

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION, JOHANNESBURGCASE NO: 141457/2024DATE: 30.07.2026

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES : NO

(3) REVISED



SIGNATURE

Date: 30 July 2026

In the matter between

10 ABROSIE BROTHERS (PTY) LTD

Plaintiff

and

INTERNATIONAL SLAB SALES (PTY) LTD

Defendant

J U D G M E N T E X T E M P O R E

WILSON, J: The plaintiff, Abrosie Brothers, is a property-owning company which is engaged in the business of building, selling and renting out residential property and office space. It contracted with the defendant, International

20 Slab, for the supply of a large number of quartz caesarstone tiles.

The first set of tiles supplied were ordered on or about 14 December 2021. Abrosie Brothers, in its particulars of claim, says that International Slab undertook to supply those tiles for a given price, the payment of which

would take place prior to delivery, and that the tiles would be suitable for use on floors.

It appears from the rest of the particulars that further batches of tiles were ordered and paid for during January 2022, July 2022, August 2022, September 2022, January 2023, February 2023, and September 2023. Abrosie Brothers says that it later transpired that the tiles, contrary to International Slab's undertaking, were not, in fact, fit for use as floor tiles. In paragraph 9 of the particulars, Abrosie
10 Brothers sets out the damages it says it suffered as a result of attempting to use and install tiles that were not fit for purpose. Those damages are amplified in paragraphs 10, 11, and 12 of the particulars.

The defendant excepted to the particulars of claim as disclosing no cause of action, alternatively being vague and embarrassing.

The approach to pleadings on an exception is clear. The pleading assailed must be excipable on every reasonable interpretation. Mr Naidoo, who appeared for the
20 defendant, was unable to convince me that it was not a reasonable interpretation of these particulars that one contract came into being for the supply of all of the tiles set out in paragraphs 3 and 5 of the particulars, and that the undertaking that the tiles were suitable for use on floors, which is recorded in paragraph 3.3, was applicable

to all of the tiles mentioned in paragraph 5.

Read in that way, the particulars insofar as the contract are concerned seem to me to be fairly clear. All of the tiles referred to in the particulars were supplied at the prices set out in the annexures to the particulars. They were all subject to an undertaking given by the defendant that they were suitable for use on floors, and that undertaking was a material and enforceable part of the contract.

10 There was also some suggestion that the type of damages claimed in paragraphs 9 to 12 of the particulars were not of the type that were claimable in an action for contractual damages. I reject that proposition, too. As Mr Naidoo was constrained to accept, the damages pleaded in those paragraphs are all damages that, if the breach is proved, at least in principle, might flow as a natural and probable consequence of the breach. The breach, of course, being the failure to supply tiles consistent with the undertaking that they were fit for use on floors. I therefore
20 reject the proposition that the particulars disclose no cause of action.

I now turn to the proposition that the particulars are vague and embarrassing. That proposition was advanced by Mr Naidoo on two grounds. The first was that there was a lack of particularity as to the defect alleged. The defect

alleged in the tiles is, of course, that they were not fit for use on floors.

While Abrosie Brothers could have been more specific by setting out why the tiles were not fit for use on floors, the *factum probandum* is clear: there was a warranty that the tiles were fit for that purpose. Although pleaded at the bare minimum, that pleading is sufficient. The question of the manner in which the tiles were unfit for the purpose for which Abrosie says they were purchased is either a
10 matter of evidence or ought properly to be the focus of a request for further particulars in preparing for trial.

It was finally suggested that the particulars are vague and embarrassing because paragraphs 9.1 and 9.3 appear to duplicate Abrosie Brothers' damages. On the face of things, that is a point well taken. However, Mr Katzew, who appeared for Abrosie Brothers, submitted that, read with the annexures to the particulars, it is clear that paragraphs 9.1 and 9.3, in fact, relate to two separate costs flowing from the supply of defective tiles. I accept that the particulars
20 are reasonably capable of that interpretation and that it is a matter of evidence whether or not the damages pleaded in paragraph 9 and set out in the annexures to the particulars are, in fact, claimable.

There was some play in the heads of argument and in the notice of exception about the use of the term "general

damages” in paragraph 5. There was also a suggestion that contractual damages cannot be claimed unless the contract is cancelled. Mr Naidoo did not seriously pursue either of those propositions and I would in any event have rejected them both.

Although the language of general damages is inapposite to a contractual claim, the term general damages, as deployed in paragraph 9, is doing no real work. It is clear to any reasonable reader of these
10 particulars that the damages particularised in paragraphs 9.1 to 9.3 are, in fact, damages of a patrimonial and contractual nature.

It is also trite that damages for breach of contract may be claimed in the absence of cancellation. The obvious example of such a situation is where the parties are in an ongoing relationship, and some part of one party's performance is defective. The other party may, in those circumstances, claim damages for the defective performance while still seeking to keep the contract alive.

20 I understand that there is authority for that proposition, to which Mr Katzew referred me, but in my view it follows as a matter of basic logic when the fundamental principles of contract law are borne in mind.

For all of those reasons, there is nothing in the exception, and it must be dismissed.

Mr Katzew asked for a punitive costs order. He urged me to conclude that the exception was taken purely for the purposes of delay. I cannot accept that proposition. Though not excipiable on the bases set out by the defendant, I accept Mr Naidoo's submission that the particulars are unhappily drafted, are sparse where more particularity could have been provided, and on an initial reading may be considered in some respects vague.

At second glance, the particulars are not excipiable.
10 But I do not think that failing to take that second look opens International Slab up to a punitive costs order.

The exception is dismissed with costs.



WILSON, J
JUDGE OF THE HIGH COURT
30 July 2026

