

REPUBLIC OF SOUTH AFRICA



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

CASE NO: 2024-119527

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

In the matter between:

SANLAM LIFE INSURANCE LIMITED

Plaintiff/Respondent

and

**JCDECAUX SOUTH AFRICA PROPRIETARY
LIMITED**

Defendant/Applicant

JUDGMENT

ROBERTSON, AJ

Introduction

1. This matter concerns:
 - 1.1. an application by the plaintiff for condonation and leave to amend its plea to the defendant's counterclaim;
 - 1.2. an exception delivered by the defendant;
 - 1.3. an application in terms of Rule 30 of the Uniform Rules of Court; and
 - 1.4. an application by the defendant for condonation for the late delivery of the Rule 30 application.
2. The defendant initially raised six grounds of complaint. Following the plaintiff's proposed amendment, the defendant no longer persisted with grounds 3 to 6. The remaining issues concern grounds 1 and 2.
3. Ground 1 concerns the plaintiff's special plea of non-joinder relating to Excellerate Real Estate Services (Pty) Ltd t/a JHI ("Excellerate").
4. Ground 2 concerns the plaintiff's plea to the defendant's counterclaim and, following the proposed amendment, the amended plea on substantially the same grounds.

Applicable principles

5. The principles applicable to exceptions are well established. Exceptions should be dealt with sensibly and are directed at the legal sustainability of a pleading, not at the resolution of factual disputes or the determination of the probabilities.
6. An excipient must establish that, on every reasonable interpretation of the pleading, no cause of action or defence is disclosed.
7. An exception is concerned with the legal sustainability of the pleading. It is not concerned with the probabilities, nor with the ultimate correctness of the pleaded version.
8. A vague and embarrassing exception requires more than a lack of elegance or

precision. The pleading must be vague in a manner that causes embarrassment and prejudice in the sense that the excipient cannot reasonably plead thereto.

9. Rule 18(4) requires a pleading to contain a clear and concise statement of the material facts relied upon, with sufficient particularity to enable the opposite party to reply.
10. Rule 22(2) requires a plea to admit, deny, confess and avoid, or state which facts are not admitted, and to plead clearly and concisely the material facts relied upon.
11. In a Rule 30 application, irregularity alone is insufficient. The applicant must show prejudice arising from the irregular step. Rule 30 is concerned primarily with procedural irregularity rather than the substantive legal sustainability of a pleading.

Condonation

12. Both parties seek condonation for the late filing of their respective applications, namely the plaintiff's application for leave to amend and the defendant's application in terms of Rule 30.
13. Neither delay was substantial. Both applications were fully ventilated in the parties' papers and at the hearing. Neither party identified material prejudice arising from the respective delays.
14. The defendant criticised the plaintiff's explanation for its delay in bringing the amendment application. That criticism is not without force. However, the amendment application is closely connected to the exception and Rule 30 application, the proposed amendment narrows the issues, and the remaining disputes were fully argued. In those circumstances, the interests of justice favour condonation.
15. In the circumstances, condonation should be granted to both parties.

Ground 1: Non-Joinder

16. The plaintiff raises a special plea of non-joinder relating to Excellerate.

17. The special plea alleges that Excellerate represented the plaintiff for purposes of contractual implementation, that the defendant's counterclaim is premised upon representations, invoices, and a demand issued by Excellerate, and that Excellerate therefore has a real and substantial interest in the proceedings.
18. The defendant contends that the special plea is excipiable because no relief is sought against Excellerate and because Excellerate has no direct and substantial interest in the counterclaim.
19. The defendant relied on *Burger v Rand Water Board and Another*,¹ *Myeni v Organisation Undoing Tax Abuse NPC and Others*² and *Gordon v Department of Health, KwaZulu-Natal*.³ Those authorities establish, among other things, that a party is not required to be joined merely because evidence may concern that party, or because adverse findings may be made against that party. The required interest is a direct and substantial legal interest in the order that the court may make.
20. I accept those principles. The difficulty for the defendant is that the enquiry before me is not whether Excellerate will ultimately be found to have such an interest. The issue is whether the plaintiff's special plea is bad in law on every reasonable interpretation of the pleaded allegations.
21. The plaintiff has pleaded the factual basis upon which it contends that Excellerate has a sufficient interest. Whether that contention is ultimately sustainable on the evidence is a matter that may be determined at a later stage.
22. I am not persuaded that the special plea is so legally unsustainable that it may be struck out on exception.
23. Ground 1 accordingly fails.

Ground 2: The Guarantee

24. Ground 2 is directed at the plaintiff's plea to the defendant's counterclaim and,

¹ *Burger v Rand Water Board and Another* [2006] ZASCA 150; 2007 (1) SA 30 (SCA) at para 7

² *Myeni v Organisation Undoing Tax Abuse NPC and Others* [2019] ZAGPPHC 565 at para 63

³ *Gordon v Department of Health, KwaZulu-Natal* [2008] ZASCA 99; 2008 (6) SA 522 (SCA) at para 9

following the proposed amendment, at the amended plea on substantially the same grounds.

