reading of the particulars of claim (paras 10.8 to 10.9) clearly outline the plaintiff's rights in the event of breach as contemplated in clause 17 of the installment sale agreement (the cancellation clause). On the basis of the agreed terms of the instalment sale agreement, a breach notice is not a prerequisite for the cancellation of the instalment sale agreement. The defendants' gripe regarding the alternative averments pleaded regarding the cancellation of the agreement is also a matter to be canvassed at the trial where the plaintiff would be required to produce evidence to prove the alleged cancellation and/or the basis upon which it relies that cancellation has been effected.

[19] Exceptions 5 and 6 are insignificant. An exception that a pleading is vague and embarrassing cannot be directed at a particular paragraph within a cause of action. The particulars of claim must be read as a whole, no paragraph can be read in isolation,⁷ let

⁷ *Southernport Developments (Pty) Ltd (previously known as Tsogo Sun Ebhayi (Pty) Ltd v Transnet Ltd*

alone nitpicked or through the use of targeted words. If one has regard to the whole particulars of claim, they speak to the crux of what is alleged by the plaintiff regarding its fulfilment of its obligations and the defendants' breach of the agreements. The details complained about in these exceptions are, namely: that the words *inter alia* talk to more obligations and more breaches do not go to the root of the cause of action. At the trial, the onus will be on the plaintiff to prove that 'everything was done that had to be done in terms of the contract' on which it relies for its claim. At this stage of the proceedings, the plaintiff must simply state the facts only. The particulars of claim must not contain either law or the evidence required to establish the facts.

[20] Having regard to the facts alleged in the particulars of claim and the pleadings as a whole, all the exceptions raised by the defendants are devoid of merit. The particulars of claim is legally competent and good in law and contain the necessary averments to sustain a discernible and a legally recognized cause of action, as described in *Mackenzie v Farmers' Co-operative Meat Industries Ltd*,⁸ do appear in the particulars of claim. The defendants can thus plead without embarrassment. Accordingly, all the exceptions stand to be dismissed. There is no reason why the costs should not follow the result.

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

The exceptions are dismissed with costs including the costs of counsel on scale B.

The Honourable Justice
 2026 -05-04 [REDACTED]
 N.S. Daniso
 JUDGE OF THE HIGH COURT

2003 (5) SA 665 (W) para 6; *Frank v Premier Hangers CC* [2007] ZAWCHC 21; 2008 (3) SA 594 (C).

⁸ *Mackenzie v Farmers' Co-operative Meat Industries Ltd* 1922 AD 16 para 23.

Appearances

For the Plaintiff: R van der Merwe

Instructed by: Phatshoane Henney INC, Bloemfontein

For the Defendant: PC Bester

Instructed by: Van der Merwe Attorneys Inc, Pretoria
C/O Kramer Weihmann, Bloemfontein