IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Reportable:	YES / **NO**
Circulate to Judges:	YES / **NO**
Circulate to Magistrates:	YES / **NO**
Circulate to Regional Magistrates:	YES / **NO**

CASE NO: 1915/2021

In the matter between:

DEON MARIUS BOTHA N.O. **First Plaintiff/Applicant**

SUNE SMIT N.O. **Second Plaintiff/Applicant**

and

REINIER MEYER WEIDEMAN **Defendant/Respondent**

Heard: 5 March 2026

Delivered: 28 July 2026

JUDGMENT

TSAUTSE AJ

INTRODUCTION

[1] This judgment concerns an interlocutory application for leave to amend the plaintiffs' particulars of claim in a defended action. The plaintiffs, duly appointed joint liquidators of Sunset Beach Trading 365 Close Corporation (in liquidation) ("Sunset Beach"), seek to fundamentally restructure their claim against the defendant, Reinier Meyer Weideman. The defendant opposes the amendment, contending that the new causes of action introduced by the proposed amendment have prescribed in terms of section 11(d) read with section 12 of the Prescription Act 68 of 1969 ("the Prescription Act"). The defendant further raises a technical objection regarding the place of signature on the notice of amendment.

[2] The application raises a discrete legal question concerning the interaction between the rules governing amendment of pleadings and the defence of extinctive prescription. The plaintiffs contend that the proposed amendment merely reformulates the same debt through different causes of action, and that prescription was duly interrupted by the timeous institution of the main action. The defendant, conversely, maintains that the amendment introduces new debts which have prescribed, and that the causes of action now relied upon are fundamentally distinct from those originally pleaded.

[3] The central question for determination is whether the proposed amendment introduces a "new debt" that is susceptible to prescription, or whether it merely reformulates the same debt through different causes of action. This question requires careful analysis of the distinction between "debt" and "cause of action" in the context of the Prescription Act, and the application of well-established principles governing amendments to pleadings.

HISTORY AND FACTUAL BACKGROUND

[4] Sunset Beach was placed under provisional liquidation on 26 September 2019, and final liquidation followed on 7 November 2019. The plaintiffs were appointed as joint liquidators by the Master of the High Court, Bloemfontein, on 31 October 2019, under Master's Reference B73/2019. They were authorised at a second meeting of creditors on 1 October 2021 to institute legal proceedings to recover debts due to the liquidated estate.

[5] During the 2019 winter season, Sunset Beach cultivated 700 hectares of wheat, which was harvested in December 2019. The defendant, without the plaintiffs' knowledge or authority, disposed of portions of this wheat crop. Specifically, he sold 416.68 tons to Silostrat (Pty) Limited for R1 941726.92, and an additional portion for R633 260.28, totalling R2 574 987.20. The defendant paid R1 million to the plaintiffs on 12 December 2020, leaving a balance of approximately R1.57 million.

[6] On 25 November 2020, the defendant testified under oath at a section 417 enquiry in the Magistrate's Court for the District of Hoopstad. He acknowledged liability for the full

amount of R2 574 987.20 and undertook to repay it together with mora interest. This undertaking was made an order of court on 25 November 2020.

[7] The plaintiffs issued summons against the defendant on 25 October 2021. The summons was served personally on the defendant on 9 November 2021. The defendant filed a notice of intention to defend on 25 November 2021. The original particulars of claim, filed in October 2021, sought a monetary judgment based on:

(a) the defendant's undertaking to pay at the section 417 enquiry;

(b) an *actio ad exhibendum;*

c) a *condictio furtiva*; and

(d) a delictual claim for damages.

[8] The procedural history since then has been protracted. The plaintiffs filed notices of amendment on 13 February 2024 and 12 March 2024, to which the defendant did not object. The defendant filed a notice of exception on 26 March 2024, and a further notice of exception on 22 April 2024, based on vagueness and embarrassment. The plaintiffs then served a notice of proposed amendment on 3 May 2025, to which the defendant objected on 9 May 2025. The present application for leave to amend was filed on 23 May 2025.