25. The defendant's counterclaim arises from the plaintiff's calling up of a guarantee issued by Rand Merchant Bank in favour of the plaintiff.
26. The defendant alleges that the plaintiff's demand under the guarantee was made in breach of clause 3.4 of the Agreement of Lease concluded between the parties, attached to the particulars of claim as Annexure "A".
27. The relevant portion of clause 3.4 provides:

"As an alternative to the aforementioned, the Tenant shall, in its discretion, on or before, the Beneficial Occupation Date, furnish the Landlord with a bank guarantee from a registered banking institution in terms of which the said banking institution guarantees to pay a sum or sums of money on written demand made by the Landlord but which sum or sums of money is properly proved to be owed by the Tenant to the Landlord arising from any un-remedied breach of the Tenant's obligations in terms of this Lease."

28. In essence, the defendant alleges that:
 - 28.1. the amount claimed under the guarantee was not properly proved to be owed;
 - 28.2. the amount did not arise from an un-remedied breach; and
 - 28.3. the contractual mechanisms relating to Opex approval and breach notice had not been complied with.
29. The defendant's complaint under Ground 2 has two components.
30. The first concerns the plaintiff's pleaded response to the allegation that the guarantee was called up in the absence of an un-remedied breach. In the original plea, the complaint was directed principally at paragraphs 11 and 12. Following the proposed amendment, the complaint is directed principally at paragraph 11 of the amended plea, including the plaintiff's reliance on a written demand, alternatively, written invoices said to constitute a written demand.

31. The second concerns paragraph 8 of the amended plea. The defendant complains that the plaintiff does not plead written approval of the relevant Opex proposals as contemplated in clauses 3.3.6 and 3.3.7. Instead, the plaintiff pleads consultation, provision of information, invoicing, implicit acceptance of the Opex budget, and conduct or representations allegedly binding the defendant to the Opex amounts.

Paragraph 11: written demand, invoices and un-remedied breach

32. In paragraph 11 of the amended plea to the counterclaim, the plaintiff admits the defendant's allegations concerning the calling up of the guarantee, save to deny that it breached or repudiated the agreement. It pleads that, after the defendant refused or failed to rectify its breaches regarding its financial obligations, and despite receiving a written demand, alternatively written invoices which constitute a written demand, the plaintiff requested payment of the guarantee from RMB.

33. To the extent that the defendant's complaint was also directed at paragraph 12 of the original plea to the counterclaim, that complaint is similarly answered by the proposed amendment and the conclusions reached below.

34. The defendant contends that this does not answer the counterclaim because clause 3.4 required an un-remedied breach, and an un-remedied breach necessarily required compliance with clause 17.1: written notice of breach and ten calendar days to remedy.

35. The defendant may ultimately be correct that clause 3.4, properly interpreted, must be read with clause 17.1. It may also be correct that invoices cannot constitute a compliant breach notice.

36. But those questions depend upon the interpretation of the agreement read as a whole, the legal effect of the documents relied upon, and the parties' alleged conduct. At exception stage, the defendant must establish that the plaintiff's pleaded position is bad on every reasonable interpretation.

37. Clause 3.4 requires the amount claimed under the guarantee to arise from an "un-remedied breach" of the tenant's obligations. Clause 3.4 does not, however,

expressly provide that an “un-remedied breach” for purposes of the guarantee mechanism can arise only after compliance with clause 17.1.

38. I do not decide that interpretive question finally. It is sufficient to hold that the defendant has not established, at exception stage, that the plaintiff’s reliance on a written demand, alternatively invoices, is bad on every reasonable interpretation.
39. The complaint also does not render the plea vague and embarrassing. The defendant understands the case it must meet, namely that the plaintiff contends that demand was made, that the defendant did not remedy its financial breaches, and that the guarantee was thereafter called up.

Paragraph 8: Opex approval, implicit acceptance and representation

40. Paragraph 8 of the amended plea addresses the defendant’s allegations that no Opex proposal was approved in writing and that, in consequence, the defendant was not liable for the increased Opex amounts.
41. The amended plea admits the allegations only to the extent that they are consistent with the lease agreement and amendments and otherwise denies them. It then pleads that Excellerate consulted with the defendant on the operating costs budget for each year, provided necessary details and particulars concerning the services, and invoiced the defendant for those costs.
42. The amended plea goes further. It pleads that the defendant never raised, communicated, or transmitted objections or queries to the plaintiff or Excellerate, and that the defendant thereby implicitly accepted the Opex budget through its conduct, alternatively conducted itself in a manner representing, or creating the representation, that it was bound by the Opex budget amounts.
43. The defendant contends that this does not disclose a defence because clauses 3.3.6 and 3.3.7 required written approval of the Opex proposal. It further contends that implicit acceptance or representation cannot override the written approval mechanism, particularly in light of the non-variation and whole-agreement clauses.

