

**REPUBLIC OF SOUTH AFRICA**



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

Case Number: 2025-077271

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

In the matter between:

**MICHAEL SILVA OPERATIONS CC**

Plaintiff

and

**TISIVA INVESTMENTS AND PROJECTS  
(PTY) LTD**

Defendant

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**JUDGMENT**

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**ROBERTSON, AJ**

## *Introduction*

- [1] This is an exception by the defendant to the plaintiff's amended particulars of claim.
- [2] The plaintiff advances three claims. Claims A and B are contractual claims arising from two written agreements concluded between the parties. The agreements are annexed to the particulars of claim as POC1 and POC4. Claim C is pleaded in the alternative and is framed as a claim based on unjustified enrichment.
- [3] The first and second grounds of exception are directed at Claims A and B. Although they concern separate agreements, the complaints are substantially the same. The defendant contends that the agreements relied upon by the plaintiff are, on their proper characterisation, partnership agreements. On that basis, the defendant contends that the plaintiff cannot claim repayment of its contributions without first pleading dissolution of the partnership, an accounting, and settlement of partnership liabilities.
- [4] The third ground of exception is directed at Claim C. The defendant contends that the plaintiff has failed to plead the material facts necessary to sustain a claim based on enrichment.

## *The applicable principles*

- [5] An exception that a pleading does not disclose a cause of action proceeds on the basis that the facts pleaded are accepted as correct.
- [6] The excipient must show that, on every reasonable interpretation of the pleading, no cause of action is disclosed.
- [7] Where a pleading, read as a whole and with the documents on which it relies, is reasonably capable of an interpretation that sustains a cause of action, an exception will not succeed.
- [8] The purpose of exception proceedings is not to decide factual disputes or, ordinarily, to determine a contested contractual construction where more than one reasonable construction is available.

### *Claims A and B*

- [9] The defendant's complaint in relation to Claims A and B is not merely formal. It does not rest only on the fact that the agreements are headed "Partnership Agreement".
- [10] The agreements contain features which, at least on one reading, are consistent with a partnership arrangement. They contemplate joint commercial activity, contributions by both parties, profit participation, and collaborative execution of the projects.
- [11] The addenda also appear to deal with matters such as continuing profit participation, "shareholding & benefits", valuation of shares, and succession arrangements in the event of death. Those provisions strengthen the defendant's submission that the agreements may have created more than a simple arm's-length contractual relationship.
- [12] The defendant also relies on the principle that, once a contribution is made to a partnership, the contribution becomes partnership property and cannot simply be reclaimed without dissolution and accounting.
- [13] Those submissions are not without force. They may ultimately provide the defendant with a substantive answer to the plaintiff's claims.
- [14] The difficulty, however, is that this is an exception.
- [15] The agreements also contain wording upon which the plaintiff relies as excluding or limiting certain ordinary partnership consequences. Clause J provides, in material part, that the agreement is not intended directly or indirectly to constitute, create, give effect to or imply a joint venture, partnership, contract, or any formal business entity "other than the collaborative relationship set forth herein". It also records that each party acts as an independent contractor.
- [16] That wording is not free from difficulty. In particular, the phrase "other than the collaborative relationship set forth herein" is capable of argument. The defendant submits that it preserves the very collaborative partnership relationship created by the agreements. The plaintiff submits that the clause at least supports a

construction that the parties did not intend to create a partnership in law.

[17] I am not required, at this stage, to decide which construction is ultimately correct.

[18] Counsel for the plaintiff drew my attention to *Van Eerden v Delco and Another*,<sup>1</sup> in which the court reiterated that even where the four *essentialia* of partnership are *prima facie* established, that presumption is not necessarily conclusive but must yield to a contrary intention as revealed in the agreement itself, read in the light of the other admissible evidence. That enquiry properly belongs to the trial court.

[19] The defendant's argument requires the Court to conclude, at exception stage, that the agreements are capable of only one reasonable construction, namely that they created partnership relationships with the legal consequence that the plaintiff was required to plead dissolution and accounting before claiming repayment.

[20] I am unable to reach that conclusion on exception.

[21] The agreements may ultimately be found, after the leading of evidence and full argument, to have created partnership arrangements. But the plaintiff's contrary construction cannot be rejected as untenable at the pleading stage.

[22] In those circumstances, the defendant has not established that Claims A and B disclose no cause of action on every reasonable interpretation of the particulars of claim and the agreements relied upon.

[23] The exception to Claims A and B must therefore be dismissed.

### *Claim C*

[24] Claim C stands on a different footing. The plaintiff pleads, in paragraph 18 of the amended particulars of claim, that the agreements are "invalid, and/or void *ab initio*, and/or incapable of enforcement due to ambiguity, and/or lawfully cancelled". Each of those is a legal conclusion. None of the material facts supporting them is pleaded. The amended particulars do not say why the

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<sup>1</sup> [2025] JDR 4261 (GP) at paras 7 to 9

agreements are alleged to be invalid; nor in what respect they are said to be void *ab initio*; nor which terms are said to be ambiguous and incapable of enforcement.

[25] The position is aggravated by the next averment, in paragraph 24, that the defendant has been enriched “without legal cause”. A claim in enrichment must be pleaded with reference to one of the recognised *condictiones*. Although a plaintiff is not obliged to label its claim with a Latin tag, the material facts supporting the chosen *condictio* must still be pleaded.

[26] On the plaintiff’s own pleading, the payments were made in performance of an agreement which the plaintiff itself alleges was valid for purposes of Claims A and B. To the extent that Claim C is dependent on the agreement being lawfully cancelled, the cause of the payments remains the (cancelled) agreement and the absence of *causa* is not pleaded.

[27] Rule 18(4) requires every pleading to contain a clear and concise statement of the material facts relied upon. To plead a series of alternative legal conclusions without the underlying material facts is not to comply with the rule. The defendant is left to guess at the case it is required to meet.

[28] Counsel for the plaintiff, very fairly, did not seek to defend Claim C. She accepted, when the difficulty was put to her, that there “could be more meat on the bone” and that she was bound to her papers. Her concession was, in my view, well made. The third ground of exception must be upheld.

[29] The plaintiff should, however, be afforded an opportunity to amend its alternative claim if it wishes to do so. Exception proceedings are intended to dispose of bad claims, not to deprive a litigant of an opportunity properly to plead its case. I shall accordingly grant the plaintiff leave to amend its particulars of claim.

### Costs

[30] Both parties have achieved a measure of success.

[31] The defendant’s exception to Claims A and B fails. The plaintiff’s opposition to the exception to Claim C fails.

[32] In those circumstances, the fairest order is that each party pays its own costs.

*Order*

[33] The following order is made:

1. the exception to Claims A and B is dismissed;
2. the exception to Claim C is upheld;
3. the plaintiff is granted leave, if so advised, to amend Claim C within 20 days of this order;
4. each party shall bear its own costs of the exception.

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**CL ROBERTSON**

**Acting Judge of the High Court  
Gauteng 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 the Plaintiff: Adv M Pinder

Instructed by: AJ Scholtz Attorneys

For the Defendant: Adv WC Carstens

Instructed by: Otto Krause Attorneys

Date of hearing: 14 May 2026

Date of judgment: 2 June 2026