THE AMENDMENT SOUGHT

[9] The proposed amendment is extensive. It deletes paragraphs 1 to 32 of the existing particulars of claim, together with the prayers, and replaces them with an entirely

new formulation. The amended particulars advance a main claim and four alternative claims, each grounded in distinct statutory provisions but all directed at the same underlying conduct and seeking the same fundamental relief, namely the recovery of approximately R1.57 million from the defendant.

a) The main claim is based on the disposition of Sunset Beach's property (the wheat crop) to the defendant, valued at R1 574 987.70, occurred after the date of liquidation (14 August 2019). In terms of section 341(2) of the Companies Act 61 of 1973, this disposition was void by operation of law. The plaintiffs seek a declaration of voidness and an order for repayment.

b) In the first alternative, the plaintiffs plead that at the time of the disposition, Sunset Beach was not indebted to the defendant. Both parties were aware that:

(i) the crops belonged to Sunset Beach;

(ii) Sunset Beach was insolvent;

(iii) liquidation was imminent or had occurred;

(iv) there would be insufficient assets to satisfy creditors;

(v) the disposition would prejudice creditors or prefer the defendant; and

(vi) the parties intended to defraud creditors.

c) The disposition was therefore a collusive transaction liable to be set aside under section 31(1) of the Insolvency Act 24 of 1936, with consequent repayment under section 32(3), a penalty under section 31(2), and forfeiture of any claim the defendant may have against the estate.

d) The second alternative seeks the disposition unduly preferred the defendant over other creditors, constituting an undue preference under section 30(1) of the Insolvency Act, liable to be set aside with consequent repayment under section 32(3).

e) The third alternative seeks a disposition was not made for value, constituted a disposition without value under section 26 of the Insolvency Act, and was made less than two years prior to liquidation. It is liable to be set aside with consequent repayment under section 32(3).

f) A further alternative seeks the defendant's acknowledgment of indebtedness and payment undertaking at the section 417 enquiry on 25 November 2020, which was made an order of court, creates a direct obligation to pay R1 574 987.70 with interest.

g) The amount claimed in the amendment is R1 574 987.70, which differs negligibly from the R1 583 877.20 claimed in the existing particulars. The plaintiffs explain that the difference is attributable to *mora* interest of R8 890.00 that was included in the original claim but is not provided for in the amendment.

THE OBJECTION AND LEGAL FRAMEWORK

[10] The defendant's objection, filed on 9 May 2025, raises two grounds:

(a) First, the defendant contends that the new causes of action based on sections 341(2) of the Companies Act, and sections 31, 30, and 26 of the Insolvency Act, are "new causes of action which were not taken up in the original Particulars of Claim." He avers that the plaintiffs gained knowledge of all facts and the debtor's identity during the section 417 interrogation on 25 November 2020, and were authorised to institute proceedings on 1

October 2021. The effect, he submits, is that these new causes of action have prescribed in terms of section 11(d) read with section 12 of the Prescription Act.

(b)Secondly, the defendant notes that the notice of proposed amendment was signed at "Bloemfontein" on 29 April 2025, which is unclear given that the plaintiffs' attorneys are in Mahikeng.

[11] The defendant's opposing affidavit expands on these objections. He emphasises that the original claim was a 'monetary claim' whereas the new claims are 'declaratory orders' and 'setting aside of transactions' which are 'totally different' debts. He relies heavily *on Duet and Magnum Financial Services CC (in liquidation) v Koster* 2010 (4) SA 499 (SCA) to argue that a declaration that a person is a "debtor of the estate" is in itself a debt for prescription purposes.

