REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2025-051490

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

DATE: 29 MAY 2026

SIGNATURE OF JUDGE: [redacted]

In the matter between:

NO 1 ONLINE SOLUTIONS (PTY) LTD Plaintiff

and

HEAVYWEIGHT CAPITAL CARRIERS (PTY) LTD 1st Defendant

ANDRE HUMAN 2nd Defendant

JUDGMENT

D van den Bogert AJ

[1] The first and second defendants, as the excipients, take exception to the plaintiff's amended particulars of claim. The defendants contend that the amended particulars of claim, dated 11 July 2025, do not disclose a cause of action, alternatively that it is vague and embarrassing.

[2] During argument, at the hearing of this exception, counsel for the defendants made the proper concession that the amended particulars of claim do, in fact, disclose a cause of action. There can be no doubt that it does disclose a cause of action. The exception therefore hinges on the notion that the amended pleading is vague and embarrassing.

[3] The principles applicable to the adjudication of exceptions are established. These requirements are not necessary to be rehearsed. In short, however, the general test in an exception taken on the basis that the pleading is vague and embarrassing are set out in the case of *Trope v South African Reserve Bank* 1992 (3) SA 208 (T), quoted by the defendants themselves, where the court says at page 211 A – E:

> "*An exception to a pleading on the ground that it is vague and embarrassing involves a two-fold consideration. The first is whether the pleading lacks particularity to the extent that it is vague. The second is whether the vagueness causes embarrassment of such a nature that the excipient is prejudiced (Quinlan v MacGregor 1960 (4) SA 383 (D) at 393 E – H). As to whether there is prejudice, the ability of the excipient to produce an exception-proof plea is not the only, nor indeed the most important, test – see the remarks of Conradie J in Levitan v Newhaven Holiday Enterprises CC 1991 (2) SA 297 (C) at 298 G – H. If that were the only test, the object of pleadings to enable parties to come to trial prepared to meet each others case and not to be taken by surprise may be well defeated.*
>
> *Thus, it may be possible to plead to particulars of claim which can be read in any one of a number of ways by simply denying the allegations made; likewise to a pleading which leaves one guessing as to its actual meaning. Yet, there can be no doubt that such a pleading is excipiable as being vague and embarrassing – see Parow Lands (Pty) Ltd v Scheider 1952 (1) SA 150 (SWA) at 152 F – G and the authorities there cited.*

It follows that averments in the pleading which are contradictory and which are not pleaded in the alternative are patently vague and embarrassing; one can be left guessing as to the actual meaning (if any) conveyed by the pleading."

[4] To found a proper exception, the pleading must therefore leave one guessing as to its actual meaning. The excipient must establish that the particulars of claim are so vague that it causes embarrassment. Embarrassment that it makes it impossible to formulate a plea in defence, because if the defendant knows what case it has to meet, there is no prejudice.

[5] This ought to be read with the case of *Absa Bank Ltd v Boksburg Transitional Local Council (Government of the Republic of South Africa, third party)* 1997 (2) SA 415 (W) at p422 B - D:

"*... it seems to me that the third party can fairly be expected to plead to the third party notice as it stands at the moment. It can respond adequately even if a hypothetical outsider happens to be relatively disadvantaged. It may be that, as the exception claims, the third party is unable to establish "precisely" what case it is called upon to meet. But it knows "adequately" what the plaintiff's case is. It can understand the plaintiff's case, and it is able to take instructions from the client and to record a meaningful response to it."*

[6] It is threshold to convince a court that a pleading is excipiable, because it is vague and embarrassing is therefore high. If a defendant knows adequately (not with exact precision) what case it must meet, it must plead. This brings me to the particulars of claim and the defendants' objection.

[7] The plaintiff pleads inter alia the following:

7.1. that on 20 February 2024 and at Pretoria, the first defendant represented by the second defendant, in his capacity as director, entered into a written agreement with the plaintiff, who was represented by a Mr Bester. In terms of that agreement the plaintiff rendered services to the first defendant at its special instance and request.

7.2. a copy of the credit application form incorporating the terms and conditions of the trade between the parties, being the written agreement, is then attached as "B1" to "B9" to the particulars. The plaintiff in its

pleading requests that the terms and conditions of "B1" to "B9" be read as if specifically incorporated in the particulars.

