

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 088014/2025

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
<u>29/04/2026</u>	
DATE	SIGNATURE

In the matter between:

F TECH SERVICES (PTY) LTD

Plaintiff

and

CHRISTOFFEL BENJAMIN LOMBARD

Defendant

The judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it to the electronic file of this matter on Caselines. The date and time of hand-down is deemed to be 9:00 on 29 April 2026.

JUDGMENT

DE VILLIERS AJ

- [1] This matter concerns an exception taken by the defendant to the plaintiff's particulars of claim on the grounds that they lack averments necessary to sustain a cause of action.
- [2] The exception, as set out in the notice of exception, is that the plaintiff's claim is for repayment of R232 635.00 pursuant to the alleged breach and cancellation of an agreement between the parties, but that the particulars of claim do not set out the requisite allegations for the lawful cancellation of that agreement, with the result that the plaintiff's purported cancellation is bad in law and does not entitle it to repayment of the amount claimed.
- [3] At the hearing, heads of argument on behalf of the excipient were handed up. The heads seem to have been uploaded on the court online system timeously, but did not appear on caselines on the date of hearing. The heads formulate the excipient's complaint with greater precision than appears from the notice of exception itself. In substance, the excipient contends that because the plaintiff's claim is one for restitution consequent upon cancellation, the plaintiff was required to plead not merely breach and an election to cancel, but also the material facts showing that

the right to cancel had accrued, whether by reason of a *lex commissoria*, or a material breach, or some other legally sufficient basis.

- [4] In my view, it would be in the interest of justice to accept the heads of argument. They merely sharpen the legal basis of the exception as advanced in the notice of exception.
- [5] The plaintiff pleads an oral agreement concluded on or about 18 July 2024. In terms of that agreement, the plaintiff ordered 50 mm grey bevel pavers for delivery and installation at a site in Refengkgotso, Vaal Triangle. The defendant accepted the order and issued an invoice in the amount of R238 600.00. The defendant required upfront payment of the invoiced amount, less 2.5%.
- [6] The plaintiff further pleads, in paragraph 3.4 of the particulars of claim, that it was an express, alternatively tacit, further alternatively implied term of the agreement that, upon receipt of such payment, the defendant would deliver the bevel pavers and commence with the installation.
- [7] The plaintiff then pleads that it paid the sum of R232 635.00, being the invoiced amount less 2.5%, and that despite due and proper payment the defendant failed and/or refused and/or neglected to deliver the pavers or to commence with the installation.
- [8] Paragraph 6 of the particulars of claim provides: 'As a result of the Defendant's breach as set out above, the Plaintiff hereby cancels the agreement.'

- [9] The plaintiff further pleads that on 5 June 2025, through its attorneys of record, it addressed a letter of demand to the defendant demanding repayment of the amount of R232 635.00, annexing that letter as annexure 'FT003'.
- [10] The first sentence of paragraph 2 of that letter records that, at all relevant times, it was an essential term of the order that the pavers would be delivered immediately and the work would commence upon payment.
- [11] The issue is not whether the plaintiff has pleaded the word 'material'. Nor is the issue whether the particulars of claim could have been pleaded with greater elegance or precision. The true question is whether, accepting the pleaded facts as correct and reading the pleading as a whole, including the documents properly incorporated therein, the plaintiff has pleaded facts which are reasonably capable of sustaining the conclusion that it became entitled to cancel the agreement and to claim restitution.
- [12] If the answer to that question is yes on any reasonable interpretation of the pleading, the exception cannot succeed. An excipient must satisfy the court that upon every interpretation which the particulars of claim can reasonably bear, no cause of action is disclosed.
- [13] An exception that a pleading lacks averments necessary to sustain a cause of action is directed at the legal sufficiency of the pleading. For purposes of deciding such an exception, the facts alleged are accepted as true. The pleading must be read sensibly, as a whole, and not over-technically.
- [14] It is so that where a plaintiff claims restitution following cancellation of an agreement, the plaintiff must plead the material facts upon which cancellation is

founded. A bare conclusion of law will not do. It is likewise so that not every breach of contract entitles the innocent party to cancel. In the absence of a *lex commissoria*, cancellation ordinarily requires a breach sufficiently serious in law to justify rescission, or the other recognised juridical basis for cancellation.