[12] The legal framework governing this application is well-established. Uniform Rule 28(1) provides

> 28. Amendment of pleadings and documents
>
> '(1) Any party desiring to amend a pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment'

This means that a party may amend its pleadings with the court's leave. The approach to amendment applications was authoritatively stated in *Imperial Bank Ltd v Barnard NNO and Others* 2013 (5) SA 612 (SCA) at paragraph 8:

> 'An application for amendment will always be allowed 'unless it is made mala fide or would cause prejudice to the other party which cannot be compensated for by an order for costs

or by some other suitable order such as a postponement'. An amendment would cause prejudice if, for example, its effect would be to deprive the other party to the action of the opportunity to raise an otherwise good plea of prescription. Thus, a late amendment which has the effect of introducing a new cause of action or new parties would inevitably cause prejudice to the other party in the action, as it would defeat an otherwise good defence of prescription. However, a plaintiff is not precluded by prescription from amending his or her claim, 'provided the debt which is claimed in the amendment is the same or substantially the same debt as originally claimed, and provided, of course, that prescription of the debt originally claimed has been duly interrupted.'

[13] This passage encapsulates the two-stage inquiry. Firstly, the enquiry is whether the amendment would cause prejudice by defeating an otherwise good defence of prescription; and secondly, if so, whether the debt claimed in the amendment is the same or substantially the same as the debt originally claimed, with duly interrupted prescription.

ANALYSIS: THE "SAME DEBT" PRINCIPLE

[14] As Loubser observes in his seminal treatise *Extinctive Prescription* (Juta & Co 1996), the concept of a "debt" for prescription purposes must be understood as the underlying obligation itself, the substance of what is owed, rather than the procedural vehicle through which that obligation is enforced. This academic position aligns with judicial precedent; in *Sentrachem Ltd v Prinsloo* 1997 (2) SA 1 (A), the Appellate Division similarly confirmed that a "debt" is not synonymous with a "cause of action", but rather refers to the "right of action" (*vorderingsreg*) representing the active pole of the underlying obligation. The main objective of extinctive prescription, as both authority and case law

indicate, is to create legal certainty and finality in the relationship between the parties after the lapse of time, with a primary emphasis on protecting the defendant against a stale claim. However, this protection is not intended to operate so harshly as to preclude a creditor from refining the legal basis for enforcing an obligation that has already been timeously asserted

[15] The "same debt" principle therefore serves as a moderating mechanism as it recognises that a creditor who has already interrupted prescription by issuing summons should not be penalised for seeking to articulate the legal basis of the claim more precisely, provided the underlying obligation remains unchanged. This principle acknowledges that the law provides multiple causes of action that may be available to enforce a single debt, and that the choice or reformulation of cause of action does not alter the fundamental nature of the obligation owed.

[16] The defendant's objection fundamentally misconceives the relationship between debt and cause of action. This Court must therefore examine the distinction carefully. *In CGU Insurance Ltd v Rumdel Construction (Pty) Ltd* 2004 (2) SA 622 (SCA) at para 6, the Supreme Court of Appeal emphasised that

'debt' in the context of section 15(1) must bear 'a wide and general meaning'. It does not have the technical meaning given to the phrase 'cause of action' when used in the context of pleadings'

The Court explained:

> 'Cause of action' is ordinarily used to describe the factual basis, the set of material facts, that begets the plaintiff's legal right of action and complementarily, the defendant's 'debt'— the word used in the Prescription Act'

[17] The test was further elaborated in *Firstrand Bank Ltd v Nedbank (Swaziland) Ltd* 2004 (6) SA 317 (SCA), at para 4 where the Court held:

> 'Even a summons which fails to disclose a cause of action for want of one or other averment may therefore interrupt the running of prescription provided only that the right of action sought to be enforced in the summons subsequent to its amendment is recognisable as the same or substantially the same right of action as that disclosed in the original summons'.

[18] The distinction between a 'debt' and a 'cause of action' was further emphasise by Harms JA in *Drennan Maud & Partners v Pennington Town Board* 1998 (3) SA 200 (SCA) at 212G–I, where the Court reiterated that 'debt' does not mean 'cause of action', adding that the strict level of scrutiny applied to a cause of action during an exception is wholly inappropriate when determining whether a debt has prescribed.

