**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2024-117197

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| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED: NO |

18 May 2026 [redacted]

DATE SIGNATURE

In the matter between:

**PETER HANSEN LYONS** First Plaintiff / Respondent

**SHARON DESIREE MARY LYONS** Second Plaintiff / Respondent

and

**ATLAS ORGANIC FERTILISERS (PTY) LTD** Defendant / Excipient

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**JUDGMENT**

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DJ Smit, AJ

*Introduction*

[1] This is an opposed exception.

[2] The excipient, Atlas Organic Fertilisers (Pty) Ltd (*Atlas*) alleges that the particulars of claim of Mr Peter Lyons and Ms Sharon Lyons is vague and embarrassing.

[3] Although there are four grounds of exception, in substance they amount to two:

a. First, in respect of loan agreements said to exist between each of Mr and Ms Lyons, on the one hand, and Atlas, on the other, written loan agreements were not attached to the particulars of claim.

b. Second, the way in which the amounts outstanding in respect of the loans is pleaded does not clarify how the outstanding amounts were calculated.

[4] For the reasons below, I conclude that the exceptions should be dismissed.

*Background*

[5] Mr and Ms Lyons instituted action against Atlas on or about 14 October 2024. Their particulars of claim is based on separate loan agreements: one allegedly[1] concluded in 2004 (between Mr Lyons and Atlas) and the other concluded in 2011 (between Ms Lyons and Atlas).

[6] The two claims follow the same pattern:

a. Each of Mr and Ms Lyons advanced a capital amount to Atlas in terms of a loan agreement.

b. The "*salient terms*" of each agreement are said to be that the loans were unsecured; bore interest at prime plus R1.5%; interest was compounded monthly in advance; and there was no fixed repayment date, as a result of which the loans could be called up on reasonable notice.

c. Up to 31 December 2021, there were further advances and repayments, so that the outstanding amount in respect of Mr Lyons was R10,667,758 at

[1] It is trite that, for purposes of exception, the facts alleged in the particulars of claim must be assumed to be true. Thus, I will record the facts set out in the particulars of claim without, in every instance, clarifying that these are mere allegations at this stage; they are not findings of fact.

that date and the outstanding amount in respect of Ms Lyons was R354,219.

d. Each of these amounts (and certain of their terms) was confirmed in the audited annual financial statements (*AFS*) of Atlas for the 2021 financial year; albeit that Atlas recorded in a note to the financial statements that there was a dispute regarding a change to the interest rate; the basis on which interest was compounded; the absence of security; and certain of the repayments and advances between 2009-2020.

e. Despite the disputes, the plaintiffs rely on the balances of the loans disclosed in the 2021 AFS of Atlas.

f. Further interest accrued after 31 December 2021 and further repayments were made on the loans up to 31 May 2023, so that the balance owing in respect of Mr Lyons was R6,009,106.99 at that date, and the balance owing to Ms Lyons was R201,448.78.

g. On 31 January 2024, Atlas paid Mr Lyons R3,848,901.50 and Ms Lyons R43,041.39, purportedly in full and final settlement of its debt.

h. The plaintiffs rejected the offer to compromise "*as a result of which the amounts outstanding on the aforesaid loans remained unaffected by the payments*".

i. Thus, at 31 August 2024, Atlas was indebted to Mr Lyons in an amount of R2,093,924.65 and to Ms Lyons in an amount of R247,234.10. Atlas owes these amounts plus interest at the contractual rates.

[7] On 29 November 2024, Atlas excepted to the particulars of claim saying that the plaintiffs did not attach copies of the written loan agreement; and that the required particulars in respect of the calculation of the interest and the balances owing on specific dates were not furnished. In particular, the plaintiffs did not plead whether the amounts paid "*in full and final settlement*" were taken into account in calculating the balances said to be owed at 31 August 2024.

*The exceptions regarding the written agreement*

[8] Particulars of claim are excipiable as being vague and embarrassing only if the ground of objection goes to the root of the cause of action.[2]

[9] In this case, the objection that the plaintiffs did not annex a copy of a written agreement or agreements does not go to the root of their cause of action. This is so for the following reasons:

a. First, the particulars of claim does not squarely rely on a written agreement or agreements. In each case, it is pleaded that the relevant plaintiff advanced funds "*in terms of a written, alternatively oral, further alternatively tacit agreement*". If the plaintiffs were to prove oral agreements, they would have a cause of action based upon a loan agreement. Thus, the fact that the agreement is alleged, in the alternative, to be written, does not go to the root of the cause of action.

b. Second, the terms on which the plaintiffs rely are clearly set out and are in general consistent with what Atlas itself disclosed in its AFS. Atlas is therefore not embarrassed in pleading to these terms. If it wishes to adduce different terms, it may do so but must be prepared to prove the allegations.

c. Third, I agree with the judgment in *Zalvest*[3] that

i. a party to a written contract is not precluded from enforcing it merely because the contract has been destroyed or lost;

ii. it is a necessary implication of Rule 18(6) that a copy of a written contract need not be attached to particulars of claim if it is impossible for the pleader to do so, though to avoid an objection to the particulars of claim (on the basis of Rule 18(6)), the pleader should explain the inability;

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[2] *Jowell v Bramwell-Jones* 1998 (1) SA 836 (W) at 902F-G.

