



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION: PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
5 June 2026	
DATE	SIGNATURE

Case number: 144418/2024

In the matter between:

GABRIEL STEPHANUS VAN DER MERWE

Excipient

and

PQJ PROJECTS (PTY) LTD

Respondent

In re:

PQJ PROJECTS (PTY LTD

Plaintiff

and

GABRIEL STEPHANUS VAN DER MERWE

Defendant

JUDGMENT

MINNAAR AJ.

Introduction:

[1] On 17 November 2023, the plaintiff purchased the property situated at Portion 693, Farm 369, Boschkop, Registration Division J.R, Gauteng, from the defendant. The purchase was regulated by a written offer to purchase ("*the agreement*"). In December 2023, the property was registered in the plaintiff's name.

[2] In March 2025, the plaintiff instituted an action against the defendant, in terms of which the plaintiff claims payment from the defendant in the amount of R998 708.15, together with interest and costs.

[3] The defendant delivered a notice to defend the action and also delivered an exception to the plaintiff's particulars of claim. The exception is premised thereon that the plaintiff's particulars of claim fail to disclose a cause of action, alternatively, lack averments necessary to sustain a cause of action.

The respondent's pleaded case:

[4] In essence, it is the plaintiff's pleaded case that, although the property was sold voetstoots, the defendant, in the negotiations leading up to the sale, explicitly advised the plaintiff's director that the property had sufficient quantity and quality of flowing water. Premised on the defendant's explicit representation, the plaintiff was induced to enter into the agreement. In this regard, it is the plaintiff's pleaded case:

- a. The defendant, at the time of the sale of the property, was aware that the property did not have sufficient quality and quantity of water available (*"the latent defect"*).
- b. The defendant, deliberately, *dolo malo*, failed to disclose the latent defect to the plaintiff and explicitly warranted against the latent defect.
- c. The aim of the defendant's deliberate non-disclosure or warranty against the latent defect was to induce the plaintiff to enter into the agreement; alternatively, it was foreseeable that the representation could induce the plaintiff to enter into the agreement.
- d. At the time of the negotiations, and at the time of contracting in terms of the agreement, the representations and warranties made by the defendant were, to the knowledge of the defendant, false in that the true facts were that insufficient water was available on the property.
- e. During the negotiations, and at the time of contracting, the latent defects were not visible or discoverable upon inspection by the plaintiff, and would not have been visible or discoverable by inspection by the ordinary purchaser.

[5] The plaintiff pleads that, as a result of the defendant's misrepresentation, the plaintiff suffered damages in the amount of R998 708.18.

[6] The alleged damages are set out in annexure "D" to the particulars of claim and provide, inter alia, for the sinking of a borehole and setting up water infrastructure.

The exception:

[7] The exception is premised on five grounds, which can be summarised as follows:

- a. Clause 8 of the agreement (*"the voetstoot clause"*) prevents the plaintiff from relying on the latent defect.
- b. Clause 9 of the agreement does not warrant the condition of the property, but in fact stipulates that the plaintiff was not induced to enter the agreement by any representations made by or on behalf of the defendant.
- c. The parties entered into the agreement, considering the above two impediments, against the plaintiff's action, contained in the agreement, subject to a Shifrin Clause, which in itself impedes the parties' right to enter into any informal agreements unless in writing and signed by the parties. Notwithstanding this, the plaintiff relies on representations allegedly made by the defendant outside the written agreement.
- d. Clause 15.3 of the agreement provides that the defendant is not liable to provide a borehole and a borehole certificate, while the plaintiff claims damages for precisely that.

- e. In the particulars of claim, the plaintiff is relying on allegations against the agreement, which is against the so-called parol evidence, the *caveat subscriptor* and the integration rule.

[8] It is the defendant's case that, on these grounds, the plaintiff fails to disclose a cause of action in its particulars of claim, alternatively, does not make allegations to sustain a cause of action.

[9] The defendant seeks an order that the plaintiff's claim be dismissed, alternatively that the exception be upheld and the particulars of claim be struck as a result.

Legal analysis and discussion:

[10] In essence, all the grounds of exception, although differently framed, are essentially the same, as the root of the complaints is effectively that the plaintiff's particulars of claim offend against the contract entered into between the parties.

[11] In *Living Hands (Pty) Ltd v Ditz* 2013 (2) SA 368 (GSJ), Makgoka J conveniently summarised the applicable general principles distilled from case law dealing with exceptions. In paragraph 15 of the judgment, Makgoka J provided the overview:

“(a) *In considering an exception that a pleading does not sustain a cause of action, the court will accept, as true, the*

allegations pleaded by the plaintiff to assess whether they disclose a cause of action.