[19] The plaintiffs also rely on *Mazibuko v Singer* 1979 (3) SA 258 (W) at para 265H–266A, where the Court formulated the critical question:

> 'Did the plaintiff, in the earlier process, claim payment of the same debt as now forms the subject-matter of the claim which is said to be prescribed? If the answer is in the affirmative, prescription has been interrupted, even if one of the grounds upon which the claim is now based differs from the ground or grounds relied on at the earlier stage.'

[20] These authorities establish a clear principle that prescription extinguishes debts, not causes of action. A cause of action is the procedural vehicle through which a debt is enforced; it is not itself the debt. The fact that a plaintiff pursues different legal theories to

recover the same underlying obligation does not create a new debt susceptible to fresh prescription.

[21] The defendant's reliance on *Duet and Magnum Financial Services CC (In Liquidation) v Koster* 2010 (4) SA 499 (SCA) requires careful consideration. In that case, Nugent JA held that a declaration under the Insolvency Act that a person is a "debtor of the estate" is a "debt" for prescription purposes. The defendant extrapolates from this to argue that the declaratory and setting-aside orders sought in the amendment are themselves "debts" distinct from the original monetary claim.

[22] This extrapolation is unwarranted. *Koster(supra)* was concerned with a specific statutory mechanism where the declaration itself created the legal obligation. The Court there was not addressing the situation where a declaration is sought as a stepping stone to a monetary recovery that was already the subject of pending litigation. Here, the declaratory orders under section 341(2) and the setting-aside orders under sections 31, 30, and 26 are not ends in themselves; they are procedural mechanisms to enable recovery of the same monetary amount that the plaintiffs have been pursuing since October 2021.

[23] The defendant also refers to the Constitutional Court's decision in *Off-Beat Holiday Club and Another v Sanbonani Holiday Spa Shareblock Limited and Others* 2017 (5) SA 9 (CC), where the majority held that an application under section 252 of the Companies

Act was not a "debt" for prescription purposes. The defendant suggests that this case supports a narrower interpretation of "debt."

[24] I must highlight that this reading is misplaced because *Off-Beat Holiday Club* (supra) concerned a regulatory application to declare persons as delinquent directors, which was a remedy that was entirely non-compensatory and disciplinary in nature. The Constitutional Court distinguished such applications from claims for "something owed or due." As affirmed by Jafta J in *Makate v Vodacom (Pty) Ltd* 2016 (4) SA 121 (CC) at para 85, the term 'debt' for the purposes of the Prescription Act must be given its ordinary dictionary meaning, namely:

> 'Something owed or due: something (as money, goods or service) which one person is under an obligation to pay or render to another. A liability or obligation to pay or render something; the condition of being so obligated.'

[25] The amended claims in this case squarely fall within this definition. Every single cause of action in the amended particulars ultimately seeks payment of money from the defendant to the liquidated estate. The declaratory and setting-aside orders are merely the legal pathways to that monetary recovery. They do not transform the fundamental nature of the claim from a monetary one into something else.

APPLICATION TO THE FACTS

[26] Applying these principles to the present case, I am satisfied that the debt claimed in the amendment is the same, or at the very least substantially the same, as the debt originally claimed.

[27] The factual foundation is identical. Both the original and amended claims are based on the defendant's unauthorised disposition of Sunset Beach's wheat crop in December 2019. The same conduct, the same property, the same parties, and the same prejudice to the insolvent estate underpin every formulation.

[28] The relief sought is functionally identical. The original claim sought payment of R1 583 877.20 (plus mora interest). The amended claim seeks payment of R1 574 987.70. The difference of R8 890.00 is explained as the omission of mora interest in the amendment. This is not a different debt; it is the same debt with a minor arithmetic adjustment.

[29] The additional consequences in the amended claims do not create a new debt. The penalty under section 31(2) of the Insolvency Act and the forfeiture provision are ancillary consequences that arise if the collusive transaction claim succeeds. They are not separate debts; they are augmentations of the primary monetary recovery. The defendant's argument that these additional consequences transform the claim is analogous to suggesting that a claim for damages with interest is a different debt from a claim for damages without interest which is a proposition that finds no support in the authorities.