[3] *Absa Bank Ltd v Zalvest Twenty (Pty) Ltd* 2014 (2) SA 119 (WCC) paras 9; 13, 20-21 and 23. See also *Nedbank Ltd v Yacoob* 2022 (2) SA 230 (GJ) paras 22-23 and 25.

iii. it is not necessary to pray for condonation of the failure to annex the written agreement in terms of Rule 27(3), because a rule of court that allowed a possibility of not condoning the failure to produce a written contract that was destroyed or lost, would arguably be *ultra vires*;

iv. if it is impossible for a plaintiff to produce the written contract or a copy thereof, the law allows him to prove the execution and terms of the written contract by other evidence;

v. if a plaintiff pleads the conclusion of a written contract and the terms relevant to his cause of action, the cause of action appears *ex facie* the particulars of claim; and

i. non-compliance with Rule 18(6) is unrelated to the question whether there is or is not a cause of action.

[10] Thus, in my view, the particulars of claim in this case sets out a non-defective cause of action. It may or may not have been objectionable in terms of Rule 18(6), but that objection was not taken. Particulars of claim are not vague and embarrassing merely because it alleges a written agreement without annexing it. While it is desirable to explain the circumstances in which a written agreement is not annexed, where a plaintiff squarely relies on a written agreement, the failure to do so does not cause embarrassment leading to prejudice in circumstances where the plaintiff has set out the terms of the agreement on which he or she relies.

[11] My conclusion that the exceptions in this regard should be dismissed is reinforced by the AFS and the attorneys' correspondence annexed to the particulars of claim which tell their own story: there is no dispute between the parties regarding the existence of loan agreements and the balances up to 31 December 2021. There are relatively narrow disputes regarding the terms of the loan agreements which may have been caused by the fact that the written agreements were lost or that they were not written in the first place. Atlas is eminently capable of pleading to these allegations.

*The exceptions regarding calculation*

[12] The third and fourth exceptions are difficult to follow. They each seem to be two-fold:

a. The plaintiffs did not set out in sufficient detail what amounts were added to and deducted from the (agreed) amounts owing as at 31 December 2021, including in regard to the calculation of interest, to arrive at the balances pleaded as at 31 May 2023.

b. The plaintiffs did not plead, in regard to the balances at 31 August 2024 (which forms the basis of their claims) whether they were arrived at by crediting the payments made by Atlas on 31 January 2024 in full and final settlement.

[13] In regard to the first leg of the objection, a pleader is obliged to plead no more and no less than the material facts on which he or she relies. His or her opinion or conclusion does not substitute for a cause of action when the material facts underlying it have not been pleaded.[4]

[14] Matters of calculation are not matters of opinion or conclusion. They are either right or wrong; and the facts furnishing the basis of calculation are either right or wrong.

[15] In this case, it seems that Atlas would have expected a schedule to be attached to the particulars of claim showing both the compounding of interest from time to time as well as all payments or further advances made. This may have been desirable, but I do not think it is required by the principles of pleading.

[16] In my view, pleading the basis for the compounding of interest (and the rate) as well as the balances from time to time – which the plaintiffs have done – sets out the plaintiffs' claims with sufficient particularity. The underlying facts and the calculation are either right or wrong; and Atlas is perfectly capable of pleading

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[4] *Buchner v Johannesburg Consolidated Investment Co Ltd* 1995 (1) SA 215 (T) at 216H-J.

thereto with its own version of amounts outstanding from time to time, interest and payments, without embarrassment.

[17] The same goes for the second leg of the objection. The pleading clearly alleges that the plaintiffs' rejection of the offer to compromise meant that "*the amounts outstanding on the aforesaid loans remained unaffected by the payments*". The fact that it appears on the face of the particulars of claim that these amounts were, in fact, deducted from the balances outstanding at 31 May 2023 to arrive at the amounts claimed is neither here nor there. Either the plaintiffs calculated the final amounts correctly without reference to the compromise payments or they did not. This is a matter that can easily be pleaded to and causes no embarrassment going to the root of the plaintiffs' cause of action.

[18] Thus, the exceptions should be dismissed. Costs should follow the event. In my view, costs on Scale B are appropriate.

*Order*

[19] I make the following order:

a. The exceptions are dismissed.

b. The defendant must pay the plaintiffs' costs, including the costs of counsel on Scale B.

[redacted]

**DJ SMIT**
**ACTING JUDGE OF THE HIGH COURT**
**JOHANNESBURG**

Date of hearing: 5 March 2026
Date of judgment: 18 May 2026

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| For the Excipient: | H Papenfus (attorney) instructed by Gerrit Coetzee Attorneys |
| For the Respondents: | GF Porteous instructed by Roy Stoler Attorneys |