7.3. the plaintiff pleads that the terms of the agreement include the following:

7.3.1. the first defendant would from time to time engage the services of the plaintiff. The plaintiff would render freight and delivery services to the first defendant upon the terms and conditions as agreed upon between the parties.

(*this is one of the grounds that the defendant says makes the pleading vague, because it alleges that such terms and conditions are not pleaded*).

7.3.2. the services include but are not limited to the transportation of goods by the plaintiff at the first defendant's request, from locations nominated by it to destinations specified by it, in accordance with instructions issued by the first defendant to the plaintiff.

7.3.3. each instance of a service rendered is then recorded in a tax invoice accompanied by a delivery note signed or stamped by the first defendant or its agents.

7.3.4. payment in respect of services rendered by the plaintiff to the first defendant must be made within 30 days after statement.

7.3.5. the interest rate on unpaid amounts shall be the maximum interest rate allowed in terms of the Usury Act, 1968.

7.3.6. the chosen *domicilium* of the first defendant is pleaded.

7.3.7. it is pleaded that the amounts reflected on the monthly statements issued by the plaintiff would be deemed to be correct, unless objected to in writing within 7 days of the issuing of the statement.

[8] The terms as set out in paragraphs 7.3.4 to 7.3.7 above, as pleaded, make specific reference to clauses in the agreement. Paragraphs 7.3.1 to 7.3.3 do not

refer to specific clauses in the written agreement. According to the defendants, this is also problematic. When I asked counsel for the defendants whether those paragraphs conflict with the terms of the written agreement, he said that they did not. As such, in my view, that objection is of no consequence.

[9] It is then pleaded that the plaintiff complied with the agreement and the defendant breached the agreement in that it failed to pay for the services rendered. As proof of the outstanding balance due, the plaintiff attaches unpaid invoices and delivery notes as annexures "D1" up to "D948".

[10] I quote the relevant parts of the exception:

> *"3 The plaintiff then in paragraph 8 of its particulars of claim pleads the alleged terms of the agreement.*
>
> *4 In paragraph 8.1, the plaintiff pleads that the first defendant would from time to time engage the services of the plaintiff which would render the services upon the terms and conditions as initially agreed upon between the parties.*
>
> *5 Just as the plaintiff failed to plead the terms of the initial agreement as referred to in paragraph 8.1, so did the plaintiff failed to plead all of the essentialia, nor does the alleged written agreement contain such essentialia to substantiate a valid and enforceable agreement.*
>
> *6 The plaintiff inter alia failed to plead the scope of services and/or rates, and the charges agreed upon and the written agreement relied upon by the plaintiff is salient in this respect.*
>
> *7 It is submitted that an agreement that does not meet or contain the minimum essential elements are invalid and unenforceable, rendering the plaintiff's particulars of claim excipiable in that it does not disclose a cause of action.*
>
> *8 Further the written agreement relied upon by the plaintiff only contains the alleged terms as pleaded in paragraphs 8.2 to 8.6 of the plaintiff's particulars of claim.*
>
> *9 The terms of the written agreement relied upon by the plaintiff does not support the allegations as pleaded in paragraph 8.1 of its particulars of claim in the event rendering the particulars of claim excipiable in that it is vague and/or embarrassing and/or that it does not disclose a cause of action."*

[11] The second defendant is a surety. Nothing turns on that.

[12] As indicated, the notion that the particulars of claim do not disclose a cause of action has been disposed of. It is rather difficult to discern from the exception what exactly in the plaintiff's pleading, read with the agreement and the breakdown of the outstanding debt, attached to it, would be difficult to plead to.

[13] All that paragraph 8.1 says is that the first defendant would from time to time engage the services of the plaintiff who would render freight and delivery services. There can surely be no objection to pleading what the nature of the services to be rendered by the plaintiff to the first defendant would be. I therefore must assume that that part of the subparagraph is not objected to. It was argued, however, that the second part of the sentence of 8.1 is vague. This is where the plaintiff pleads that the services would be rendered to the first defendant upon the terms and conditions as agreed between the parties.

[14] How that causes confusion, escapes the mind. In paragraph 7 of the particulars of claim it is pleaded that the credit application form incorporates the terms and conditions of the trade between the parties. It says that it is attached to the particulars of claim as "B1" to "B9" and the plaintiff claims that the terms and conditions thereof should be read as if specifically incorporated. It is therefore plainly wrong for the defendants to claim that one is left to guess as to what the terms and conditions are. It has been pleaded.