[30] The timing is undisputed. The summons was issued on 25 October 2021 and served on 9 November 2021. The defendant does not dispute this. Under section 15(1) of the Prescription Act, the service of a process whereby the creditor claims payment of

the debt interrupts prescription. The original summons clearly claimed payment of the debt at issue. Prescription was therefore duly interrupted in November 2021, well within any applicable prescriptive period.

[31] The defendant's own conduct confirms the identity of the debt. At the section 417 enquiry on 25 November 2020, the defendant acknowledged liability for R2 574 987.20 and undertook to repay it. This acknowledgment was made an order of court. The defendant's subsequent payment of R1 million and his defence of the action since 2021 demonstrate that he has always understood the nature of the claim against him. The amendment does not introduce any surprise or prejudice.

[32] The defendant's argument that the original claim was based on an "undertaking to pay" whereas the new claims are based on "void dispositions" and "collusive transactions" is a distinction without a difference in substance. The undertaking to pay was itself based on the defendant's admission that he had disposed of the wheat crop without authority. The amended claims simply articulate the legal basis for that liability more precisely, drawing on the specific statutory provisions governing liquidated estates. This is precisely the kind of procedural refinement that the amendment rules are designed to accommodate.

[33] I turn briefly to the defendant's technical objection regarding the place of signature. The notice of amendment was signed at "Bloemfontein" at the plaintiffs' attorney, Mr. Charl Nienaber of Nienaber & Wissing Attorneys, practices in Mahikeng. A confirmatory affidavit

explains that the reference to Bloemfontein was a drafting error; the document was in fact signed in Mahikeng. This is a minor technical irregularity that does not affect the validity or substance of the notice. The defendant has not demonstrated any prejudice flowing from this error. The objection is accordingly dismissed.

PREJUDICE

[34] The defendant has failed to establish any prejudice that would result from the amendment. He has had notice of the factual basis of the claim since 2021. The same witnesses, the same documents, and the same legal issues will be relevant. The amendment does not introduce new parties, new time periods, or new factual disputes. The defendant's ability to defend the action is entirely unaffected.

[35] Conversely, refusal of the amendment would cause grave prejudice to the plaintiffs. They would be forever precluded from prosecuting valid causes of action that are specifically designed to protect creditors of insolvent estates. This would frustrate the purposes of the Companies Act and the Insolvency Act, and would potentially infringe the plaintiffs constitutionally entrenched right to a fair trial under section 34 of the Constitution.

CONCLUSION

[36] For all the reasons stated above, I am satisfied that:

(a) The proposed amendment does not introduce a new debt susceptible to prescription;

(b) The debt claimed in the amendment is the same, or substantially the same, as the debt originally claimed;

(c) Prescription of the original debt was duly interrupted by the timeous service of summons in November 2021;

(d) The defendant has not established any prejudice that cannot be compensated by costs;

(e) The technical objection regarding the place of signature is devoid of merit.

[37] The application for leave to amend the particulars of claim is accordingly granted.

[38] The defendant's opposition to this application was not frivolous—he raised arguable points based on recent Constitutional Court jurisprudence that required careful consideration. However, his objections were ultimately misplaced, and the plaintiffs have been compelled to incur unnecessary costs in responding to them. In the exercise of my discretion, I consider it appropriate that the defendant pay the costs of this application.

ORDER

[39] In the result, I make the following order:

1. The plaintiffs' application for leave to amend their particulars of claim in accordance with the notice of proposed amendment dated 29 April 2025 is granted.

2. The defendant is ordered to pay the costs of this application, including the costs consequent upon the employment of counsel on Scale C.

3. The defendant's objection to the proposed amendment is dismissed.

[redacted]

T. TSAUTSE

JUDGE OF THE HIGH COURT

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