- [15] The excipient relied, among other authorities, on *Singh v McCarthy Retail Limited t/a MacIntosh Motors* 2000 (4) SA 795 (SCA) and *Ponisammy v Versailles Estates (Pty) Ltd* 1973 (1) SA 372 (A). Those authorities support the proposition that, in a restitutionary claim, the basis for cancellation must appear from the pleading.
- [16] The plaintiff, on the other hand, relied on the approach that pleadings are to be read benevolently and as a whole; that a pleader is required to plead the material facts and not the evidence; and that cancellation may be communicated in process. It also contended that the excipient's complaint confuses pleading with proof.
- [17] In my view, the plaintiff's answer to the exception is a substantial one.
- [18] The plaintiff's contention is that the facts pleaded disclose a breach of a term fundamental enough to sustain cancellation.
- [19] There is force in that submission. Paragraph 3.4 does not plead some vague obligation to perform at some indeterminate future time. It pleads a specific obligation linked directly to payment: upon receipt of payment, the defendant would deliver the pavers and commence installation.
- [20] Paragraph 5 then pleads that, despite due and proper payment, the defendant failed and/or refused and/or neglected to do exactly that. The pleading therefore alleges not merely that the defendant failed to perform eventually, but that the

defendant failed to perform when, according to the pleaded agreement, performance became due.

[21] In the commercial setting pleaded by the plaintiff, that is significant. The defendant is alleged to have required upfront payment of the full purchase price, less 2.5% and the pleaded counter-performance was delivery and commencement of installation upon receipt of such payment. On a sensible reading, that is capable of conveying that immediate reciprocal performance upon payment lay at the heart of the bargain.

[22] The excipient's difficulty is that, to succeed, it must show that those allegations are incapable of sustaining the plaintiff's cause of action on any reasonable reading. I am unable to reach that conclusion.

[23] It is certainly possible, as the excipient argues, to say that paragraph 3.4 pleads when performance fell due but does not expressly say that time was of the essence or that failure to perform at that moment constituted a breach sufficiently serious to entitle immediate cancellation. That is a tenable criticism. But it is not the only reasonable reading.

[24] The pleaded facts are also reasonably capable of bearing the meaning advanced by the plaintiff, namely that where the defendant insisted on full upfront payment and undertook to deliver and commence installation upon payment, a failure to do so went to the root of the bargain and entitled the plaintiff to cancel.

[25] Annexure FT003 reinforces that reading. I do not treat the annexure as creating a new cause of action or as impermissibly substituting for absent *facta probanda*. The material contractual term is already pleaded in paragraph 3.4. The annexure

serves rather to clarify the plaintiff's pleaded case by stating expressly what is already implicit in the pleaded structure of the bargain, namely that immediate delivery and commencement upon payment were essential to the transaction.

[26] The pleading must be read as a whole. Where an annexure properly incorporated into the particulars clarifies the pleaded case, it is not to be ignored in a vacuum.

[27] The authorities relied upon by the excipient do not, in my view, compel the upholding of the present exception. Here the plaintiff expressly pleads cancellation in paragraph 6; pleads a reciprocal obligation to perform upon payment in paragraph 3.4; pleads non-performance despite such payment in paragraph 5; and annexes a demand recording that immediate performance upon payment was an essential term. Whether the plaintiff will ultimately prove those allegations, and whether the breach was indeed of such a character as to justify cancellation, are matters for trial.

[28] The plaintiff may yet fail at trial. The defendant may well plead that performance was not required immediately, or that a reasonable time for performance had not elapsed, or that mora notice was required, or that cancellation was otherwise premature. But those are defensive matters to be raised on plea and, if necessary, determined on evidence.

[29] An exception is not the vehicle by which to decide whether the plaintiff will succeed on the merits. It is a mechanism to determine whether the plaintiff's particulars, read benevolently and as a whole, disclose a legally recognizable cause of action. In my view they do.

[30] The excipient's heads, although they sharpened the argument, do not alter that conclusion. Properly understood, the plaintiff's pleading is not deficient merely because it does not deploy the specific label 'material breach'. The facts pleaded are, in my judgment, sufficient to sustain that conclusion, at least for pleading purposes.

[31] In the result, the following order is made:

1. The exception is dismissed.
2. The defendant/applicant is directed to pay the costs of the exception on scale B.


C DE VILLIERS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the Applicant	:	Adv HP West
Instructed by:		F Peters Attorneys

Counsel for the Respondent	:	Adv H Scholtz
Instructed by:		GFT Pistorius INC

Date heard: 20 April 2026

Date of Judgment: 29 April 2026