[15] It is also wrong, as the second exception claims, that there is a reference in the amended particulars of claim to "*terms and conditions as initially agreed upon*". The amended particulars of claim do not have the word "*initially*" in paragraph 8.1. That is a copy and paste exercise carried over from the first exception.

[16] Although it does not appear from the exception itself, counsel for the excipient argued that the standard terms and conditions and more specifically clause (h) thereof stipulates that *"All loads are undertaken in terms of No 1 Solutions' standard conditions of Carriage"*.

[17] Because, so the argument went, the defendants are left to guess what those conditions are, the defendants are embarrassed to plead. Firstly, no word of this is mentioned in the exception itself. I could also not find this issue raised in the heads of argument of the excipient which were filed one court day prior to the

hearing of the exception. It is, however, apparent that plaintiff's claim is not premised on the standard conditions of carriage. This clause seems to have bearing on the conditions relating to the transporting or carrying of each load. It has little, if any, to do with payment outstanding in respect of transport and freight services rendered.

[18] The defendants in their heads of argument contend that they are unable to ascertain the basis of the quantum for the debt due. This is so, according to the defendants, because the agreed rates and charges in respect of the services was not pleaded.

[19] C1 to C7 to the particulars provides a breakdown of how the debt is arrived at. D1 – D948 provides every single invoice that speaks to the breakdown in C. For example, the load rate on D1 is R920.00 per load. This is then multiplied with the number of loads, and one gets to the amount due in respect of that invoice. The suggestion that the defendants are embarrassed in this respect is incorrect. The defendants might be confused with a claim for damages where a plaintiff must provide detail as to how it arrived at the quantum so that the defendant can assess the quantum of damages with some ease. This is not such a case.

[20] The simple question is whether the defendant is embarrassed to plead.

[21] On a proper consideration of the plaintiff's pleading, it knows "adequately" what the plaintiff's case is. With reference to the *Boksburg Transitional Local Council* case – *supra,* the defendants *"... can understand the plaintiff's case and it is able to take instructions from the client and to record a meaningful response to it..."*. Instead, in this case I dare to say that a hypothetical outsider would know what case the defendants have to meet.

[22] In my view, the exception is ill considered and cannot succeed. That brings me to the issue of cost. The plaintiff urges me to grant cost on a punitive scale. This is firstly premised on the notion that the delivery of the exception was earmarked to delay the prosecution of the plaintiff's case, and secondly, because the agreement allows for cost on an attorney and client scale. There is merit in the argument that the exception was filed for purposes of delay. This is borne out by the fact that the defendants, as the excipients, did not prosecute their exception.

The plaintiff had to file heads of argument, which it did already on 27 October 2025. That did not spurt the defendants, being *dominus litis* in the exception, into motion.

[23] Instead, this court received heads of argument at the latest moment being the Friday before the hearing of the exception (i.e. with one court day notice), which is non-compliant with this court's directives. This is indicative thereof that the defendants had no intention to prosecute their exception. The defendants knew that the exception premised on the notion that the particulars of claim do not disclose a cause of action, was bad in law. This is conceded.

[24] Premised on this alone, a punitive cost order is warranted, because, in my view, and although I am not easily convinced to grant costs on a punitive scale, this court ought to show its displeasure in an excipient failing to prosecute its own exception.

[25] Furthermore, the parties agreed that, in the event of the plaintiff having to approach a court under the agreement, as pleaded, cost on an attorney and client scale is warranted. This is a further reason why an attorney and client costs order is justified.

[26] I make the following order:

1. The exception is refused.

2. The first and second defendants are directed to deliver their plea within ten (10) days from the date of this order.

3. The first and second defendants shall pay the cost of the exception, jointly and severally, the one paying the other to be absolved on an attorney and client scale.

[redacted]

D VAN DEN BOGERT
ACTING JUDGE
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 29 MAY 2026.

Appearances

Counsel for the excipient/defendants:	R de Leeuw
Instructed by:	Rabie Botha and Associates Attorneys Ref.: FJR/JE/LF1912
Counsel for plaintiff:	D Gana
Instructed by:	NVDB Attorneys Ref:M01473/N van den Berg
Date of Hearing:	25 May 2026
Date of Judgment:	29 May 2026