44. Again, the defendant's argument may ultimately prove correct. But it depends upon the proper interpretation of the agreement, the legal effect of the parties' conduct, and whether the plaintiff's pleaded reliance on conduct and representation is legally available in the circumstances. Those are matters more appropriately determined at trial.
45. Clause 3.4 is the clause upon which the counterclaim is founded. The defendant seeks to link clause 3.4 to clauses 3.3.6 and 3.3.7 by submitting that, because the guarantee was called up in respect of Opex charges, the Opex could only be "properly proved to be owed" if the written approval mechanism had been complied with.
46. That is a coherent argument, but it is an interpretive argument. Clause 3.4 does not expressly equate "properly proved to be owed" with "approved in writing" under clause 3.3.6.
47. The plaintiff's pleaded answer is that, notwithstanding the defendant's denial of written approval, the Opex amounts were due because of consultation, invoicing, absence of objection, implicit acceptance and/or representation.
48. Whether that answer will survive trial is not the question. The question is whether it is legally bad on every reasonable interpretation. I am not persuaded that it is.
49. Nor is the pleading vague and embarrassing. The defendant understands that the plaintiff relies on implementation conduct and representation to answer the allegation that the Opex amounts were not due. The defendant can challenge both the factual allegations and the legal consequences for which the plaintiff contends. If necessary, the defendant may also seek further particulars for purposes of trial.
50. The fact that the plaintiff's case may face difficulty at trial does not make the pleading excipiable.
51. Ground 2 accordingly fails.

Rule 30 Application

52. The defendant's Rule 30 application is based on substantially the same grounds as the exception.
53. The complaint is that the amended plea does not comply with Rules 18(4) and 22(2) because it does not plead the material facts necessary to sustain the plaintiff's answer to the counterclaim with sufficient particularity to enable the defendant to plead.
54. In relation to Ground 1, the plaintiff has pleaded the basis upon which it alleges that Excellerate has a real and substantial interest in the proceedings. The defendant may dispute the legal sufficiency of that basis, but the pleading is not irregular in the Rule 30 sense.
55. In relation to Ground 2, the plaintiff has pleaded its answer to the guarantee claim. As to paragraph 11, it pleads written demand, alternatively invoices, refusal or failure to remedy, and the subsequent demand on RMB. As to paragraph 8, it pleads consultation, provision of particulars, invoicing, absence of objection, implicit acceptance and representation.
56. Those allegations are sufficient to enable the defendant to understand and address the case advanced.
57. The Rule 30 application is not concerned with whether that case is good in law or likely to succeed. It is concerned with whether the pleading is irregular and prejudicial.
58. I am not persuaded that the defendant has established prejudice of the kind required for Rule 30 relief.
59. The Rule 30 application must therefore be dismissed.

Amendment Application

60. Following the proposed amendment, the defendant no longer persisted with Grounds 3 to 6 of its exception.

61. I have found that Grounds 1 and 2 do not justify refusing the amendment.
62. The plaintiff is therefore granted leave to amend its plea to the counterclaim in accordance with its notice of amendment.

Costs

63. Costs should follow the result. Although the proposed amendment addressed several of the original complaints, the defendant persisted with Grounds 1 and 2 notwithstanding the proposed amendment and was unsuccessful in those challenges.
64. In those circumstances, the plaintiff should bear the costs occasioned by the amendment application, but the defendant should bear the costs of the exception and Rule 30 application.
65. The agreement contains a contractual costs provision providing for costs on the scale as between attorney and client. Both parties relied on that provision. There is no reason not to give effect to the contractual costs regime.

Order

66. The following order is made:
 - 66.1. Condonation for the late filing of the plaintiff's application for leave to amend is granted.
 - 66.2. Condonation for the late filing of the defendant's application in terms of Rule 30 is granted.
 - 66.3. The plaintiff is granted leave to amend its plea to the counterclaim in accordance with its notice of amendment dated 9 April 2025.
 - 66.4. The defendant's exception is dismissed.
 - 66.5. The defendant's application in terms of Rule 30 is dismissed.
 - 66.6. The plaintiff shall pay the costs occasioned by the amendment application, including the plaintiff's condonation application, on the scale

as between attorney and client.

- 66.7. The defendant shall pay the costs of the exception, the defendant's condonation application, and the application in terms of Rule 30, on the scale as between attorney and client.

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CL ROBERTSON
Acting Judge of the High Court
Gauteng Local Division, Johannesburg

This judgment was handed down electronically by circulation to the parties' legal representatives by email and by upload to Caselines. The date for hand-down is deemed to be 2 June 2026.

APPEARANCES

For PLAINTIFF/RESPONDENT: S Mathiba

Instructed by: Ben Groot Attorneys Inc. T/A GVS Law

For DEFENDANT/APPLICANT: MCJ van Kerckhoven

Instructed by: Fluxmans Inc.

Date of Hearing: 11 May 2026

Date of Judgment: 2 June 2026