- (b) *The object of an exception is not to embarrass one's opponent or to take advantage of a technical flaw, but to dispose of the case or a portion thereof in an expeditious manner, or to protect oneself against an embarrassment which is so serious as to merit the costs even of an exception.*
- (c) *The purpose of an exception is to raise a substantive question of law which may have the effect of settling the dispute between the parties. If the exception is not taken for that purpose, an excipient should make out a very clear case before it would be allowed to succeed.*
- (d) *An excipient who alleges that a summons does not disclose a cause of action must establish that, upon any construction of the particulars of claim, no cause of action is disclosed.*
- (e) *An over-technical approach should be avoided because it destroys the usefulness of the exception procedure, which is to weed out cases without legal merit.*
- (f) *Pleadings must be read as a whole and an exception cannot be taken to a paragraph or a part of a pleading that is not self-contained.*

- (g) *Minor blemishes and unradical embarrassments caused by a pleading can and should be cured by further particulars.”*

[12] In amplification to Makgoka J in *Living Hands*, Maier-Fawley J, in *Merb (Pty) Ltd and Others v Matthews and Others* (2020/15069) [2021] ZAGPJHC 693 (16 November 2021), also provided a summary of the legal principles applicable in deciding an exception where it is alleged that no cause of action is disclosed:

- “9. *Exceptions are also not to be dealt with in an over-technical manner, and as such, a court looks benevolently instead of over-critically at a pleading.*
10. *An excipient must satisfy the court that it would be seriously prejudiced if the offending pleading were allowed to stand, and an excipient is required to make out a very clear, strong case before the exception can succeed.*
11. *Courts have been reluctant to decide exceptions in respect of fact bound issues.*
12. *Where an exception is raised on the ground that a pleading lacks averments necessary to sustain a cause of action, the excipient is required to show that upon every interpretation that the pleading in question can reasonably bear, no cause of action is disclosed. It is trite that when pleading a cause of action, the pleading must contain*

every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment (facta probanda). The facta probanda necessary for a complete and properly pleaded cause of action importantly does not comprise every piece of evidence which is necessary to prove each fact (being the facta probantia) but every fact which is necessary to be proved.”

[13] For an exception, complaining of a defect in the pleadings, to be successful, the trite position is that it must be adjudicated upon the basis that all the allegations contained in the particulars of claim are true.¹

[14] Pleadings must be looked at as it stands,² together with the facts agreed by the parties, if any, and no facts outside those stated in the pleadings can be brought into issue, except in the case of inconsistency, and no reference may be made to any other documents.³

[15] Courts are reluctant to decide upon an exception concerning the interpretation of a contract.⁴ And this is precisely what is before me: the interpretation of the agreement and whether there was indeed a latent

¹ *Champion v JD Celliers & Co. Ltd* 1904 TS 788 at 790-1; *Amalgamated Footwear & Leather Industries v Jordan & Co. Ltd* 1948 (2) SA 891 (C); *Makgae v Sentra Boer (Kooperatief) Bpk* 1981 (4) SA 239 (T) at 244H – 245A

² *Pretorius v Transport Pension Fund* 2019 (2) SA 37 (CC) at 44F – G; *Brocsand (Pty) Ltd v Tip Trans Resources* 2021 (5) SA 457 (SCA) at par 14

³ *Wellington Court Share Block v Johannesburg City Council* 1995 (3) SA 827 (A) at 833F; *Dilworth v Reichard* [2002] 4 All SA 677 (W) at 681j – 682a; *Naidoo and Another v Dube Transport Corp and Others* 2022 (3) SA 390 (SCA)

⁴ *Sun Packaging (Pty) Ltd v Freulink* 1996 (4) SA 176 (A) at 187J

defect as pleaded by the plaintiff, or whether the defendant is protected by the voetstoots clause.

[16] I am bound to accept, as true, the allegations pleaded by the plaintiff. In my view, the plaintiff pleaded all the required *facta probanda* to sustain its cause of action. On every interpretation thereof, I am satisfied that a cause of action is indeed disclosed.

[17] Where there are, as in this case, fact bound issues pleaded, a court should be reluctant to interfere.

[18] The defendant is not seriously prejudiced by the plaintiff's pleaded case. There is a case to which the defendant can reply.

[19] Premised on the particulars of claim, and the positive factual allegations contained therein, it would be premature, at this stage, to close the door on the plaintiff's pleaded case. The plaintiff is entitled to prove its case on the latent defect, and it can do so only at trial.

[20] In my view, the defendant is placing the cart before the horse, with the exception. It follows that the exception must fail.

Costs:

[21] The plaintiff is seeking a dismissal of the exception with punitive costs on the basis that the exception is meritless and that it constitutes vexatious litigation.

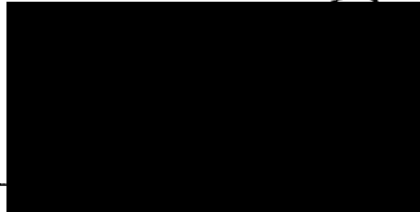
[22] In my view, it cannot be said that the exception was brought for any ulterior or prior motives. The defendant exercised a right available to him in the course of litigation and, as such, will not be punished by an adverse costs order.

[23] I am, however, mindful of the technical nature of exceptions and, under those circumstances, costs will be granted on Scale B.

Order:

Consequently, I make the following order:

1. The exception is dismissed, with the defendant to pay the costs of the exception, such costs to be taxed on Scale B.



Minnaar AJ
Acting Judge of the High Court
Gauteng Division, Pretoria

For the plaintiff:	Adv M Jacobs Instructed by Coombe Commercial Attorneys Inc.
For the respondents:	Adv H C van Zyl Instructed by Annelise Venter Inc.
Heard on:	6 March 2026
Date of judgment:	5 June 2026